

Method in Legitimation

Exploring Lonergan's Political Thought

Christopher Dan Berger

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Christopher Dan Berger

Advisor: Patrick Byrne, PhD

This dissertation proposes to give an expanded reading and interpretation of the work of Bernard Lonergan, SJ, in political theory around the question of political legitimation: What does it mean for a governing entity to exercise coercive power legitimately? To answer this question from Lonergan's thought requires that we do several things: understand the historical context in which we find ourselves (Chapters 1-2), understand what Lonergan means by authenticity (Chapter 3), and how that relates to legitimate authority, which is an authentically operating matrix of authentic individuals participating in authentic communities governed by and utilizing authentic institutions and institutional sub-communities (Chapters 4-6). We come out at the Conclusion with a method for evaluating governmental legitimacy that expands on Lonergan's approach.

The history of the conversation concerning political legitimation is capacious, complex, confused, and contradictory, and I do not propose to recount it here in full. But with so much already said, what does Lonergan bring to the table distinct from the previous conversation? What is new is his philosophical focus, emphasizing method over concrete content or legislative procedure, which leads to an account of legitimation as authenticity. What matters is how individuals, communities, and institutions, including governments, are operating, not what particular form they take. Granting that his account of legitimation as authenticity is unique, why do we need authenticity to make sense of legitimate political authority? What does it add that the myriad other available accounts of legitimation do not already have?

Available accounts of legitimation meander through the shoals of history, and it's usually only through trial and error that a navigable passage connecting power to legitimate authority is found. In brief, what Lonergan's thought provides is a way to skim over the shoals of history so that no matter what new features may form beneath the waves, legitimate authority will always be possible and recognizable. We begin with an extensive but partial mapping of those shoals and pointing to some of the major shipwrecks of previous theories, the better to distinguish Lonergan's view of legitimation as rooted in authenticity of individual, community, and institution in subsequent chapters. This will also give us examples for practical evaluation to show how Lonergan's method might work in action.

Lonergan is not a cultural relativist, but he does claim that his understanding of legitimacy will be applicable in all times and for all peoples and that, by extension, legitimate government is always possible, no matter what form it takes. He gives a retrospective evaluation method, looking at the progress or decline of a culture, a nation, a civilization, a people as a proxy for the legitimacy of their leadership. "Inquiry into the legitimacy of authority or authorities is complex, lengthy, tedious, and often inconclusive" because direct evaluation of authenticity is complex, lengthy, tedious, and often inconclusive.¹ But "[t]he fruit of authenticity is progress" and "[t]he fruit of unauthenticity is decline", and the meat of this work is to spell out in detail the authentic operations of individuals, communities, and institutions (and institutional sub-communities).² These are what produce the progress or decline, and we conclude by supplementing Lonergan's

¹ Bernard Lonergan, "Dialectic of Authority," in *A Third Collection*, ed. Robert Doran and John Dadosky, 2nd ed. (Toronto: University of Toronto Press, 2017), 6; hereafter cited as Lonergan, "Dialectic of Authority"

² Lonergan, "Dialectic of Authority", 6, 7

method with an approach that concurrently evaluates the operations of individuals, communities, and institutions and their sub-communities to see whether they are operating unauthentically (because unauthenticity is easier to recognize than authenticity in concurrent evaluation) and so, likely to produce either progress or decline. This is not as reliable as the retrospective method because not everything going on at a given time can be known to the contemporaneous observer and evaluator, but it is also more useful for creating concrete critiques of what is, in fact, going forward.³

³ Bernard Lonergan, *Method in Theology*, 2nd ed., ed. Robert Doran and John Damosky (Toronto: University of Toronto Press, 2017), 168; hereafter cited as Lonergan, *Method in Theology*.

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Preface

When I was admitted to the doctoral program at Boston College, I already knew what I wanted to write on: Lonergan on legitimation. I relished the opportunity to write on a subject until I thought I had done it justice, then understand how much more there was to explore and continue to go deeper until I ran out of pertinent questions. Over 600 pages later, while I have questions left and still want to explore additional aspects of Lonergan's political thought, I think it would be difficult to say that I have not taken advantage of that opportunity. I was initially struck by his thought on common sense in *Insight* as being important for explaining something that had long bothered me about the nature of our political discourse. From that starting point, my thinking has evolved and gained depth as I have continued to study Lonergan's work and written this dissertation, reaching ever upward to his mind. This has been a labor of love, excitement, and discovery, and I hope the reader will experience it in all those modes as well.

A work of this sort and size is not produced in a vacuum or without significant personal, communal, and institutional support. There are any number of people who have contributed to its successful completion, but of them, several bear special mention.

First, my wife, Noelle. She has been unflagging in her emotional and material support for me and my dream during what has turned out to be a much longer process than either of us anticipated going in. Her willingness to act as a sounding board for my late-night rambles and a sympathetic ear when I've been frustrated by one thing or another have only ever made me love her more (even when she's also been very frustrated with me over the pace). Without her support, none of this would have been possible.

Second, my director, Dr. Patrick Byrne. Dr. Byrne introduced me to Lonergan on my first day as a Master's student, and over the course of that semester I found in Lonergan the elusive ring of truth. Lonergan has a much steeper learning curve than most philosophers, and it ranges high in terms of the volume of material one must have at least attempted to get an adequate idea of his project and his method of advancing it. Dr. Byrne was never anything but patient with me as I struggled to make sense of Lonergan that first term (and for several terms thereafter), and when I proposed this project for my dissertation, I was absolutely thrilled that he agreed to direct it. I could not have asked for a better mentor or director.

Third, the other members of the committee, Dr. David Rasmussen and Dr. Thomas McPartland. Dr. Rasmussen agreed to sign onto this project at the beginning, despite my up-front warnings concerning its anticipated size, and Dr. McPartland agreed when it had already crested 400 pages. The detailed comments I have received on my drafts from every member of the committee have been extremely helpful as I try to refine my thought and come out with a project I can be proud of. I have repeatedly had occasion to be extremely grateful that they agreed to be part of this.

Fourth, Brian Himes. When Brian first came to me to suggest that we form a dissertation writing group in the summer of 2018, I was initially somewhat hesitant because I knew that for it to be worthwhile, I would have to ask him to read carefully through my entire dissertation and read carefully through his in turn, which would not be a small time commitment for either of us. But the partnership has been invaluable in ways I could not have anticipated. I could not be more thankful to him for his unfailing attention to detail, for calling me out when needed, and for always doing so in a spirit of love. Our weekly meetings have sometimes turned a bit heated and often run to four hours, but I have gained much more than a writing partner. I have gained a good friend.

Lastly, Dr. Kerry Cronin, Dr. Brian Braman, Dr. Christopher Constan, Dr. Susan Legere, Mary Elliot, and everyone else involved with the Perspectives program and the Lonergan Institute at Boston College, including Dr. Byrne as the director of the Lonergan Institute. Dr. Cronin in particular has been an immensely helpful mentor in learning to teach, and everyone here has been a source of constant and material institutional support. Thanks to them, I have been in the unusual and delightful position of teaching Perspectives 1 and now Perspectives 3 for almost the entire time I have been writing this dissertation, which has both been a fascinating opportunity to road test some of its ideas in the classroom and an excellent way to not bankrupt my funding stream. They have all given me a great deal during my time at Boston College, and this would have been much harder to complete without their continued support.

Introduction

This dissertation proposes to give an interpretation of Lonergan's work in political theory around the question of political legitimation: What does it mean for a governing entity to legitimately exercise power, especially coercive power? To answer this question from Lonergan's perspective, we will need to do several things: We will need to understand the historical context in which we find ourselves to understand the nature of the legitimation crisis facing the Western world and what Lonergan brings to the table—a historical context not so different from Lonergan's own, in most respects. We will need to understand what Lonergan means by legitimate authority, which turns out to be an authentically operating matrix of authentic individuals participating in authentic communities governed by and utilizing authentic institutions and institutional sub-communities. And we will come out with a method for evaluating the legitimacy of any government that expands on Lonergan's own suggestions.

The history of the conversation concerning political legitimation is capacious, complex, confused, and contradictory, and I do not propose to recount it here in full. But

with so much already said, what does Lonergan bring to the table that is distinct from the previous conversation? What is new is his philosophical focus, emphasizing method over concrete content or legislative procedure, which leads to an account of legitimation as authenticity. What matters is how individuals, communities, and institutions, including governments, are operating, not what particular form they take. Granting that his account of legitimation as authenticity is unique, why do we need authenticity to make sense of legitimate political authority? What does it add that the myriad other available accounts of legitimation do not already have?

Accounts of legitimation available today are come upon apparently at random by communities guided by the conditions of emergent probability through the shoals of history, and it is usually only through trial and error that a navigable passage connecting power to legitimate authority is found. In brief, what Lonergan's thought provides is a way to skim over the shoals of history so that no matter what new features may form beneath the waves, legitimate authority will always be recognizable. We begin in Chapters 1 and 2 by giving a partial mapping of those shoals and pointing to some of the major shipwrecks of previous theories, the better to distinguish Lonergan's view of legitimation as rooted in authenticity of individual, community, and institution in subsequent chapters. This will also give us examples for practical evaluation to show how Lonergan's method might work in action.

Lonergan is not a cultural relativist, but he does claim that his understanding of legitimacy will be applicable in all times and for all peoples and that, by extension, legitimate government is always possible. He gives a retrospective evaluation method, looking at the progress or decline of a culture, a nation, a civilization, a people as a proxy

for the legitimacy of their leadership. “Inquiry into the legitimacy of authority or authorities is complex, lengthy, tedious, and often inconclusive” because direct evaluation of authenticity is complex, lengthy, tedious, and often inconclusive.⁴ But “[t]he fruit of authenticity is progress” and “[t]he fruit of unauthenticity is decline”, and the meat of this work is to spell out in detail the authentic operations of individuals, communities, and institutions (and institutional sub-communities).⁵ These are what produce the progress or decline, and we will conclude by supplementing Lonergan’s method with an approach that concurrently evaluates the operations of individuals, communities, and institutions and their sub-communities to see whether they are operating unauthentically and so, likely to produce either progress or decline. This is not as reliable as the retrospective method because not everything going forward at a given time can be known to the observer and evaluator contemporaneously, but it is also more useful for creating concrete criticisms of what is, in fact, going forward.⁶

This is a unique approach to the question of legitimacy. In the early 20th century, Max Weber outlined three archetypes of legitimation, which he gave as *charismatic* (the law is legitimate because of the leader who made it), *traditional* (this is the way it should be done because we have always done it this way), which usually represents the ossification of what the charismatic leader put in place, and *legal-rational* (the law is legitimate because it was made following the proper forms, however conceived). These archetypes, I think, accurately describe every attempt at a normative theory of legitimation—except

⁴ Bernard Lonergan, “Dialectic of Authority,” in *A Third Collection*, ed. Robert Doran and John Dadosky, 2nd ed. (Toronto: University of Toronto Press, 2017), 6; hereafter cited as Lonergan, “Dialectic of Authority”

⁵ Lonergan, “Dialectic of Authority”, 6, 7

⁶ Bernard Lonergan, *Method in Theology*, 2nd ed., ed. Robert Doran and John Dadosky (Toronto: University of Toronto Press, 2017), 168; hereafter cited as Lonergan, *Method in Theology*.

Lonergan's. And each of these attempts has proven deficient for various reasons, some of which we will consider in Chapters 1 and 2. Charismatic legitimation is basically unreliable in the long term as even the best charismatic leaders die; the tradition of authority the charismatic leader bequeaths to the next generation requires constant renewal from a charismatic source and collapses when not renewed for too long (or when we peek behind the curtain of tradition); legal-rational legitimation relies on procedural safeguards to legitimate the resultant law but cannot put enough safeguards in place to ensure that the legal norms created will also always be morally acceptable.

What makes Lonergan's thought on this matter so historically unique and why it can offer a unique solution to the crisis of our day is that it offers a higher integration of these Weberian archetypes. In the West, we have largely relied on legal-rational legitimation in the last century not because it is inherently superior, on Lonergan's account, but because it is what our communities have adapted to as they developed. When a piper comes along trying to ground the legitimacy of his actions in the force of his personality, this will be illegitimate without a serious shift in the community. It is also true that, in practice, legal-rational legitimation almost never operates alone for any period of time but must first conform to or pay homage to tradition and then, by its operation, form its own tradition. Lonergan's approach to legitimation explains why all of this is and why it is not the right approach for every community in every historical situation, something previous legitimation theories have tended to do. And because it can speak to each kind of legitimation archetype and say why each is or is not appropriate in each time for each community, it does not fit within the bounds of any of those archetypes or within the original bounds of the theory that first articulated them.

Furthermore, Lonergan's approach to legitimation contains elements of each. Charismatic legitimation deals with the authentic operation of the individual in his capacity as the defining leader within the community, something we will discuss in Chapter 5. Lonergan's approach explains what is needed for that charismatic leader to be legitimate, that is, to produce genuine progress: charisma is not enough; it must be coupled to authentic operation of the individual driving authentic operation of the community and the institutions and institutional sub-communities set up under his auspices. Traditional legitimation deals with the authentic operation of the community in structuring its interactions. Lonergan treats this as a set of informal institutions, frameworks for cooperative human action, which we will discuss in Chapter 6. Where traditional legitimation concerns informal institutions, legal-rational legitimation concerns formal institutions.⁷ The difference between the two is the purposiveness with which they were constructed and are maintained. Lonergan's approach treats both in similar ways: an institution is only authentic if its operative framework directs the action of its sub-community to actualize values the community needs actualized and is so directed in ways aligned with the community's scale of value preference (and if that scale of value preference is, itself, normative). Because Lonergan's approach operates in this way, he does not fit into any of these archetypes but supervenes on them all to regulate their application.

In Chapter 1, we begin, of necessity, at the beginning. It was once said that all roads lead to Rome, and while that is not entirely true for us, we cannot ignore the impact of Rome and her institutions on the subsequent development of law and politics in Europe

⁷ We will explore the differences between formal and informal institutions near the beginning of Chapter 6.

and around the globe. There are very few places left in this world whose political and legal institutions cannot trace their pedigree at least in part to Rome. As such, Rome represents a convenient time zero for us, and a consideration of Rome's institutions will be of use to us later as well. With Rome, we will consider two significant shifts in government and, with them, shifts in the meaning and locus of legitimate authority. The end-point of Rome's legitimation saga is the second settlement of the Augustan Principate in 23 BC and the establishment of *majestas*, majesty, as the foundation of legitimate authority, a foundation which survived the fall of Rome and persisted for 1500 years in Europe, unchanged in substance.

From there, we proceed in Chapter 2 to consider legitimation in the High Middle Ages following the end of Roman imperial authority in Western Europe. The core notions of legitimation in this period are essentially identical to what existed under Imperial Rome, and that, perhaps surprisingly so. Here we will consider two points at which the legitimation schema might have shifted, at which one might be tempted to say it *should* have shifted, but at which it nonetheless did not. The basic reason for that is simple enough: a true revolution in the practice of legitimation is difficult, and the inertia of the political order will tend to preserve the old ways of doing things where possible. It took a series of body blows in (historically) quick succession, beginning with the Ottoman's final conquest of the Byzantine Empire in 1453 and ending in 1517 with the advent of the Reformation, to bring the system to its knees.

This caused a series of shifts in legitimation theory leading down to the present day. In each shift, we will consider the crisis point when authority lost its legitimacy and was

revealed “as mere power.”⁸ These crisis points spawned revolutions in thought because at each, existing institutions and their underlying claims to legitimate authority were demonstrated as insufficient to meet the challenges of the day. As part of that consideration, we will see that legitimation theories generally make their claims more or less systematically: at one end, what is right is what is right because *the right people* have said it is right; at the other end, what is right is right because the appropriate people have said it *in the right way*. In the former instance, the emphasis is on the personal: Did the right person speak? What makes that the right person? In the latter instance, the emphasis is on the structure: What manner and mode of speech did that person use? Was it said at the right time, in the right way, to the right people, about the right things?

Since the Reformation, the response of political philosophy to every epochal shift in history has been to wrap ever more framework around political action, build in ever more structure. Every step down this road has taken us further from the core question of politics: “What should we as a community do in a given situation?” Instead, the question has become, “How should we structure our lives together so that we do not make mistakes?” When we do make mistakes as a community, we do not ask, “What should we have done here?” We are usually pretty clear on what the wrong thing to do was (if not *why* it was the wrong thing), and we assume we know what the right thing would have been (usually the opposite of what *did* happen, with the implied either/or fallacy). We instead ask, “How could this error have been prevented?”, and our answers almost always involve more structural and procedural changes, more checks and balances, more opportunities to

⁸ Lonergan, “Dialectic of Authority”, 6

say “no” to whatever new proposal, policy direction, or governmental action may be at issue.

But today, we in the West seem to have come to a place where the answers from our last crisis point at Nuremberg have proven insufficient to address the challenges of our day. In Chapters 3-7, we will turn to the question of Lonergan’s method of legitimating power, ensuring the authentic operation of individuals, communities, and institutions and their sub-communities, and at all nodes of this matrix both internally and in relation to the other nodes. Throughout these chapters, we will rely on Lonergan’s most explicit writing on the question of the legitimacy of authority, “Dialectic of Authority”, as our guiding star.

Chapter 3 will consider what Lonergan means by “authenticity”. This is not a simple question to answer, and what we will come to is that authenticity is borne in the meanings and values we generate and is therefore attributable also to the process by which we know the world and ourselves and make decisions (and so also to us as subjects). But where previous treatments of Lonergan on authenticity emphasized authenticity as an integrated and whole way of being, with good reason, we must instead consider its three components separately. These are the entities that are or are not authentic (individual, community, and institution), the processes by which each operates authentically, and the meanings and values they generate in that authentic operation. Each entity is different and accordingly employs different processes, but the meanings and values generated are of the same kinds in all three instances. Chapter 3 will therefore give a precis on authenticity to give the reader a framework for the rest of the project through Chapter 6, then dive into what Lonergan means by ‘meaning’ and ‘value’ and how they are employed in his work.

Chapters 4-6 will press into how authenticity applies to legitimation for Lonergan. Authenticity begins for Lonergan with human cognitional structure, and in his account of conscious intentionality, he posed three questions in attempting to understand the knower, and these questions generally outline his method: What am I doing when I'm knowing? Why is doing that knowing? What is brought about by doing that? Patrick Byrne, in his recent book *The Ethics of Discernment*, has given those questions another cast in attempting to spell out Lonergan's ethics: What am I doing when I'm being ethical? Why is doing that being ethical? What is brought about by doing that? We will need to ask a similar but enlarged set of questions: What am I doing when I'm being authentic? Why is doing that being individually authentic? What is brought about by doing that? Who, then, can we say is being authentic? Because Lonergan explicitly separates the individual subject to authority, the community, and the individual in (institutional) authority as substantively different entities in "Dialectic on Authority", a separate set of questions must be asked about each, and a separate set of answers will be arrived at in each case. We will begin by asking the first three of these four questions about the individual (Chapter 4), community (Chapter 5), and institutions and institutional sub-communities (Chapter 6).

There are, we should note, four questions here at each juncture, compared to Lonergan's and Byrne's three each. The fourth question looks to operationalize the answers to the first three into an evaluative method, and the Conclusion will look to put all of these things together to fulfill the promise of the title and come out with a method in legitimation. As we said, a direct evaluation of authenticity "is complex, lengthy, tedious, and often inconclusive", and Lonergan's own suggestion was to consider the fruits of individual-communal-institutional matrices. This can support a powerful retrospective

analysis, but it lacks the tools to support concurrent review or prospective analysis, particularly when large communities and institutions are involved.⁹ We will therefore propose to include also a second form of analysis, considering whether currently employed processes or proposed changes thereunto exhibit signs of unauthenticity, which should allow us to conduct a closer concurrent and prospective analysis. Here, we will not just consider theory but application, and we will return to the groundwork laid in Chapters 1 and 2 to see Lonergan's theory in practice by evaluating the Nuremberg Trials, which were an abrogation of international law when they took place, using evidence available at the time as much as possible.

At the end, what we come out with is an operationalizable theory of legitimation that can be productively applied to analyze the role of government in modern communities and our individual lives and critique (both positively and negatively) individual, communal, and governmental actions. But we recognize that Lonergan has more in scope than just the government, and this theory of legitimation will support a thoroughgoing analysis of communal and individual action as well. We make no promises that such an analysis will be easy to do. We recognize that Lonergan's ideal of an authentic individual-societal-institutional matrix is probably not totally achievable given the human condition, but striving towards that goal is possible and beneficial. We come out with a method that can help us direct our efforts and take responsibility (as authentic) for our course of development in such a way that any authentic attempt to utilize the method is itself a valuable instance of progress.

⁹ Lonergan, "Dialectic of Authority", 6

Chapter 1: Past Prologue

The Foundations of Majesty

The reader may wonder why we are beginning a consideration of Lonergan's political thought with a lengthy disquisition on history, especially in what purports to be a work of philosophy. For Lonergan, theory relates things to each other, and to construct a proper theory, a theory that actually explains what is going on, we must first begin with a proper understanding of the things to be related. In this way, we acquire the questions that actually need answering to understand the way they are related to one another, the way they should relate to one another, and whether those are the same or not. Since our goal is to understand political legitimation in Lonergan's work, we need to begin by encountering the history he would explain, the things this theory must relate, the very real political cultures that informed the actual political life of various polities and the nature of the legitimation crises each successive attempt at a political theory has attempted to resolve. History is where we will find the questions we need to answer.

Moreover, Lonergan claims that his legitimation theory can apply to all cultures because “culture has come to be conceived as the set of meanings and values that inform a common way of life.” These “may be authentic or unauthentic”, and “authenticity makes power legitimate.”¹⁰ In brief, if the meanings and values a community generates are authentic, so also will be the institutional power structures that community sets up. Given that he intends this claim to apply across all cultures in all times, we cannot consider only one history—we must consider as wide a range of histories as we can, and we encourage the reader to bear in mind each history we visit in these next two chapters as we proceed through Lonergan’s thought, beginning from Chapter 3. We will not be able to give a comprehensive accounting of every culture history records, but we will try to give a coherent narrative of legitimation in one strand of history over the course of almost three millennia.

We begin with Rome because, as we noted, Roman law and institutions are the common ancestor of law and institutions in the great majority of the world today. All countries presently operating under a code or civil law system, including former parts of European empires that have retained a European-style legal code and most countries that have engaged in significant legal reform in the last century (e.g. Japan, China), even today owe the basis of their legal code to the 6th century AD *Corpus Juris Civilis* of Justinian I.¹¹

¹⁰ Lonergan, “Dialectic of Authority”, 5-6

¹¹ This is as opposed to a common law system, which is largely restricted to the British Commonwealth, the United States, and India.

So also does the canon law of the Roman Catholic Church, so much so that it used to be said that *ecclesia vivit lege romana*, the Church lives by Roman law.¹²

But more importantly, this code, when introduced, was grounded in the majesty of Justinian I. As we will see in §4.2, majesty sits at the intersection of perceived personal virtue, demonstrated military prowess, and apparent divine approbation. We begin with majesty because this has been the single most successful approach to legitimation in Western history. It survived for 1500 years, through Rome's Christianization, the collapse of the western Roman Empire, and the failures of the Crusades. The current crisis of legitimation, as we will discuss in Chapter 2, is grounded in the collapse of institutionalized majesty as a viable grounds of authority. Our failure to find a stable new scheme of

¹² One should here note that there is not a continuous tradition of Roman law in Europe following the collapse of the Western Roman Empire. The *Corpus Juris Civilis* was only ever introduced with significant effect in Italy following the re-conquest by Justinian I in the 6th century, but was lost as Byzantine influence waned and eventually collapsed by the end of the 8th century. Until its rediscovery about 1070 and widespread introduction in the 12th century, Europe was governed by a patchwork of Germanic oral law traditions. These laws often lacked sophisticated concepts of equity and were better suited to life in small villages than to life in major urban centers.

There were some attempts at creating a code law answering these challenges (most notably the Salic law) but because these basically codified the existing oral law traditions, they tended not to survive the kings who created them. Salic law is the exception here. It was compiled from oral law traditions at the behest of Clovis I of France in the early 6th century but fell out of use in the 9th century following the reign of Charlemagne. Its later reclamation in modern Europe seems more than anything else to have been a matter of nomenclatural convenience, giving a short-hand for existing legal practice, and/or of opportunism, as the principle appeal to Salic law was to the section stating that women cannot inherit, which was interpreted variously to deny female claimants to noble titles and crowns and, in some cases, their male descendants.

No serious claim to a lengthy tradition of Salic law since the end of the Carolingian dynasty can be entertained, though, as not even the laws surrounding succession were referenced during the several French succession crises and wars of the 14th and 15th centuries. Shakespeare's reference to it at the opening of *Henry V*, for instance, as justification for Henry's invasion of France to press his claim to the French throne is a wholly fictitious interpolation. The most which may be said is that Salic law's proscription on female inheritance of land was in accordance with the Germanic oral tradition, but a causative link between Salic law and these limitations elsewhere in Europe is, at best, difficult to justify.

As a result, when the *Corpus Juris Civilis* was rediscovered about 1070, it formed the core text for legal education at the University of Bologna, the premier law school of Europe in the High Middle Ages. From there, its use was spread through Europe on the one hand by Italian merchants who needed a treatment of equity not available in the otherwise-prevailing Germanic oral law traditions and, on the other hand, by legal scholars attracted to the appeal of restoring Roman Law to the Holy Roman Empire. It also suited the Popes, who claimed to have succeeded to the authority of the Western Roman emperors. By the time of Aquinas in the 13th century, this was the dominant legal scheme throughout central and western Europe, not just Italy.

legitimation in the subsequent five centuries suggests that we have not been asking the right questions, leaving us with a significant theoretical gap. Our goal in this broader work is to use Lonergan's political thought to bridge that gap.

To begin to do so, we need to understand how Justinian came to acquire this institutional majesty, this apparently legitimate authority to make law not just for the state but for the Church. To do this, we will need to begin at Rome's beginning, or as close to it as we can come. The first section will be concerned with the nature of the evidence available for the earliest periods of Rome's history and why we cannot begin with Rome's legendary foundation and the seven kings. Given that many of the sources for the history of the regal period are the same as those available for the early Republic, this discussion will have some bearing on what we have to say about legitimation in the early and late Republics as well. Once we have finished our assessment of the evidence available, we will in §2 begin our discussion of legitimation in Rome by considering what gave the Senate legitimate authority during the early Republic. Third, we'll look at how that changed moving into the late Republic. Lastly, we'll consider the rise of Empire and how the imperial majesty that underwrote legitimate authority in the western world for 1500 years came to be.

As we do so, it's important to bear in mind that for much of this discussion, we'll be reconstructing theory out of practice. No extant political theory has survived from Rome under the legendary kings and very little more from the period of the Republic. The first native Roman political theory as such that we have is articulated in Cicero's fragmentary *De Re Publica* and *De Legibus*, both modeled on Plato's *Republic* and *Laws* and authored in the 40s BC, near the end of his life and in the waning days of the

Republic.¹³ While Cicero's works remain valuable sources for the traditions of both the regal period and the early Republic and for the institutions of the late Republic, relying on Cicero comes with substantial difficulties because of the rose-colored lenses through which he viewed the *tempora maiorum*, the great old days of the Republic, by his day raised to mythic status by the poets, notably Q. Ennius' *Annals*. Later attempts were written after the transition from Republic to Empire was complete and emperor was firmly established, and accounts written under the emperors tended to look back to Augustus with a similarly nostalgic gaze.

Nor are there surviving contemporary political analyses of Rome's constitution available from other cultures in the area, for the most part. When Plato and Aristotle were alive, Rome was a regional power in western Italy, but not one worth noting in the Mediterranean basin overall, so neither they nor their immediate successors have left us with much reflections on the nature of the constitution or its legitimacy in Rome. Nor did either have a prescriptive influence in Rome before the late Republic, when Cicero translated a great deal of Greek thought into the Latin idiom and made it accessible to his countrymen. By the time the theories of Plato and Aristotle had a field test of sorts in Syracuse and Macedon, respectively, the basic structure of Rome's political practice for the next several hundred years was already set. The sole exception is Polybius, whose *Histories* gives a comparison of Rome's constitution with those of several Greek city-states, using Aristotle's categories of government to structure his analysis, as we will discuss in §3.

¹³ Gary Forsythe, *A Critical History of Early Rome* (Berkeley: University of California Press, 2005), 68; hereafter cited as Forsythe, *Early Rome*. I am indebted to his work throughout the first three sections of this chapter. For a far more complete overview of the nature and state of the evidence available to us about early Rome, please see chapter 3 of his book.

Therefore, we must consider what was done, and then seek to understand as best we can why it was found acceptable—why it was legitimate. In doing so, we will begin to see not only the story but a number of interlocking “significant issues and operative factors” informing the way legitimation was addressed at each successive stage of Rome’s development.¹⁴ We do this partly to begin to weave the tapestry of thought against which later political thinkers, whom we will address in the next chapter, conducted their analyses, partly as an exercise in legitimation analysis, and partly to understand that there is always a legitimation scheme at play, even if it is not always explicit. Beginning in §2 with the early Republic, then, each section will be broken into two parts, the first considering the history, and the second considering what legitimation theory we could derive from it.

1 *The Rise and Fall of the Roman Kingdom*

“Much that once was is lost, for none now live who remember it. ... History became legend, legend became myth, and for two and a half thousand years, the ring passed out of all knowledge.”¹⁵

In her soliloquy at the opening of the *Lord of the Rings* films, Galadriel captures just our problem in discussing the early history of Rome. Ideally, we would begin by reconstructing the nature of and conditions on legitimate authority under Rome’s kings, but there we are faced with an insurmountable challenge of reconstructing not only theory from practice but practice itself. The unfortunate fact is that accounts of Rome’s regal period are, at best, legend, and accounts of Rome’s foundation and of Romulus himself are myth. We can have little confidence that the history of the regal period is anything more

¹⁴ Lonergan, *Method in Theology*, 168

¹⁵ *The Lord of the Rings: Fellowship of the Ring*. Directed by Peter Jackson. 2001. USA: New Line Cinema, 2002. DVD.

than speculation grounded in a traditional mythology which is at many points contradicted by the available archeological evidence. Therefore, we cannot responsibly look to Rome's kings to ground our story.

Accounts of the early Republic are enough better that we can have some confidence in our reconstruction of political practice, but I must stress that "better" does not mean "good". This period of history remains relatively speculative, and it is only by several strokes of luck that we're able to say as much as we will. We ought therefore to pay some mind to the nature of the evidence for the practices out of which we propose to reconstruct our theory. The accounts which have come down to us from this period are troubled for three reasons.

First, their dates of composition put them at some remove from the events they recount without access to reliable sources. Rome itself is believed to have been founded between 800 and 750 BC, right around the time Homer was setting pen to parchment on the *Iliad* and the *Odyssey*. No written record of Italy generally nor Rome in particular exists from that time. Before the *pax Romana* spread through the Mediterranean, both the archaeological evidence and the early histories agree that Italy was engulfed in a series of destructive wars, including the first and only sack of Rome acknowledged in ancient sources before the late Empire.

Around 386 BC, the Gauls sacked Rome and burned six of Rome's seven hills, including the Aventine temple complex where the plebeian aediles maintained copies of the laws and other important documents in the temple of Ceres.¹⁶ What survived were

¹⁶ Forsythe, *Early Rome*, 174. Aediles were the assistants to the tribunes whose special responsibility was the maintenance of public buildings. If they were patricians, they could also wield curule authority.

principally religious documents concerning the proper performance of various ceremonies and rites, defended in the last redoubt at the Capitoline Temple, and many of those were subsequently lost or replaced as time went by or destroyed when the state religion of Rome became Christianity. The closest thing we have to a written record of Rome before this point is the legal calendar maintained by the *pontifex maximus* at the Capitoline Temple, but this is a far cry from a historical account of events.

The earliest historical (as opposed to archaeological) attestation of civilization in Italy concerns the Etruscans, known through the commercial records of their Greek and Phoenician trading partners. Herodotus, writing in 440 BC, is the first we know of to discuss their origins; he claims at 1.94 of his *Histories* that the Etruscans were originally settlers sent out from Lydia (the western half of today's Turkey) during a time of extreme famine. Herodotus chiefly concerns himself with the final dynasty of Lydia, founded by Gyges, and especially Croesus, the last king of Lydia, but he gives enough dating throughout his account (beginning at 1.7) to say that this crisis of famine would have been c. 1200 BC, about the same time as the Trojan War. Subsequent Greek authors dispute his account, and archaeological evidence suggests a significant change in local culture, demonstrating considerable influence from Near Eastern sources, in about the late eighth century BC instead of the twelfth.¹⁷

But history paid Rome no mind for nearly 200 years after Herodotus. The first account of Rome's history extant anywhere is Timaeus' *Histories*, an account of the Greek world (which then included Sicily and much of Italy) composed between 275 and 265 BC in the interlude between the Pyrrhic War and the First Punic War. His account includes

¹⁷ Forsythe, *Early Rome*, 38.

the collection of myths from the area, including the myths surrounding the foundations of Rome. Unfortunately, his work exists now only in fragments, so it is difficult to evaluate his claims in full, and this is typical of the work of the period.

The first native accounts of Rome were composed by Q. Fabius Pictor and L. Cincius Alimentus, in the second century BC, following the Second Punic War. They were also written in Greek, as the *lingua franca* of the day, and they included the myths surrounding Romulus. Also from the second century BC was Q. Ennius' *Annals*, a “national epic—heroic, moralizing, and patriotic in nature—[that] was a staple for educating Roman schoolboys and thus shaped the Romans' view of their past until its account of Rome's Trojan origin was supplanted by Vergil's *Aeneid* during the Augustan principate.”¹⁸ Lastly from this period is the *Origines* of Cato the Elder, the first history of Rome composed in Latin. Unfortunately, all four of these works also exist today only as fragments.

For the first accounts of Rome's history which survive to us today as incomplete but continuous narratives, we must turn to Livy's *History of Rome* and Dionysius of Halicarnassus' *Roman Antiquities*, both from the late first century BC at the close of the Republic and the birth of the Empire. From this point forward our historical evidence becomes much more reliable as historians begin penning contemporary accounts of events which survive to us at least as fragments. Both authors redacted and synthesized the earlier histories (and are the sources of many of our fragments from them), and they remain our most important sources on early Roman history. Neither work has survived completely intact—of Livy's 142 books, only 1-10 (covering the foundations of Rome and early

¹⁸ Forsythe, *Early Rome*, 61.

history to 293 BC) and 21-45 remain, and of Dionysius' 20 books, we have only the first 11 (covering events down to 449 BC).¹⁹ Our best evidence for the events of the regal period, including the transition from monarchy to republic, was thus written at least four centuries after the fact.

Second, reliance on these ancient histories is made yet more problematic by the fact that they and/or those on whose prior work they rely actively worked to remold that myth and legend to serve their own purposes. Roman histories had a habit of romanticizing their subject matter and making editorial changes to accentuate Roman virtues and the role Rome played in events and paper over Roman failures or embarrassments. While not so flagrant in their inventiveness as the nationalistic epics of the period (Q. Ennius' *Annals* and Virgil's *Aeneid*), they played a similar role in reinforcing late republican Rome's cultural understanding of itself and its place in the world and in history. When later Roman historians made their edits, the beneficiaries were often Romans who had either failed in their duties and received justification for their failures or ordinary Romans who became credited with outsized roles. In some cases, the effect was to transfer the responsibility for what the writer considered a great event from a non-Roman to a Roman. In others, Romans were made the improbable leaders of enemy armies, so that even when Rome was defeated, one could still say that a Roman had carried the day, and that the later harsh treatment of that Roman was justified.²⁰

¹⁹ Forsythe, *Early Rome*, 67.

²⁰ For an instance of both, consider the story of Marcius Coliolanus, where the annalists transformed what was likely a native Volscian commander who achieved considerable success against Rome into a bitter Roman exile, finally brought to heel by his wife and daughters, the flower of patriotic Roman womanhood. (Forsythe, *Early Rome*, pp. 191-92)

These ancient historians also used these histories as ways of telling stories to make sense of major events like the transition from monarchy to republic, the construction of major landmarks in the city, and the origins of their institutions. While these stories often have a basis in fact, their historicity is at best questionable. Where historians had no reliable indications of the truth, they found it unacceptable to have *no* account of what happened and why, so they fabricated stories out of whole cloth or adapted other stories. We have enough information available today to recognize the source material for many of their adaptations. Romulus himself is now generally thought to be an ahistorical figure cobbled together out of Greek myth and Italian folklore, and the construction of his tale was largely complete by the Second Punic War. “The names of the other six kings are likely to be authentic recollections of real people, but it also seems probable that few reliable details were known about their reigns.”²¹

This is problematic because, with one exception, the most important political and religious institutions of the regal period and many from the early Republic were attributed to the kings. This means both that we cannot rely on the historical tradition as a guide to the practices of legitimate authority during the regal period and that the later tradition’s self-understanding was basically flawed. They were seeking legitimate authority in a historical practice they did not understand and so could not duplicate in their own day.

²¹ Forsythe, *Early Rome*, 97. This includes a series of improbably long reigns (35 years on average, and none below 24 years) the lengths of which certainly seem like they were deliberately manipulated to accommodate numerological superstitions of the age. It also includes the relationship of the Tarquin kings as father and son despite the 44-year reign of Servius Tullius between them, under which the elder Tarquin began his reign in 616 BC and the younger Tarquin was finally ousted in 509 BC, more than a century later. “Given the vagaries of human mortality in early central Italy, it seems very unlikely that these regnal years for seven successive kings accurately reflect the history of the regal period.” (98)

This created persistent problems until legitimate authority was re-imagined under Augustus.

To understand the scope of the problem, it may help to give a partial listing of the major achievements attributed (unreliably) to each king. To Romulus is attributed the creation of the Senate and the *comitia curiata*, Rome's oldest popular assembly. To Numa Pompilius is attributed nearly all of Rome's religious institutions, including and most notably for our purposes, creating the major and minor flamens (Rome's most important priests), whom we'll touch on later. To Tullus Hostilius is attributed a series of wars and construction of several temples, and his successor, Ancus Marcius, is portrayed as being a middle point between Numa and Tullus. To both Rome's fifth and seventh kings, Tarquinius Priscus and Tarquinius Superbus respectively, are attributed various aspects of Rome's construction, including the Capitoline temple complex, the Circus Maximus, and Rome's first sewer system, the Cloaca Maxima, and in many cases these constructions are attributed to both of them at various points.²² Between them stands Servius Tullius, to whom is attributed the construction of the Servian Wall and the creation of the *comitia centuriata*, a popular assembly of men of military age. These institutions and constructions represent most of the core of later Republican Rome both physically and governmentally.

While we cannot say with any certainty when and how Rome's political and religious institutions came to be, we can say without doubt that the ancient histories have misattributed many of those construction projects to the kings. The annals are contradicted by uncontested archaeological evidence. The stone available in Rome's immediate vicinity is a kind of tufa, a sedimentary stone. Most of Italy had the same sort of stone to work

²² Forsythe, *Early Rome*, 108.

with, but the quality varied regionally. Rome's quarries produced a particularly inferior kind of tufa, but since that's what they had to work with during the regal period, that's what they used. The Servian Walls and the Capitoline temple complex, though, were built of a different variety that comes from the quarries of Veii, an Etruscan city to the north-north-west of Rome (and close enough to have been enveloped by Rome's suburbs today). This stone was of higher quality than the local variety and so supplanted the local stone for construction once it became available, but it wasn't something the kings would have had access to. The last Tarquin was removed from power around 503 BC, and Rome finally conquered Veii in 396 BC. That puts the construction of the Servian Wall about 150 years minimum after the ancient historians claim it was built and makes the Capitoline temple complex likewise younger than claimed by at least 120 years (more like 200 years if we ascribe its foundations to Tarquinius Priscus). Given the role these constructions play in the story of each king, this is reason to cast doubt on the reliability of ancient accounts of the regal period. We can still regard the stories themselves as basically true or reflecting a basic truth, but their details are suspect.

Third, there's a notable anomaly in these accounts: They treat Rome's history as primarily political with precious little attention paid to the impact or role of Rome's religious institutions in the course of events. Roman religion had a markedly transactional character, such that even if the names or functions of the deities changed over the centuries, even if the details of ceremony shifted slowly, the basic premise held firm: the gods will treat me well if I give them something they want, be that material or behavioral. This exchange was formalized in a vow, often with a votive offering, which functioned as a down payment on the goods promised should the god hold up his side of the bargain. When

things were going well, the gods were pleased. When things went badly, the gods had been angered in some way. This was true no less for the state than the individual, with the added challenge that while the individual had to please just a relative handful of gods, the state had a much wider panoply of deities with whom to bargain. We thus cannot understate the importance of religion to the Roman way of life, privately and politically: while many people today have a tendency to think of God as a far-off figure, perhaps not entirely removed, but certainly watching from afar and above us, for the Roman (as for the Greek), the gods were everywhere and in everything.

Rome's elaborate pantheon, moreover, as with their Greek cousins, demonstrated both elements of nature religions and reverence for activities and concepts. This meant that not only did a good Roman have to appease the spirits of places and things, he also had to seek the favor of the gods governing his actions: in war, those associated with war; in farming, the gods of weather, boundaries, and plants; in sleeping, the gods of the threshold and of his doorframe; in his daily life, the household gods (usually virtuous ancestors). Failing to do so, or doing so improperly, would insult the relevant deity and risked incurring his or her wrath. While the gods might make allowances for the limited circumstances of the private individual, no such allowances could be made for the state, which could be expected to do bigger and better things than most private citizens could manage and to do them properly.²³

²³ On the state, the gods were really quite exacting. "It was not uncommon...to begin [religious ceremonies] by offering the sacrifice of a pig as expiation for any involuntary mistakes committed by the priest. The correct performance of all Roman public religious rituals was insured by requiring that several attendants oversee and assist the presiding priest or magistrate. In order to make sure that the prayer was spoken without mistakes, one person read the prayer aloud to the priest or magistrate, who then repeated it word for word, while a second attendant checked these proceedings against his own written text. Moreover, since the ceremony could be invalidated by the intrusion of an unwanted sight or sound, the presiding official kept his

It is certainly true that by the late republic, Rome's religious order demonstrated considerable accommodations and synchronizations to ease the integration of conquered peoples, which suggests that religion was used as a political tool, and one might readily argue that this accounts for the failure of these early histories to pay attention to Rome's religion. But for two reasons, this seems unlikely to be the whole explanation.

First, we have considerable archaeological evidence for settlements in Italy and at Rome going back beyond 800 BC, and while the archaeological data is not a historical account, it can tell us a few things here. The best-preserved evidence comes from graves and temples, both of which invading armies tended to leave undisturbed and both of which have strong ties to religious practices. The graves yield grave goods and the temples, votive offerings, both of which are often inscribed with the name of the deity and of the supplicant. These can help build a pre-historical ethnography, but for us, what's of note is that there was always considerable synchronicity between the various pantheons of Greece and Italy, and we can trace when new cults arrived in Italy and how understandings of a deity changed over time based on what names appear on what goods in various periods. Religion spread through both trade and colonization, and if the rate of religious synchronization increased during Roman expansion, that seems part and parcel of their increased opportunities for trade and colonization.

Synchronism was possible because the pantheons were similarly composed, anthropomorphizing and deifying places, things, actions, and concepts, and because same basic transactional premise underwriting Rome's religion underwrote religion belief and

head partially covered with his toga so as to restrict his vision, and a flute player furnished the ceremony with a kind of sacred background noise. If any errors or interruptions were detected, the entire ceremony had to be repeated." Forsythe, *Early Rome*, 144

practice around the Mediterranean and throughout the Near East. Consider, for instance, how Plato characterizes piety from the perspective of the Athenian religious establishment in *Euthyphro*: “the godly and pious is the part of the just that is concerned with the care of the gods,” which care is “a kind of service to the gods” and turns out to be “a knowledge of how to give to, and beg from, the gods, ... a sort of trading skill between gods and men”.²⁴ This dialogue was written in the early fourth century BC and is set the evening before Socrates’ trial in 399 BC, which places it as contemporary with Rome’s early Republican period. Rome’s pantheon can be closely identified with Greece’s in part because of the degree to which Rome imported Greece’s pantheon but in part because they had the same basic orientation to the project of being religious.

Second, even in the late Republic, Rome culturally attached considerable importance to its religious institutions. We know this in a number of ways, but three of special significance. To begin with, victory in war was tied closely to the Roman cultural identity—few cultures have as many gods for the various aspects of war as Rome, and fewer still have more.²⁵ We should, therefore, pay some attention to the reliance of Roman

²⁴ Plato, *Euthyphro*, in *Five Dialogues*, 2nd ed., trans. G.M.A. Grube & John Cooper (Indianapolis, IN: Hackett Publishing Co., 2002), 12e, 13d, 14d-e. In this vein, consider also how Adeimantus proposes the unjust immunize themselves against the gods’ wrath in *Republic* 364b-366d. Plato, of course, was pointing out that this way of thinking did not comport to the moral force of the word ‘piety’, but his characterization of contemporary religious practice in *Euthyphro*’s mouth is not an uncharitable caricature.

²⁵ Of those that do have more, it’s helpful to bear in mind that this is often the result of synchronism between multiple pantheons where different gods for the same thing have kept distinct identities even so (for instance, the various Celtic deities of war or the remarkable diversity of the Hindu pantheon). Because many cults were gender segregated, it’s sometimes the result of creating a female version of the male god to let women make their offerings as well. The Romans worshiped at least seven different aspects of war itself as deities: Bellona (bloodlust, aggression, destruction), Honos (chivalry, honor, military justice), Mars (boundaries, defense), Minerva (strategy, tactics), Mithras (soldiers), Nerio (valor), Victoria (victory), and Virtus (military strength). Quirinus, one of the major gods during this early period served even in later years by one of the three major *flamens*, was likely also a god of war, perhaps of weapons, but Romans no longer had a clear conception of who he was by the time available histories were written. Forsythe, *Early Rome*, 137.

generals on the auspices, oracular signs read by the augurs (an order of priests) usually in the movement of birds, sometimes in the clouds, and occasionally in other animals. War was not conducted without favorable auspices, and when recounting Roman victories and losses in the field, it was not uncommon for historians in the late Republic and early Empire to lay credit or blame at the feet of the generals' attention to the auspices and other religious duties. While this was not universal, there are enough cases of it in the ancient histories to make it difficult to credibly ignore.²⁶

More striking, though, is the authority of the religious institutions over Rome's political institutions. "No assembly of the people (electoral, legislative, or judicial) could be held unless favorable auspices had been received beforehand, and an assembly could be disbanded while in progress if an augur announced the observation of an unfavorable sign."²⁷ The consuls also could not take office until they had taken favorable auspices themselves, and had to receive the authority to take auspices when in the field with the

²⁶ Here, we can consider three accounts of Rome at war. First, in Livy's account of the Battle of the Allia, the final battle before the Gallic sack of Rome in 387 or 386 BC, he blames Rome's defeat on the arrogance of the consuls who drew up their battle lines without obtaining favorable auspices (5.38). Second, in Valerius Maximus' account of the Second Punic War, he attributes the death of the proconsul Tiberius Gracchus in 212 BC in a Carthaginian ambush to his failure to heed a remarkably dire set of auspices (1.6.8).

The third is somewhat more curious. In Livy's account of the Battle of Sentinum in 295 BC, during the Third Samnite War, he attributes Roman victory to the self-sacrifice of one of the consuls, Publius Decius. Livy's account has him leading several cavalry charges, until the enemy answers with an improvised chariot attack. His troops demoralized and scattered, Decius "devotes" himself as a way of redeeming his failure, meaning that he dedicated his life and death and those of the enemy forces to the gods above and below in hopes of invoking their aid in the battle, then charged the enemy lines with no mentioned accompaniment save for the pontifex who had joined him on the campaign and with whose aid he made the devotion (10.28.5-18). Decius' self-sacrifice seems to have reinvigorated the Roman army, who were inspired to retrieve his body and, doing so, went on to win the battle. Livy's account becomes somewhat fanciful from here; the Furies involve themselves directly, terrifying the enemy and relieving them of their senses, as Decius' death acts as a gravitational nexus, pulling Gallic and Samnite forces down to the underworld and the embrace of the gods below (10.29.1-4).

²⁷ Forsythe, *Early Rome*, 139

army by a special *lex curiata*.²⁸ Moreover, we must note that a wide variety of civic functions took place in temples under the supervision of priests. The temple of Bellona, goddess of war and bloodlust, housed a pillar representing the edge of Rome proper; war was declared by throwing a javelin over the pillar to strike the symbolic first blow. The temple of Ceres housed the records of the aediles, officials responsible for the upkeep of Rome's public buildings and infrastructure and whose name derives from the word *aedes*, a temple edifice. The mint was housed in the temple of Juno Moneta, goddess of money and guardian of funds. Rome's principle college of priests, the *pontifices*, take their name from the Latin *pons*, meaning 'bridge'. The reference is to the Sublician bridge, the first bridge over the Tiber and an economically and militarily vital artery of which they were originally the caretakers. The chief of the college, the *pontifex maximus*, was the chief priest of the Roman state religion, nominally outranking even the flamens. We could cite numerous further examples. Whatever Rome did politically, it did in the sight of and at the pleasure of the gods.

Finally, more tenuous but if correct much more significant, there are some reasons to think that the Senate was originally controlled by the state priesthood. We'll discuss this further in the next section, but the fact of the patricians as a closed aristocracy is extremely unusual, and for linguistic and cultural reasons, it makes the most sense to understand this group, which was held apart even after plebeians began gaining high office in the fourth century, as having its roots in a hereditary clan-based priesthood. Even in the

²⁸ Forsythe, *Early Rome*, 179. A *lex curiata* was a law or resolution passed by the *comitia curiata*, the original popular assembly of Rome. By the late Republic, it was largely vestigial and its original function was not well understood by the historians of the time. The *rex sacrorum* was the *de facto* head of the Roman state religion in Republic; his office took on the religious duties of the king when the military and political duties passed to the consuls.

late Republic, though all political offices were open to plebeians (consider, for instance, the career of Cicero, a *novus homo* from a previously unknown and unimportant family), the highest offices of Rome's state religion, the major flamens (serving Jupiter, Mars, and Quirinus) and the *rex sacrorum*, were still open only to patricians.²⁹ And all of this makes it quite odd that the first historians we have make no mention of religion in their accounts of these early times.

Given the nature of this evidence from the regal period and the kings of Rome, we can say so little about the practice of legitimate government in this period that, sadly, we cannot make a responsible attempt at political theory. But in the interests of giving contexts to the traditions that informed legitimation in the Republic, it will be appropriate to recount the manner in which a new king came to power.

According to Livy's first book, Rome's monarchy was not hereditary, though tradition tells us that the Tarquin kings were related. Rather, as the papacy today, Rome's monarchy was elective, and according to the tradition, there was no prerequisite of citizenship or even residence—of the six kings after Romulus, only half were from Rome. When the king died, authority over the state reverted to the Senate, who appointed a series of interim kings (Latin: *interrex*), each of whom held authority for a term of five days. The *interrex* always came from the ranks of the Senate and was always a patrician, by custom if not by law.

The Senate, in the meantime, sought a suitable candidate to take the throne. Once they had agreed who should be the new king, the priests were summoned to take the auguries of his reign, and a candidate could be disqualified if the auspices were

²⁹ For a more complete discussion, see Forsythe, *Early Rome*, ch. 6.

unfavorable. If the auspices were good, the current *interrex* summoned the people of Rome in the *comitia curiata* to vote on the candidate. Once approved by a vote the people (the *lex curiata*), the candidate received a final vote of the Senate (*patrum auctoritas*) and was then invested as King of Rome.

This account must, unfortunately, be viewed with some suspicion as it's more or less identical to the method used during the Republic to replace the consuls when both were killed in office in quick succession, so that one could not supervise the election of a replacement for the other, or when they were unable to convene the appropriate assemblies before the end of their terms due to civil unrest. For us, the value of this account lies for us in the fact that during the Republic, this method of replacing the kings was cited as the tradition legitimizing this contingency method of replacing the consuls.

For similar reasons, we can little trust the traditional accounts of the collapse of the Roman monarchy. Much as we might hope to learn how legitimation changed in Rome from such a momentous event as the fall of the Tarquins, the facts of events are veiled. Livy's account of Tarquinius Superbus' entire tenure (1.46-60) has the air of a Shakespearean tragedy, with Tarquin cast as Richard III and his wife Tullia as Lady MacBeth. The picture Dionysius of Halicarnassus paints (4.28-85) is more lurid yet. Both claim that Tarquin and his wife each murdered their previous spouses (the two couples were two brothers and two sisters) to marry one another and comingle their avarice and ambition.³⁰ Both say that the younger Tarquin achieved the throne not by virtue of the election procedure described above but by murdering Servius Tullius, his father-in-law and

³⁰ Livy 1.46; Dion. Hal. 4.29-30. Dionysius has the longer and more lurid account because of his fondness for reconstructing or inventing speeches and dialogue which do not grace Livy's pages.

the previous king, claiming the throne on the strength of the fact that his father (or grandfather—the histories are inconsistent), Tarquinius Priscus, had been king before Servius and there had been some irregularity in Servius' election.³¹ Both say that Servius was left bleeding in the street and both say that Tullia purposively ran over her father's body with her carriage.³²

The rest of the reign of Tarquin the Proud is given in similarly exaggerated terms, and these later histories recount for us the Rape of Lucretia by Tarquin's son Sextus and the outrage this spawned as the occasion of an uprising led by one of Tarquin's relatives, Lucius Junius Brutus, who became one of the first two consuls of the Republic. But this portrayal of Tarquinius Superbus' reign, as with Shakespeare's account of the rise and fall of Richard III, is basically a propaganda piece intended to send the message that he was a tyrant and that the Republic was founded on just resistance to his tyranny.

The portrayal is quite stereotypical in this respect. For all its fame, the story of the Rape of Lucretia “appears to be little more than a Roman adaptation of the famous story of how the downfall of the Peisistratid tyranny in Athens c. 514-510 BC was set in motion by an assassination arising from a homosexual love affair gone bad”.³³ While we could say that the ancient tradition is basically correct in the sense that Tarquin was corrupt and abusive, “the ancient tradition is so overlaid with later stereotypical features customary in the portrayal of a tyrant that we cannot be sure what details, if any, should be accepted as genuine.”³⁴

³¹ Livy 1.48.4; Dion. Hal. 4.39.3

³² Livy 1.48.5; Dion. Hal. 4.39.5. Dionysius attributes to this incident the name of an odd street in Rome, the *vicus Sceleratus*, literally, “Wicked Street”.

³³ Forsythe, *Early Rome*, 147

³⁴ Forsythe, *Early Rome*, 148

2 Res Publica Romana: *the Early Republican Rome*

Unfortunately, the state of the history available for much of Rome's early republican period is not much better than what we had for Rome's regal period. As we noted at the outset of the last section, the first histories to include Rome were not composed until the mid-third century BC, half-way through the Republic, and the earliest accounts from Rome itself surviving as anything but fragments date to the Republic's end. But it is enough better that we can say a few things about how practice changed from the early Republic to the late Republic, some more speculative than others, and construct a theory of legitimation out of what we know of their practices.

Following the establishment of the Republic, ancient sources tell us that the Tarquins appealed to Porsenna, king of the Etruscan city of Clusium, to restore them to the Roman throne. Porsenna agreed to do so, but was turned back by the heroism of Horatius Cocles, who single-handedly held the Etruscan side of the Sublician bridge—the first and, at the time, only bridge over the Tiber in Rome—long enough for his fellows on the southern end of the bridge to collapse it, and then swam the Tiber. Porsenna continued to harass Rome but was turned back and eventually almost assassinated by a brave young Roman man who, on capture, burned off his right hand on an altar to demonstrate his resolve and that of the whole city. So impressed was Porsenna with this, and so fearful of that resolve and of how close the assassin had come to his mark (he killed the king's secretary by mistake) that Porsenna withdrew and made peace.³⁵

This story is not especially plausible for a number of reasons, but we do have archaeological evidence of Porsenna and reason to believe he went to war in Latium in this

³⁵ Livy 2.10.2-13.4

period. The more likely scenario is that he went to war with Rome while Tarquinius Superbus was still on the throne, succeeded in forcing entry and occupying the city, and removed the Tarquins from power, leaving in their place two governors to balance one another's power and make sure Rome would be so preoccupied with internal squabbles that it would not threaten him further.³⁶ Even in that day and age, Rome had a reputation for military prowess, and if Porsenna wanted to conquer Latium, he could not leave behind him a Rome capable of fighting him, situated as it was at the border of Etruria.³⁷ He made sure that one of those he left in charge was a relation of the deposed king (the Brutus mentioned by Livy and Dionysius, who does appear in the consular *fasti*, a record of who held the consulship when, as one of the first two consuls) to lend this occupation government some form of legitimacy. When Porsenna was eventually forced to withdraw from Latium by the army of Cumae, the patrician aristocracy held onto power and the Republic persisted, ridding themselves of the monarchy in what amounts to an act of political opportunism. The later tradition, with its tales of Roman virtue and courage, was subsequently created “to redeem Roman pride and to disguise the embarrassing fact that Porsenna did in fact occupy the city.”³⁸

³⁶ Forsythe, *Early Rome*, 148-49. See ch. 6 for an account of the implausibility of the version told by the ancients.

³⁷ A map may be necessary to properly make sense of this point, but leaving Rome at his back and capable of fighting him would have exposed Porsenna to considerable problems from interrupted lines of supply and communication to Etruria to possibly fighting on two fronts at once. Unless he could leave sufficient forces behind to keep the city of Rome under siege, Porsenna had no choice but to take the city to make sure it couldn't attack him while he continued with his conquests elsewhere in Latium.

³⁸ Forsythe, *Early Rome*, 149

2.1 History

To understand the institutions of this new Republic and reconstruct its legitimate practice of authority with any degree of accuracy, we must understand the nature of the aristocracy who ran it. Much has been made in the scholarship of the Conflict of the Orders, as recounted by later authors, which they portray as a fight about social inequalities between the patricians and the plebeians. But as we've said at some length in the previous section, there are reasons to think that the historians of the late Republic and early Empire exaggerated or were not fully aware of the history on the subject, and their accounts are certainly shaded by their own experiences of class struggle to the point that they "assume that the nature of social conflict in 500 BC was more or less the same as it was in 400 or 300 BC."³⁹ Much of the later tradition bears striking similarities to the troubles caused by the Gracchi brothers during their tenures as plebeian tribunes in the second century BC, so much so that it appears quite likely that many details of the annalists' accounts were drawn from controversies far fresher in the public mind.

What is certain is that the patricians did dominate the Roman state in the early fourth century BC, and that this did cause difficulties as they attempted to exercise an utterly imbalanced set of prerogatives. This, we'll address below, as it forms a core part of the crisis that shifted legitimation from the early to the late republic. For now, we need to understand who the patricians were and how they came to be.

In most every aristocracy in history, while vertical mobility is limited, it's far from non-existent or unheard of. The dearest ambition of many commoners was to somehow

³⁹ Forsythe, *Early Rome*, 159. For details, please see Forsythe, *Early Rome*, ch. 6. We can say for certain that their accounts do not line up with other historical evidence in some significant ways, particularly, as discussed below, the asserted patrician dominance of the consulship.

make their way into the nobility, either by achieving victory in war or through some other means. And while those families who succeeded were often not recognized as nobility for several generations, they demonstrate that it was possible.⁴⁰ Wherever there has been hereditary nobility, it has almost always been open to commoners even if admission was extremely rare and the price, high.

In some ways, Rome was no different. By the late Republic, any pleb could (in theory) hold any political office in the Republic and most religious ones as well (some religious offices remained exclusively in patrician hands by law and custom). Even by the middle Republic, most offices were open to plebeians, and after the Licinian reforms of 367 and a series of other reforms later in the 4th century BC, a wealth of new political and religious offices were created and open to plebeian politicians. The *de facto* mark of nobility was membership in the Senate, and since membership in the Senate was automatically granted to anyone who had served in high public office, this meant that the nobility was quickly dominated by plebeian families.

But the patricians remained as a separate group within the nobility, a closed group based on lineage and not open to new entrants. In this period, if you belonged to one of a specific set of clans, you were a patrician, and if you didn't, you weren't, full stop. What

⁴⁰ European history, to say nothing of the rest of the world, is an exceptionally rich tapestry, and if we traced the claim of every noble family, we'd almost certainly come out with a commoner who did something extraordinary. For the sake of space, I will give but one example here: the Medici family of Florence. Because of the influence of their bank over Italian affairs, their power far outstripped their hereditary rank and title during the early Renaissance, but they did eventually gain hereditary titles as Duke of Florence in 1532 and Grand Duke of Tuscany in 1569.

is rather a mystery is how this group came to be closed and on what basis membership was initially determined.⁴¹

All or nearly all patricians were members of the Senate during the early Republic, and ancient writers tell us that they were the descendants of those who had been in the Senate when Tarquinius Superbus was removed from his throne. To that point, the Senate, we are told, had been filled by appointment of the king. From the foundation of the republic to the reforms of 367 BC, the ancient historians tell us, the patriciate completely dominated the consulship. When membership in the Senate became open to plebeians, so also did the nobility, but the ranks of the patriciate remained differentiated from those new plebeian nobles down well into imperial times.

But what the consular *fasti*, listing the consuls (or those exercising consular authority), make clear is that patrician dominance of political office cannot be the whole

⁴¹ Forsythe also regards *when* the patriciate was closed as a bit of a mystery, but for our purposes, this doesn't matter much. Much of *Early Rome*, ch. 6, is spent adducing a plausible alternative to the traditional Conflict of the Orders narrative given in Livy and Dionysius of Halicarnassus. To the ancient claim that the patricians dominated political office from the foundation of the Republic to the Licinian reforms in 367 BC, he notes that the consular *fasti* for the early to mid-fifth century BC include a healthy number of names not known to be patrician in later years. This, he uses to claim that the patriciate wasn't closed until at least the mid-fifth century BC and possibly later than that, though certainly by the beginning of the fourth century, and uses this as part of a larger argument about the social fluidity of early Latin culture (e.g. noting that foreigners could become Roman nobility).

But given his argument, which we will follow below, that the patriciate originated as a set of priestly clans, not just a social club defined by membership in the Senate during the regal period, and given his argument that the Conflict of the Orders narrative for the early republic needs some serious rethinking, it would make more sense, *prima facie*, to follow the ancients in positing a closed patriciate at the beginning of the republic and say instead that the consular *fasti* demonstrate that patrician dominance of political office simply wasn't complete at this early stage. The Licinian reforms were driven at least as much by the fact that Rome's chief curule magistrate had been a military tribune more often than a consul in the then-recent past, and while yes, the patricians dominated that, there's no reason to think there wasn't a more even power-sharing arrangement earlier in the Republic.

What is more important to Forsythe, and to us, is that the Senate was dominated by patricians for most or all of the early republican period. Since membership in the Senate was gained either by being a patrician or by holding high public office, and since there just weren't enough such offices in this period to give the plebeians a voting majority in the Senate even if all civil offices were reserved to the plebeians, the patriciate would dominate the Senate regardless when it was closed.

story. We have, as did the ancient annalists, the consular *fasti* back to about 500 BC. For the first 65 years of the republic, a relatively large number of those recorded as consuls are not from known patrician clans (which, coincidentally, contradicts the account of the Conflict of the Orders given in ancient sources).⁴² Between 444 and 367 BC, governance of Rome “fluctuated between two consuls and a board of military tribunes with consular power”, and while the consuls were always patricians, plebeians were often included among the military tribunes.⁴³ By the end of this period (404-366 BC), the election of consuls rather than military tribunes was anomalous and only happened in the years 393 and 392.⁴⁴ This makes it clear that at no point was the patriciate the only nobility in Rome, just a part of the nobility that asserted special privileges and regarded certain offices as their special province.

So how did the patricians come to be as this closed subgroup of the nobility? We can garner several clues from the name of the group as well as from certain other institutional practices which, though vestigial by then, were still in evidence in later years.

First, and this may seem an obvious point but it bears mentioning to frame much else, patricians in Rome were called *patres*, “fathers”, but since the Senate was open to plebeians, it’s not wholly clear in which sense the patricians were the fathers of the state.

In fact, the only other widespread use of the word *patres* as an honorific during the

⁴² Forsythe, *Early Rome*, 156-57. Depending on how one counts, non-patrician names account for somewhere between about 15% and 45%. The trouble is that we don’t have a complete and total list of the patrician clans and some clans had both patrician and plebeian branches – one could renounce one’s status as a patrician and become a plebeian, along with all of one’s descendants. The 15% are those whose names we know only as plebeian, though depending on when the patriciate was closed, they could have been patricians when they were consuls. An additional 30% we can’t be sure of “either because they became extinct before later historical times, or because the immense lapse of time between early officeholders bearing these clan names and later people with the same name makes the connection between the two uncertain.” (156)

⁴³ Forsythe, *Early Rome*, 234

⁴⁴ Forsythe, *Early Rome*, 238

Republic was with reference to male deities and, by extension, to their priests. These priesthoods were often, in practice, hereditary, meaning that it would have been relatively easy for their holders to amass power in the hands of their clans and set themselves apart as a different class of Roman citizen. In this respect, the Senate of the early Republic may have resembled in composition the English House of Lords Spiritual and Temporal, and there are reasons to think that the priests “could have constituted a majority in the Senate before the second half of the fourth century BC. At that time, the increase in the number of magistracies is likely to have led to the secularization of the senate, as the prestige and importance of the priestly body of *patres* were eroded and there was an influx of senators with political and military backgrounds.”⁴⁵

Second, as late as the close of the 3rd century BC, there was institutional memory and acknowledgement of a traditional right of the highest levels of the priesthood to formal political power. According to Livy, in 209 BC, “the patrician C. Valerius Flaccus assumed the office of flamen of Jupiter... After becoming a flamen, Flaccus asserted that it had been the prerogative of the occupant of this priesthood to be a senator automatically.”⁴⁶ The urban praetor denied this claim of membership in the Senate *ex officio*, and they argued their cases before the tribunes.⁴⁷ Flaccus argued that this was an ancient privilege which had not been exercised in recent times because his recent predecessors as flamen had not been worthy of it; this was not the case with him. The tribunes agreed that their failure to

⁴⁵ Forsythe, *Early Rome*, 169. It may be worth noting here that a hereditary clan of priests is not unfamiliar even to our own cultural context – Aaron and his descendants were appointed as the hereditary priests of Israel in Exodus, and his descendants, the Kohanim, continue in that responsibility today.

⁴⁶ Forsythe, *Early Rome*, 167; Livy 27.8.5-10

⁴⁷ Normally, admission to the Senate was controlled by the Censors, but the *praetor urbanis*, the urban praetor, could challenge it in his capacity as the chief magistrate of the city of Rome.

exercise this privilege was a loss to each individual flamen of recent years, not a loss to the priestly office, and Flaccus was admitted to the Senate without further opposition.

Third, until its dissolution sometime after 603 AD, the beginning of any formal address to the Senate was “*qui patres, qui conscripti estis*”, ye who are fathers and ye who are enrolled. The distinction between *patres*, the fathers, and *conscripti*, the enrolled, was lost to history by the time even the early histories were written and was entirely unknown by the end of the Republic, but may have referred to a distinction between those who were members by virtue of their priesthoods and those who were members for some other reason.

Fourth, we should note that the patricians remained thoroughly tied up with the state religion more or less until Christianity became the state religion in 380 AD. As we noted above, only a patrician could fill the offices of the major flamens or the *rex sacrorum*, and before the Ogulnian reforms of 300 BC, plebeians were barred from being pontiffs or auspices. In this connection, we should pay some attention to the nature of the office of *interrex*. This was the only other office open only to patricians and the only office *elected* only by patricians. As we also noted, after the Licinian reforms, all political offices were opened to plebeians. This leads one to wonder at the nature of the office of *interrex*: was it political or spiritual? Or perhaps a bit of both? It is, I think, telling that when the Republic was without curule magistrates, the state was said to revert to the *patres*.⁴⁸ It seems unlikely that this is a statement that the state reverts to the patricians, particularly as the state reverted in practice to the full Senate, who appointed the new curule magistrates.

⁴⁸ As we noted at the end of the previous section, this might happen if, for instance, both consuls died in quick succession. If one died, the surviving consul would hold an election to replace the deceased consul; this was part of his *auctoritas* as consul. But if both died, there was no other regularly occupied magistracy competent to hold the election. An *interrex* was appointed to take up curule authority while the Senate sought suitable candidates to replace the deceased consuls.

It makes much more sense to say that the state reverts to a religious authority on which the political authority is founded. That the patricians represent that religious authority says much about who and what they were, or at least used to be.

Fifth and lastly, legislation approved by a Roman assembly was not law until it had received the concurrent endorsement of the Senate, the *patrum auctoritas*. “*Auctoritas*” is usually translated as “authority”, but it carries significant religious and mystical connotations as well as its familiar political implications. As such, “the original meaning of the phrase *patrum auctoritas* is likely to have been the sanction given by the *patres* in the senate,” who, as a group, exercised the highest and broadest religious authority in the state.⁴⁹ Over time, as the connection between the patricians and the priesthood was diluted and the Senate became secularized, the phrase did not fall out of use but was reinterpreted to refer to the approbation of the Senate as a whole, not just the priests (or patricians) in their ranks.

Nor was the Senate the only place the patricians exercised political power in the early Republic. We have strong reason to think they also originally held jurisdiction over the enforcement of private law. The traditional story is that when the Kingdom was replaced by the Republic, the king’s military, juridical, and spiritual authorities were divided between the consuls and the *rex sacrorum*, with the consuls receiving the military and juridical authorities. This story, however, has “been the subject of much modern scholarly speculation, which has rightly challenged this ancient reconstruction as overly legalistic and historically simplistic.”⁵⁰ More likely, the consuls originally exercised only

⁴⁹ Forsythe, *Early Rome*, 169

⁵⁰ Forsythe, *Early Rome*, 211

the military part of that authority, suggested by the facts that the consuls were elected by the *comitia centuriata*, originally simply the Roman army acting as an assembly, and that the consuls' legal authority was called their *imperium*, at bottom the power to command soldiers, rather than their *auctoritas*.⁵¹

This leaves the *patres* as the administrative functionaries who made the law *work* by overseeing lawsuits. The early Republic had two law codes in succession, the *Leges Regiae*, a “motley mixture of public, private, and sacred elements found in earlier known Roman enactments”, followed by the Law of the Twelve Tables, introduced about 50 years after the fall of the Tarquins.⁵² This transition had two principle impacts on the priests' role in the law.

Because the Law of the Twelve Tables left religious laws mostly to one side (laws on what kind of marriage priests are to have are a notable exception), the scope of priestly authority under the law itself was greatly reduced. Moreover, the Law of the Twelve Tables contained very few provisions concerned with the constitution of Rome—it primarily addressed itself to private law. Topically, this leaves the priests with little left on which to hang their hats.

But as though by way of compensation, the priests received an out-sized role in the application of this law in every respect. Down to the late Republic, the *pontifex maximus* maintained the legal calendar, and the records maintained through this office constitute a valuable source of information for checking the chronology used by the ancient annalists

⁵¹ We might further note that even the name for magistrates with this kind of authority, *magistratus curules* or curule magistrates, is derived from the chair in which they sat: the *sella curules*, a folding camp chair of the kind one might find in the tent of an army commander. Curule magistrates included more than just the consuls; dictators, *interreges*, censors, praetors, and curule aediles were also all accounted as curule magistrates.

⁵² Forsythe, *Early Rome*, 213

even today. This meant that the priests determined on which days legal business could and could not be conducted.

Additionally, complaints before the law were handled in two phases: the first, administered by the state through the pontiffs to ensure that the complaint was something appropriately addressed under existing law; the second, an appearance before a private citizen, appointed to decide the case, who would hear both sides and render judgment. The first phase required the plaintiff to frame his case within an appropriate *legis actio*, an action of law, a specific and formal legal ritual which had to be uttered properly in the presence of the appropriate Roman official to initiate a case. There were a number of *legis actiones*, and the form and content of each varied with and served to specify the area of law implicated in the suit. Should the official decide that the plaintiff had chosen an improper *legis actio* for his case or should the plaintiff fail to speak the words properly, he immediately lost his case. These *legis actiones* were not written down until 304 BC but were instead maintained by the priests through an oral tradition of the law.⁵³

No separate officer of the Republic was designated as being responsible for cases brought under the civil law until the Licinian reforms of 367 BC and the creation of the office of praetor, who assumed civil jurisdictional responsibilities. While they did not themselves judge cases, no case could be brought outside the forms prescribed by the pontifical college, and the priests themselves remained as the foremost jurists and interpreters of the law, both code and precedent, for quite some while.

⁵³ See Forsythe, *Early Rome* ch. 7 for a more detailed discussion of legal practice in the early Republic

2.2 Legitimation Theory

The early republic, then, represents the transition from a king backed by the authority of the priests to consuls and a different sort of king backed by the authority of the priests. Since the *rex sacrorum*, the *interrex*, and a progressively larger number of civil officials, eventually including the consuls themselves, had to come from the priestly families, the patricians, and since in all cases their accession to and exercise of authority had to be legitimated by the priests, the authority of the priests is still underwriting legitimate authority in the Rome's early republic.

The structure of legitimation, then, flows from the divine: what is right is right because it has been done by the gods' own representatives. So long as the people believe in the gods and the priests continue to plausibly represent the gods, then whatever the priests do in governing will be legitimate. Moreover, the gods hold the priests to a different standard from the rest of the people—the gods demand purity in worship and have laid out codes which those who minister before them must to follow if their prayers and sacrifices are to be found acceptable in the gods' sight. Because they are answerable to this higher law, the priests are often exempted from a need to follow the laws they set out on the gods' behalf for the rest of the people. We said at the beginning that we were interested in this chapter to understand the genesis of majesty, and that one of its three parts was apparent divine approbation. This is as far back as we can trace the origins of that requirement.

Does this early stage of the Roman republic represent a significant shift in legitimation from the kings? It's hard to know for sure, but most likely not. We can say two things for certain: First, the early republic represents the first footing of any solidity available in talking about what constituted legitimate authority in Rome, even if that footing is less firm than we would like. Second, however the transition from monarchy to

republic happened, it likely had more to do with political opportunism on at least the part of the first consuls, as we discussed at the beginning of this section, than with a genuine shift in legitimation. In this sense, the game hasn't changed, just the players.

I will, however, venture some speculation on the point. Under the kings, to our knowledge, political legitimation of regal authority relied on the authority of the priests and especially of the auguries by which they divined the will of the gods. Under the early republic, the biggest change is not how power is obtained or legitimated but who has it—the priests have cut out the middle man, as it were. And even that may be rather a stretch given that the kings were essentially made into priests upon coronation—they were the head both formally and *de facto* of the Roman state religion, such that when regal authority had departed, the *rex sacrorum* remained the *de jure* head of Rome's state church.

The crisis point, as understood by later historians, came with two kings who did not follow the proper forms in ascending the throne. The charge of Tarquinius Superbus against Servius Tullius, as recounted by both Livy and Dionysius, was that he had taken the throne without an *interrex* between him and Tarquinius Priscus, his predecessor, and that his accession had not been confirmed either by the Senate or by a vote of the *comitia curiata*.⁵⁴ Thus his reign was begun without the proper blessings of the gods. Given everything of which the younger Tarquin accused Servius, the fact that Tarquin himself then took the throne after murder and mayhem, without an *interrex*, a vote of the patrician-dominated Senate, or a vote of the *comitia curiata*, relying instead on his lineage from the last “legitimate” king, is not only a terrific irony, it also stripped him of a legitimate claim to the throne. That and the tyrannical behavior attributed to the younger Tarquin and his

⁵⁴ Livy 1.47.9-10; Dion. Hal. 4.31.2

progeny by later historians justified the move from monarchy to republic in their eyes. Tarquin's authority was fatally undercut by his lack of respect for the religious institutions on which his regal authority rested, and those religious institutions asserted their dominance thereafter.

3 *Senatus Populusque Romanus: Late Republican Rome*

Beginning in the 380s BC, we see a much more substantive change in legitimation in Republican Rome. The appeal to religious authority which had sustained the early Republic and kept the existing aristocracy in power when the kings were deposed ceased to hold sway over the peoples' minds and hearts. But the prerogatives of the nobility, the patricians, were still asserted, more forcefully and with less justification than at any time previous in the Republic. In the early parts of this decade perhaps more than anywhere else before it, we can finally see the leading edges of the Conflict of the Orders.

3.1 *History*

The crisis here begins with the sack of Rome by the Gauls in 390 BC.⁵⁵ As we noted above, from 444 to 367 BC, Rome was governed in some years by consuls and in others by military tribunes with consular authority. Ancient sources are divided on the reasons for the creation of the office of consular tribune.⁵⁶ Livy indicates that even by his day, there were at least two traditions: one claimed it resulted from the Conflict of the

⁵⁵ The date is the subject of some dispute, but 390 BC is the traditional date, and the alternative (387 BC) is close enough as to not cause us any distress at this juncture.

⁵⁶ Forsythe, *Early Rome*, 234-35

Orders and the desire of the plebeians to hold the consulship; the other, that two consuls were not enough to handle the military affairs of Rome during this period.⁵⁷ Certainly, Rome was engaged in a prodigious number of wars during these eight decades, many conducted concurrently, which makes this second explanation quite plausible even if the claims about the Conflict of the Orders seem anachronistic.⁵⁸

During the early part of this period, the consuls governed more often than the tribunes; after the sack of Rome, no consuls were elected again until the reforms of 367 BC. Under the Conflict of the Orders interpretation, the office of consular tribune was created as a compromise to give plebeians access to consular authority without actually naming them consuls. And during this period, while the consuls were all patricians, the military tribunes were often plebeians, despite the fact they wielded consular authority. After the reforms of 367 BC, plebeians continued to wield consular authority, this time as proper consuls.

During this period of 25 years or so without consuls, the confluence of several issues in Roman society came together to force a change to the previous power structure. The most significant issue was a serious erosion of trust in the political elite. This had a two-fold cause. First, following the codification of the law into the Twelve Tables, the priests' role in the law was reduced to the point that they were little more than judicial functionaries, simply cogs in the machine—important cogs, but cogs all the same. At the same time, the Senate gained a large number of plebeian members—those who had been

⁵⁷ Livy, 4.7.2

⁵⁸ Rome had a number of treaties in place with neighbors which gave Rome access to their military forces in time of war. The Senate made considerable and judicious use of these provisions during this period to field a much stronger military force than they would otherwise have been able to muster and to fight wars on more fronts than they would otherwise have been able to manage. Nevertheless, Roman generals always led these forces and every Roman army had a Roman core. See Forsythe, ch. 8 & 9, for details.

consular tribunes were, as any curule magistrate, enrolled for life in the Senate—so the body lost its cast as a priestly institution. This meant that the patricians were trying to hold onto their accustomed privileges, but the ground on which they made this stand was eroding out from under their feet.

Second, this period featured an indebtedness crisis with the patricians as the primary creditors. Issues of indebtedness were a cyclical problem in Rome, but this one seems to have been particularly bad, to the point that it's noted by Tacitus in his *Annals of Imperial Rome* in recounting the emperor Tiberius' attempt to address a different round of debt.⁵⁹ The major issue seems to have been, repeatedly, rampant usury. The Twelve Tables fixed the maximum rate of interest on a loan at one twelfth (8.33%) per year, and subsequent enactments of the *comitia tribuna*, the plebeian law-making body, banned compound interest and attempted to stamp out evasions of the law.⁶⁰ Gross excesses

⁵⁹ Tacitus, *Annals* 6.16-17

⁶⁰ Roman law, before it could receive the *auctoritas* of the Senate, first had to be passed through one of three assemblies: (1) the *comitia curiata*, a vestigial religious body whose function is not wholly clear but seems to have been originally religious, which was involved in some adoptions and the selection of new consuls when the old ones were not able to preside over an election before the end of their terms, usually due to untimely death; (2) the *comitia centuriata*, the army of Rome; (3) the *comitia tribuna*, an assembly of only plebeians. The last two were of primary importance to legislation in the middle and late Republic. Their competencies seem to have overlapped to a considerable degree with the notable exception of consular elections, which were always handled by the *comitia centuriata*. The consuls were, after all, generals first and foremost. In many cases, the reason to put the vote before one body rather than the other seems to have been the way the voting blocs were composed – the *comitia centuriata* grouped blocs by property qualification (divided by the character of gear each member of the bloc was expected to be able to provide for himself) while the *comitia tribuna* grouped them by geography (by tribe), and each bloc received a single vote.

Notably absent from this list is the *concilium plebis*, to which modern classicists generally ascribe the character I've given to the *comitia tribuna* with the sole distinction that the *concilium plebis* did not include patricians. Usually, the simplified claim is that the *comitia centuriata* dealt with foreign affairs, the *comitia tribuna* dealt with domestic affairs, and the *concilium plebis* passed "*plebecitiae*", rather than laws, which were binding only on the plebeians. In discussing only three assemblies, I am following Forythe's reasoning concerning the *concilium plebis* (*Early Rome*, 179-81). Though widely accepted by 20th and 21st century classicists, the distinction between the *comitia tribuna* and the *concilium plebis* is not attested in ancient sources from the late Republic such as Cicero or Livy, despite their extreme attention to political affairs

persisted despite these measures. Tacitus notes at 6.16 that during the crisis under Tiberius, every member of the Senate was guilty of such usury, despite the laws remaining on the books from previous crises, such that they had to go hat-in-hand to the emperor and beg his indulgence on the point.

We may reasonably surmise that the situation was not substantively different during the indebtedness crisis in the early 4th century BC, and was exacerbated by the patricians' claims of divine immunity from the law. As we noted above, the priests were held to much more stringent laws than the plebeians—the major flamens and *rex sacrorum*, for instance, had to be married in a very particular way and couldn't leave the district around Rome, for a start. There were myriad laws surrounding their behavior, and on these grounds they

during the Republic in their many extant writings, and makes no appearance until the middle Empire in the writings of the lawyer Laelius Felix in the 2nd century AD.

Its inclusion also requires us to considerably complicate the portrait of Rome's republican institutions. It is unclear what the jurisdiction of the *concilium plebis* would be against the *comitia tribuna*, or why a separate assembly would be necessary. Modern interpretations suggest that the *comitia tribuna* was responsible for electing the quaestors and curule aediles, while the *concilium plebis* was responsible for electing the plebeian tribunes and aediles. (Jo-Ann Shelton, *As the Romans Did: A Sourcebook in Roman Social History*, 2nd ed. (Oxford: Oxford University Press, 1998), 204-06; hereafter cited as Shelton, *As the Romans Did*.) Membership in these assemblies was also different, according to modern interpretation: while the *comitia tribuna* included patricians, the *concilium plebis* did not. This is thought to receive additional weight from the *lex Hortensia* of 287 BC, which, among other things, applied the decisions of the plebiscite to the patricians explicitly, implying that there was some significant question before that point. The rationale given for this is that plebiscites applied to only plebeians because only plebeians could vote on them. But if, as we considered in §2.1, the patricians as a closed group were the descendants of those who held priestly office, it's not difficult to think that they were claiming a vestigial privilege of immunity from the laws of the domestic assembly, a privilege originally asserted on the basis of the myriad other laws and regulations they had to follow as priests, especially those of the major flamens, which might conflict with the pronouncements of the domestic assembly.

As noted, this distinction between two domestic assemblies, one including the patricians and one not, does not appear in Cicero, Livy, or any other ancient source before the second century AD, around 200 years after the end of the Republic and 100 years after the final dissolution of the plebeian assembly under Tiberius. This distinction also appears to be unknown to scholarship before the 20th century. Given that contemporary sources from the late Republic make no mention of this distinction, one is tempted to impute its emergence to a hidden impulse to interpret Rome's Republic in strongly democratic terms as a way to make sense of the Conflict of the Orders, effectively reading our cultural sensibilities into Roman history. Whether or not that is the case, one is left to seriously question the degree to which a *concilium plebis* is necessary to the history of Rome's Republic.

asserted a privilege from being bound physically, legally, or magically lest their adherence to secular authorities conflict with or restrain them from fulfilling their duties to the divine.⁶¹ There was just one significant problem: by the early 4th century BC, many of those asserting this privilege were not and never had been priests and in many cases weren't following the laws set out for the priests either.

The end result, then, is a political elite who with one breath claims the right to make laws on the grounds of hereditary divine authority and with the next violates those same laws without being connected and committed to that divine authority in the traditional way. It is not difficult to appreciate why this created a crisis of faith in the political elite and in the divine authority on which they grounded their claims.

Exerting additional pressure was a significant increase in the size of the Roman state. As we noted above, following the sack of Rome around 390 BC, Rome became militarily much more aggressive and leveraged its treaties with neighbor states to gain access to far more military manpower than could have been fielded out of Rome's citizenry alone. This triggered a tremendous wave of territorial expansion, and with it, Roman citizenship was extended to an increasing number of people. This had a number of consequences, but the most important one for our purposes is that Rome outgrew its existing civil institutions. What had worked well for a city-state became progressively more problematic for a nation-state as the judiciary clogged and Rome engaged in more concurrent wars than the two consuls could feasibly oversee.⁶²

⁶¹ Forsythe, *Early Rome*, 141

⁶² Forsythe, *Early Rome*, 236

The second significant consequence arises from the opportunity this arrangement afforded plebeians to participate in affairs of state and, almost more importantly, of war. The consular tribunes were consuls in all but name and, for lack of a better term, ordination. They exercised the same powers as did the consuls, but they did so without an explicitly religious foundation for their authority. And under their guidance, the Roman state prospered: the gods smiled on the city and her plebeian leaders as they roughly quadrupled Rome's territory.

This was a lesson not missed by the people, and in 367 BC, the Licinian reforms were passed, substantially reforming Rome's government and civil service. There are two changes of significance to note. First, the consulship was opened to plebs, and the Licinius for whom the ancient annalists named these reforms was one of the first plebs to hold the office. Despite the continued participation of the *comitia curiata* in the contingencies of consular succession, plebs who were elected consul were not made hereditary priests by this elevation, though they were expected to take military auspices as necessary. Also, and it is not entirely clear when, it became traditional at some point to elect one patrician and one plebeian consul to the point that politicians of different classes would form a ticket, much as might happen in a modern presidential election.

Second, jurisdiction over enforcement of the law was shifted away from the office of the consul. In this case, enforcing the law was likely an authority that accreted to the consular *imperium* somewhat after the consulship came into existence in consequence of *imperium*'s implicit authority over life and death. By this period, the consuls were the supreme magistrates, at least in name. This authority was also given to the consular tribunes, and the board of consular tribunes, originally three in number, grew to six by the

time the Licinian reforms were implemented, at least in part to handle the increasing number of legal cases that came with a growing population.

Under the reforms, jurisdiction over law enforcement was transferred to the newly minted praetors, each of whom held *imperium* and could legally command armies in his own right but whose primary exercise of *imperium* was in the context of the law. Likely because of the sacral nature of the law to this point, the praetor initially had to be a patrician, but this proscription only lasted 30 years; in 334 BC, the first plebeian praetor was elected.

So the Licinian reforms of 367 BC were responsible for creating the *cursus honorum*, the course of honors or offices, as it existed in Cicero's day. In general, aspiring young men would first serve 10 or so years in the army, usually either as a cavalry officer (*equites*) or on the general staff of a relative or family friend, then run for the office of quaestor, then either aedile or praetor (usually, aedile *then* praetor), and finally consul. To be elected consul, you had to be at least 40 as a patrician and 42 as a plebeian, while the office of quaestor opened at 28 and 30 respectively, so most consuls had served in high government office for at least 10-12 years before assuming this responsibility. After serving as consul or praetor, it was also required that a politician serve at least one term governing a province as either proconsul or propraeor, representing the executive and judicial functions respectively in each province.

Every step on the *cursus honorum* was an office of senatorial rank, so the Senate, long the stronghold of the patriciate, became quickly dominated by the plebeian faction and found itself greatly more accommodating to plebeian concerns. This plebeian dominance of the Senate, along with the phenomenon of the *novus homo*, shifts us into the late Republic.

3.2 Legitimation Theory

In terms of how power was legitimated, this really does represent a much more significant shift than the shift from royalty to republic. In the early Republic, legitimate authority was a consequence of divine approbation expressed through the priests. In the late Republic, political legitimacy in the mind of the Roman became far more secular, and not just as an ossification of religious practice into civil/secular tradition. We can see this in two significant ways.

The first and most obvious is the rise of the plebeian class. As we noted, prior to the sack of Rome around 390 BC, real power was concentrated in the hands of the patriciate and basically unavailable to the plebeians on religious grounds: the gods were an integral part of the Roman state, and two of Rome's three principle deities were gods of or strongly related to war. Because *imperium*, the right to command soldiers, was a religious authority rather than civil authority, the priestly class, the patricians, were the only ones who could be trusted with this authority. This ties the second element of majesty, demonstrated military prowess, to the first, apparent divine approbation

We observed above that little mention of the religious practice of the people or its continuing significance in political life was made by the Roman philosophers, rhetoricians, and historians writing in the late Republic (e.g. Livy, Cicero), who preferred instead to focus on the ways power was gained and exercised. This, I think, we should take as a clue to how they thought about what it meant to hold authority legitimately as they read history through the lens of their own day. But this is not to say that the Roman constitution paid no heed to the gods during this period—quite the opposite. The gods and their service remained a pervasive aspect of Roman life, but in a less active role than before. While native Roman philosophers, rhetoricians, and historians of the period had little to say about

it, their foreign counterparts were not so restrained. For instance, Polybius, a Greek historian writing in the 2nd century BC, a century prior to Cicero or Livy, cites Romans' relationship with their gods as the single greatest strength of their constitution. It gave them, he thought, an excellent way to tame the people by providing a state-controlled interpretive framework for historical events, to structure the relationship between the people and their leaders, and to restrain the leaders by enforcing certain moral norms.⁶³

The advent of regular plebeian access to *imperium* through first the consular tribunate and later the consulship itself marks a major departure because, even though in form and function the institutions remain (largely) as they were under the religious legitimation paradigm, their sacral character has been abolished in the public *intellectus* (or if not abolished, then significantly abrogated). A simple lack of priestly blood is no longer enough to keep competent, worthy men from posts where their excellence can be of greatest benefit to the state and the people. The combination of the importance placed by the Greek historian on Roman religious practice and the lack of attention paid it by Roman politicians and historians of the era suggests that the religious character of political institutions was so ubiquitous and pervasive as to form a part of the background contextual assumptions that would have needed no explanation (to contemporary readers) once religious authorities stopped exerting a direct and active influence on political affairs.

But second and more importantly for our purposes, the fact of the *cursus honorum* should not be overlooked because it structured legitimate authority by ensuring that capable people were in positions of power. Its function was, in effect, to train and test potential

⁶³ Polybius, *Histories* 6.56. On this last point, he attributes to the pervasive nature of religious practice the relative lack of corruption in Roman officials during the 2nd century BC. It was, apparently, unusual during his day for a Roman official to be caught embezzling public money, though one may question just how much faith one ought to place in the implication that embezzlement was, in fact, a rarity.

future rulers and weed out those who would not be able to make the cut. By the time he was eligible to be consul, a man would have served in military and government in one capacity or another, even if only as a senator, for nearly a quarter century, minimum. It was, in fact, seen as an exceptional grace note to achieve each magistracy *in suo anno*, that is, in the first year in which one was eligible, so most who completed the *cursus honorum* had served considerably longer than that.⁶⁴ One could serve in each office multiple times, but following the Social War (91-88 BC) and the reforms of Sulla, a minimum 10-year waiting time was imposed between terms (though this was flagrantly violated towards the end).

This is reflected further in the positions of proconsul and propractor which former consuls and praetors were expected to take up, at least for a time. The thought was that those who had served successfully in Rome itself and had performed well under the close scrutiny of the Senate could be trusted to exercise authority, especially *imperium*, on the Senate's behalf in the colonies and overseas provinces. We should note here that, though the first proconsul was appointed in 327 BC because, as consul, he was in command of an army besieging Neapolis (Naples) when his term ended and a change of leadership would have been inadvisable, these offices were not in common use until the Second Punic War (218-201 BC), when the pressures of Hannibal's years-long rampage through Italy demonstrated the need for a continuity of command that simply wasn't possible when the

⁶⁴ Cicero was extremely proud of having accomplished this feat, despite being especially well liked by neither the *populares* nor the *optimates*, the two principle political factions of his day, and despite being a plebeian *novus homo*, coming from a family that had not before held the consulship.

generals were changed out on the basis of annual elections.⁶⁵ It proved a convenient arrangement as Rome began expanding beyond the Italian peninsula.

So in the late Republic, legitimate authority no longer flows from the gods; it flows instead from the system by which the rulers are trained. The system ensures that, even if those in place aren't precisely the right people to handle the situations they face, at least they will have significant experience and be able to muddle through competently. Because of the *cursus honorum*, competent people will be wielding *imperium* in the right places at the right times for the good of the Senate and People of Rome.

This competence is a core part of the component of majesty to do with perceived personal virtue. The other concerns the personal lives of leaders. We today have an unprecedented level of access to the personal lives of our leaders, but now as then, we evaluate their personal behavior according to communally held religious values or, at minimum, cultural values informed by those religious values. The explicitly transactional nature of Roman religious practice heightened this: the basic assumption was that if a person was not worthy of their position personally and professionally, they would not have been put there by the gods and the people, respectively. If one had not done right by the gods and lived a pious life, one would not have been allowed to attain high office. For obvious reasons, the Roman political class did not discourage this notion. But for high officials during the late Republic, divine approbation was taken for granted. Emphasis in legitimation was placed on demonstrated competence in military and administrative affairs.

⁶⁵ David Shotter, *The Fall of the Roman Republic* (London: Routledge, 1994), 12; hereafter cited as Shotter, *Fall of the Republic*. Shotter's work in this volume presents a good summation of the complicated politics of the late Republic with an eye to answering how Republic shifted into Empire, the very question which will concern us in the following section, and I am indebted to his work, along with that of Howard Scullard (*From the Gracchi to Nero*, below) in the consideration that follows.

This compares well with what Polybius has to say about legitimation in Rome at that time.⁶⁶ He gives the Roman constitution special praise on several fronts. The natural life cycle of a civilization, he says, is elevation from tribalism into monarchy, decline into tyranny, renewal into aristocracy, decline into oligarchy, renewal into democracy, and decline into ochlocracy, until it returns to tribalism and rule by a strong man, so that the cycle repeats. He praises Rome's republican constitution, at its peak, for being a blend of the three best forms (monarchy, aristocracy, and democracy) wherein each part supports the others to carry out reasonable and sensible government.⁶⁷

But his actual standard of legitimation is not this blended constitution. He accurately predicts that it will only serve Rome well so long as continual states of crisis force the three parts to work together productively. Once they no longer need each other, once the state is no longer threatened but exists as a dominant power, the consuls, the Senate, and the people will begin fighting with one another for power in a way that will ultimately destroy the state and reduce it to ochlocracy (and, thence, to a strong-man ruler).⁶⁸ Legitimacy is not to be found in a given form of government, then, but in the values of the people and the character of the government they create (as opposed to any specific form of government), as structured by the traditions and customs of the culture. If the traditions and customs are good, they will produce a people restrained in their greed

⁶⁶ Polybius was Greek, from Megalopolis, but he was given to the Romans in 167 BC as a hostage against the good behavior of the Achaean League following the Third Macedonian War (171-168 BC) and became a prominent figure in Rome, tutoring the sons of Rome's victorious general in that war (most notably, Scipio Aemilianus). When he was freed in 150, he remained as an advisor to his former pupil as Aemilianus commanded Rome's forces in the Third Punic War and the destruction of Carthage.

⁶⁷ Polybius, *Histories*, 6.11-18

⁶⁸ Polybius, *Histories*, 6.57

and attentive to their duty and a government characterized by its equity and impartiality. If they are not, the people will be avaricious and the government, partial and unjust.⁶⁹ The root of all of this is the traditions and customs of the culture, and if change in the people and their government is to be effected, it will be through changes to those traditions and customs.

In Rome's case, at the Republic's zenith, Polybius has some very particular thoughts on what those traditions and customs are. Given that he's writing an account of the most significant wars of the era, it is not a surprise that Rome's military organization comes in for significant analysis and praise.⁷⁰ What sets it apart from most other militaries, he thinks, is that every male citizen serves in the military and so is trained for warfare in a way he thinks parallels Sparta. And because they are using native soldiery rather than mercenaries, Rome's armies will always be as invested as possible in whatever war they fight (by contrast with Carthage's land forces). At rather less length, he calls the role of Roman religion in public and private life the greatest strength of the constitution, as we noted above.⁷¹ And he says that the state goes to great lengths to instill in its youth the values of the *mos maiorum* (the storied ideals of older days) and the desire to match the achievements of their sires, giving as his example their funerary practices but assuring the reader that this is only one of a panoply of measures by which Roman custom and tradition mold their youth into exemplary citizens.⁷²

⁶⁹ Polybius, *Histories*, 6.47

⁷⁰ Polybius, *Histories*, 6.19-42

⁷¹ Polybius, *Histories*, 6.56

⁷² Polybius, *Histories*, 6.53-55. In relevant part, when a notable Roman died, the body was placed on public display on a raised platform, joined by his son or other close family member to recount his virtues and accomplishments. This was a very public affair. A mold was then taken of the dead man's face and used to

In effect, Polybius seems to be saying that Rome is creating in each of its citizens a spark of *majestas* by training them to be effective in the military, inspiring them to personal virtue, and shaping positively and constructively their relationship to the divine. Only when the customs and traditions supporting and perpetuating the collective *majestas* of the people and the Senate cease to train, inspire, and bless them does the system break down. But while, from an outsider's perspective, this is likely correct, it nonetheless does not seem to be why the Roman people themselves understood their government to be legitimate; they focused on the *cursus honorum*.

4 Imperium Romanum

This system broke down significantly in the first century BC, leading to the rise of empire. The transition from Republic to Empire is a bit of an oddity, historically. While most other shifts in legitimation place greater emphasis than previously on structure, this one placed its emphasis back on the person, initially Augustus Caesar. This is not merely to say that he was a strong-man (though that, he undoubtedly was). This is to say that he successfully reconstructed the nation's mythos around what it meant to hold legitimate authority in such a way that his own practices constituted such authority not only for himself but for those who claimed to inherit his mantle for fifteen centuries. This is such

create a mask (*persona*) to inhabit a shrine in the house, along with the family's other honored dead. On holidays or at the funeral of another notable member of the family, those most like the deceased in appearance would put on the mask and dress appropriately to their dead man's station and process through the streets in a chariot preceded by the trappings of office appropriate to the deceased they personated. At a funeral, those wearing masks would also be seated on the platform with the newly deceased, and following the encomium for the decedent, the speaker would remind the assembled of the virtues and accomplishments of every *persona* on the stage with him, from the most ancient on forward.

In some families, this meant that funeral orations could go on for quite some while. But their value, for Polybius, lay in inspiring the young by connecting them to a tradition of virtue and greatness to live up to and surpass, if they could, either within their own family or at least within their own culture.

an unusual phenomenon that it will behoove us to spend some time considering why and how it took place.

4.1 History

The shift from Republic to Empire can, in many respects, be traced to the simple fact that Rome kept expanding. The problem was that it did so without necessarily meaning to and without a coordinated vision for what the new Rome should look like. On the surface, Rome's expansion was comparatively benign. Rome found herself as, if not the ruler, then certainly the suzerain of Italy, and this brought it into contact with many foreign powers, often violently, on behalf of its client states. The treaty signed with Carthage in the late sixth or early fifth century BC stipulated that Carthage would not harm several named coastal cities in Latium or any other Latins subject to Rome's authority, and if they captured a Latin city, they were to hand it over to Rome unharmed.⁷³ This indicates that even as early as the first year of the Republic, Rome was regarded as the guarantor of its neighbors' safety.⁷⁴

By the third and second centuries BC, this situation had grown only more pronounced. A map of Italy's political divisions following the end of the Samnite Wars (290 BC) resembles a particularly demented patchwork quilt of areas directly under Rome's authority, areas with *civitas sine suffragio* (Roman citizenship without voting rights), areas with mutual defense treaties with Rome, and areas which remain nominally

⁷³ Polybius, *Histories*, 3.22-23

⁷⁴ Forsythe, *Early Rome*, 121-23. As Forsythe notes (*Early Rome*, 72), a study of Rome's treaties with Carthage was completed by Polybius to assemble a diplomatic history for the two ancient powerhouses. This first treaty he dates to the first year of the Republic. While it's possible that the treaty was concluded under Tarquinius Superbus, it is generally acknowledged as dating from the turn of the fifth century BC.

independent of Rome but whom no one would dare invade for fear of Rome's ire. A benign interpretation, then, might claim "that Rome's entry into the larger world of overseas relations was forced upon her by commitments to her allies, and in no sense was an enterprise undertaken with a positive purpose."⁷⁵

This is to say, Rome went to war frequently, often pursuant to treaty obligations to city-states under its protection, and by the third and second centuries BC, this was resulting in a string of overseas territorial acquisitions. At this point, Rome engaged only in wars that were (nominally) defensive.⁷⁶ They were always quite careful to ensure that the *causus belli* was not something they'd done. But each man who wielded *imperium* also had to live up to the office and great name of the ancestors, the *mos maiorum*, so that each man had to find a way, during his time with *imperium*, to expand Rome's territories, to win a great victory for the fatherland. As a result, Rome's leaders were past masters of engineering situations so that (nominally) defensive wars were declared at a time and place that suited Rome. While Rome wasn't expanded as part of a state program and policy, it was consistently expanded as part of a cultural mandate.

This came with a dangerous price: the unplanned nature of the expansion meant that Rome had not institutionally prepared for the challenges of governing far-flung provinces. The systems that had worked well when all of Rome's territory could be reached by no more than a week's ride from the capital did not work nearly as well when it could take a month. And Rome's responses to this situation were consistently improvised. The

⁷⁵ Shotter, *Fall of the Republic*, 12

⁷⁶ This was a religious imperative, actually. The principle god of war, Mars, began as an agricultural god of boundaries and the wilderness, responsible for defending the borders of the fields from pests and wild animals. This character persisted as he evolved into the principle god of war. See Forsythe, *Early Rome*, 127-28; Cato, *De Agricultura* 141.

first round went well, as we saw above. In the second round of improvisation, in the second century BC, Rome was not so fortunate.

The problems began with Rome's *ad hoc* reaction to the aftermath of the Second Punic War (218-201 BC). Rome found herself with substantial new overseas territories in Iberia to govern and no practiced model for this. For various reasons including military command and criminal justice concerns, he to whom the governorship was entrusted would need to have *imperium*. Since the other features of consular or praetorian office (having to do with the legislative process and certain religious functions) were not to be exercised by the governor, proconsuls and propraetors were sent as governors for the provinces, and on several occasions, the numbers of praetors were increased to ensure there would be enough propraetors to serve as governors (e.g. under Sulla in 80 BC).⁷⁷

This created three problems, all of which led to a significant shift in how power was perceived and how legitimate authority was grounded. First, it led to massive abuses of power in the provinces. "In a province, the governor's authority, although *legally* under control" of the Senate, was *de facto* uncontrolled—within his province, each governor was the final authority and the Senate exercised limited (if any) oversight.⁷⁸ The most prominent and pervasive resultant abuses concerned taxation. Taxes were assessed communally rather than individually and were to be collected by the provincial governors (though some contracts for tax collection were let out to groups of equestrians) with the expectation that the governor would assess more in taxes than the Senate and People had mandated as a way of funding both the organs of government under his authority and his

⁷⁷ Shotter, *The Fall of the Republic*, 45

⁷⁸ Shotter, *The Fall of the Republic*, 13

household. In practice, this meant that what the provincials paid often bore little resemblance to what Rome demanded as the governors financed lavish lifestyles and their underlings (those collecting the taxes, at any rate) took their direction from the top and did the same thing on a smaller scale.⁷⁹ Many had also gone into substantial debt to win office, as we'll see below, and needed to tax the provincials to pay their creditors in Rome.

Governors who were particularly rapacious could make themselves obscenely wealthy, but this often had side effects of breaking the law rather horribly and exposing them to prosecution on their return to Rome. Cicero made his bones taking down one such governor, Gaius Verres, whom he prosecuted on behalf of the people of Sicily. If even half the charges in the Verrian Orations are accurate, Verres had been a very bad boy indeed.⁸⁰ But because it was comparatively easy to buy off juries and because few provinces could secure the services of an orator of Cicero's caliber, few prosecutions of such governors took place.⁸¹ This meant that to the provinces, more important than the office was the man holding it. Provincials' security and prosperity depended quite directly on his virtue.

⁷⁹ Because of this, tax collectors were often regarded as thieves working for a hostile government – this is the genesis of the stigma with which they are treated by most in the Gospels, for instance.

⁸⁰ The nadir of Verres' depravity, according to Cicero, was that he had crucified Roman citizens without a trial. Citizens in the provinces enjoyed a right of appeal to Rome and the criminal courts there against summary execution, a right not available to most in the Empire. Violating this was a significant problem, one which was to cause Cicero himself considerable consternation following the affair with Catiline, whom, as consul, he executed on the basis of a *senatus consultum ultimum* without the trial to which Catiline was entitled. The irony was not lost in Cicero's detractors.

⁸¹ That Cicero was willing to take on this case demonstrates either courage or desperation – a *novus homo* especially, because he had to be at such pains to avoid offending anyone if he wished to continue on the *cursus honorum*, would do best to avoid the role of prosecutor where he could and instead take up the defense of any *nobilis*, be he the most scurrilous reprobate, who found himself facing prosecution. See Ronald Syme, *The Roman Revolution* (Oxford: Oxford University Press, 1939), 10-13 for further information on the situational complexities; hereafter cited as Syme, *The Roman Revolution*.

Second and closely related, this underwrote a significant expansion in electoral corruption: “men were prepared to use and borrow huge sums of money to distribute as bribes to the Roman people at election time in the knowledge that they would have the opportunity to recoup their outlay, pay off their debts, and make a profit by fleecing provincials.”⁸² The system of political patronage which had been established to this point experienced a massive and sustained infusion of cash which only increased in scale as the empire grew. This became such a problem that many leading citizens opposed expanding citizenship to Italians both before and after the Social War (91-88 BC) on the grounds that it would be ruinously expensive to have so many new hands outstretched for electoral bribes.

Third, when they returned to Rome, many former governors caused additional challenges because they had grown accustomed to being functionally independent. They were solely and wholly responsible for the administration of the Roman military and civil and criminal matters within their province, and they didn’t have the Senate looking over their shoulders the whole while. “It is not surprising that some provincial governors should have seen themselves in quasi-regal terms and have been very reluctant to sink back into” the relative obscurity of being simply a member of the Senate once their year of provincial power was over.⁸³ They wanted to keep being big fish in a small pond, and that meant they had to grow considerably larger than life in the grand pond of Rome.

These problems between them contributed to a major shift from emphasis on the system to emphasis on the individual. As men raised at roughly the same social class and

⁸² Shotter, *The Fall of the Republic*, 13

⁸³ Shotter, *The Fall of the Republic*, 13

in the same culture who were experienced in the use of power, they had very similar policy proposals. Most of them were, in other words, the “right men” for the job—they were well-qualified and proposed to use power in very similar ways. So when they stood for election, the questions became who was going to be a friend to whom, who commanded the most respect and personal *auctoritas*, and who could pay the best bribes.

Pressure on those at the top of this pyramid of power and patronage increased substantially following the reforms to the Roman army by Gaius Marius during his first consulship in 107 BC. The Roman army to that point had a property qualification: you had to be a citizen landowner to be subject to the military levy. This had worked well for a smaller Rome which was still focused primarily on agrarian life, and it had the distinct advantages of making sure that the soldiers had a very direct stake in the Republic and giving them something to return to after their term of service. But between the economic expansions of the 3rd century following Rome’s ascendance to effective hegemony over Italy, the increasing availability of cheap grain imports from elsewhere in the empire undercutting Italian farmers, and Hannibal’s years-long ravaging of the peninsula, the agrarian life was considerably less attractive than it had been. The levy, too, was bitterly resisted, and many abandoned their land so as not to be caught in it.⁸⁴ The net result was legions that were sent into battle undermanned and without the training or materiel they needed to be successful.

Marius’ reforms were thoroughgoing, but the reform of greatest significance for us concerned the property qualification: while one did still have to be a citizen to serve in the

⁸⁴ Shotter, *The Fall of the Republic*, 14

legions, one no longer had to hold property. This solved the recruitment problem, but it created a significant new difficulty:

By definition, many of the new recruits had [no property] to which to return. Many, therefore, preferred to serve under a successful commander who could lead his army to enormous rewards in the form of booty. Second, the state made no provision, as Augustus was to make later, for the automatic distribution of land to discharged legionaries; rather, on each occasion on which an army returned to Italy for demobilisation, its general had to arrange for the passage through the senate and people of an agrarian law to acquire and provide the necessary land. Events were to show, particularly in Pompey's case in the late 60s BC, that such legislation could become ensnared in factional rivalry and delayed indefinitely. These factors emphasised the close interrelationship between an army commander and his troops, and effectively turned the legionaries into their generals' clients, who felt an obligation to do whatever was asked of them if it appeared to be to their mutual advantage.⁸⁵

To ensure passage of the necessary agrarian legislation, a successful general needed three things: (1) the requisite votes in the *comitia tribuna* to pass the legislation, (2) a friendly slate of tribunes to ensure the legislation was both presented to the *comitia tribuna* in the first place and not vetoed by one of the other tribunes, and (3) a voting majority in the Senate to ensure that the Senate's *auctoritas* would attach to the legislation. To accommodate these requirements, the networks of patronage already in place within the assemblies crept upwards to build a system of political alliance and clientage between leading citizens.

This structured itself into dichotomous parties who differed more in methodology than anything else. Most often, one party appealed to the urban plebes (*populares*), another appealed to the nobility and ancient principles of the Republic, the *mos maiorum* (*optimates*), and they squabbled over the middle class, the equestrians.⁸⁶ Thus emerged

⁸⁵ Shotter, *The Fall of the Republic*, 31-32

⁸⁶ While the equestrians were nominally plebs, they were considerably better off than those to whom the *populares* made their primary appeal. Equestrians were a merchant class, so named because in the early Republic, they could afford to furnish their own horses and formed the core of Rome's cavalry. By the late Republic, many had fortunes that made the Senate look like a house of paupers.

factional politics, but with personal rather than policy differences, such that one man headed each faction. The question for them was who could amass more voting clients in each of the assemblies.⁸⁷ In many ways, next to the serious problems facing Rome during this period, the political history of this period reads like a farcical fencing match between two men on very tall stilts: falls are common, and when someone falls, they fall *hard*.

As personal ambition overtook patriotism and concern for the common good, it became evident just how much the system relied on the virtue of those responsible for its exercise and upkeep and how very vulnerable it was to manipulation once those men lost their scruples. The period from the early 130s BC to Octavian's final victory over Marc Antony at the Battle of Actium (31 BC) is complicated and involved, and a complete accounting would be an unnecessary digression. But we should take notice of four particular moments in that history for their impact in hastening the shift from governance by system to governance by men of virtue, from Republic to Empire: the turbulent tribunate of Tiberius Sempronius Gracchus,⁸⁸ the dictatorship of Sulla, the rise and assassination of Julius Caesar, and finally the ascent and consolidation of authority under Octavian, later Augustus Caesar.

The problems of recruitment and military readiness that Marius addressed in 107 BC were not then of recent provenance. As we noted, they began following the Second Punic War a century prior, and as time went on, they only got worse. By the late 130s BC, a solution was badly needed. In 133 BC, Tiberius Sempronius Gracchus was elected as one

⁸⁷ Shotter, *The Fall of the Republic*, 17. He notes here, and I think this an important consideration, that "It is a common error of modern commentators to attach to these factional groups such labels as 'right wing', 'left wing', 'reactionary', and 'progressive'; these terms do not describe the distinctions between Roman groups."

⁸⁸ Related is the tribunate of Gracchus' younger brother, Gaius, who was elected a decade later and ended just as badly. But as his tribunate did not result in the same kinds of changes as T. Gracchus', we are not in a position to recount it here.

of several plebeian tribunes, and he put forward a solution: land redistribution. Since Rome was choked with landless citizens, many subsisting on the increasingly expensive public grain dole, and the army badly needed more landed citizens, this seemed like an ideal approach in a lot of respects.

This was not a new idea; a similar proposal had been made about ten years prior by one of Rome's most prominent *nobiles*, Scipio Aemilianus, the destroyer of Carthage in the Third Punic War (149-146 BC), adoptive grandson of the Scipio Africanus who had defeated Hannibal, and T. Gracchus' adoptive uncle and one-time political patron.⁸⁹ The land which had been abandoned was not fallow; rather, it had been incorporated into large estates or was being farmed by squatters without title to the land. When Gracchus introduced the legislation, he was opposed by many of those who stood to lose.

But he was also opposed by Scipio's faction in the Senate. The legislation was popular among the urban plebs, many of whom regarded this as a Robin Hood proposal—control of arable land was the source of and inextricably linked with wealth during this period, which meant that taking land away from those who had amassed large agricultural estates was a very effective strike against the rich of the day. These urban plebes were also a traditional part of Scipio's political clientele, and he was not enthused about losing a significant number of them to a man he now regarded as a political opponent.

So T. Gracchus circumvented the Senate. It had become usual to consult the Senate before moving forward with legislation, though it was not law, but Gracchus simply presented his legislation to the *comitia tribuna*. In doing so, he also got around the veto of his colleague as tribune, Gaius Octavian, a supporter of the Scipiones faction by the simple

⁸⁹ Shotter, *The Fall of the Republic*, 19

expedient of having him bodily removed from the assembly despite the legal sacrosanctity of his person. So the *lex Sempronia agraria* was passed, but not before many came to see the actions of T. Gracchus and his faction (headed by the *princeps senatus*) as an attempt to take over the government: “a faction was attempting to manoeuvre itself into a position where, by ‘stealing’ its opponents’ clientage and controlling an arm of government, it could control Rome in a quasi-regal fashion... made all the more sinister in that they tried to hide behind a much-needed piece of reform.”⁹⁰

This constitutional violence was met with physical violence. Despite the legal sacrosanctity of his own person, T. Gracchus was killed by Scipio Nasica, one of Aemilianus’ cousins and at the time the *pontifex maximus* of the Roman state religion.⁹¹ As he left the Senate to do the deed, Nasica raised his toga over his head, as one in his religious position would do when performing a sacrifice. The implication was clear: T. Gracchus was to die as a sacrifice to the Republic. Aemilianus made this point himself when asked whether the murder was justified: “if the tribune was trying to establish himself as king (*rex*), then he was rightly murdered.”⁹²

Even after T. Gracchus’ death, though, when Scipio’s faction regained control of the levers of power, the agrarian law he had forced through was left in place. As we noted,

⁹⁰ Shotter, *The Fall of the Republic*, 22

⁹¹ The plebian tribunes’ history is another part of the mythology of the glory days of the old Republic recounted in the annalists, one that we don’t have the space to go into here. Their precise origins are uncertain (as are the origins of the *comitia tribunata*, of which they were the principle officers), but they were part of the fabric of Rome’s government before the Licinian reforms of 367 BC. During that period, when the Senate was largely under patrician control, the plebian tribunes were often the sole effective voice for the plebs in Rome’s government. This put them in considerable danger of bodily harm, and as such, they were granted an extra measure of protection: one quite literally couldn’t legally lay a finger on a tribune without his permission. To do so was sacrilege. This is part of what makes the actions of Scipio Nasica so remarkable: willingness to break this taboo was often taken as a sign that one wanted to rule as a king.

⁹² Ibid.

party politics tended to hinge on personal differences rather than policy differences, and Scipio himself had proposed such legislation a decade prior. It was broadly recognized as a necessary reform—the problem was only ever with the man pushing it. But as a solution, it had run its course inside 20 years, and it became clear that more radical reform would be needed, prompting the reforms of 107 under the *populare* Gaius Marius, during the first of his then-unprecedented seven consulships.

We elide at this point over a significant stretch of history, 40 years or so, to the rise and rule of Lucius Cornelius Sulla. This period was not without its issues, most notably the turbulent tribunes of T. Gracchus' younger brother Gaius in 123-122 BC, which ended just as badly as had Tiberius Gracchus', but Sulla represents the next significant step down the road that ends with Augustus.

Sulla's rise in Roman politics was first evident following the Social War (91-88 BC), in which he served with distinction as Rome's commander in southern Italy.⁹³ As we noted, the reforms of Gaius Marius in 107 had made the army exceptionally dependent on its (successful) general, to which Sulla added their personal loyalty—he received the *Corona Graminea*, the Grass Crown, traditionally woven from the plants of the battlefield and awarded only by acclamation of an army rescued by the personal bravery of the commander in question. Few were ever awarded.

The Social War began in part because of the issues of participation in the civic affairs of Rome that the haphazard expansion had left open. Many of Rome's allies and client states had a form of Roman citizenship, but they lacked the ability to vote in Roman

⁹³ H. H. Scullard, *From the Gracchi to Nero: A History of Rome from 133 BC to AD 68* (London: Methuen & Co. Ltd., 1959), 68-69; hereafter cited as Scullard, *Gracchi to Nero*.

elections, and many were without even that much, leaving them legally quite vulnerable to their Roman overlords. Rome refused to address these concerns, and the result was half their subject peoples confederating and rebelling. Rome won the war militarily but conceded the issue politically. Full Roman citizenship was extended to all Italians south of the river Po and one tribe in Cisalpine Gaul, but for many, this was a distinction without much of a difference—half the rights of citizenship, including the right to vote in the *comitiae*, could only be exercised in Rome itself, and elections were held in the middle of winter, making a difficult journey impossible for those further from the capital, and much of the grumbling persisted.

In recognition of his service, Sulla was elected consul for 88 BC, and he began a thoroughgoing set of constitutional reforms. During his first consulship, Sulla instituted three reforms of significance. First, he moved the date of elections from January to June, making it easier for most Italians to exercise their franchise—many could get the spring planting done, be in Rome for the elections, and be back home for the harvest. Second, he passed a law requiring that all future legislation be submitted to the Senate for approval before being sent to the *comitiae* for a vote, closing for good the route T. Gracchus had taken with his destabilizing effort at reform. Third, he ensured that the new citizens would only be enrolled in 8 of the 35 voting tribes in the *comitia tribuna*. Since each tribe had only a single vote, this very effectively blunted the impact the new citizens could have on government, much to the delight of his *optimates* allies.⁹⁴

This last point caused significant tension, and in 87, when Sulla was leaving the consulship to take command of a military mess in Asia Minor, he made his successor as

⁹⁴ Shotter, *Fall of the Republic*, 41-42

consul, the *populare* Cinna, swear to leave his reforms in place. No sooner was Sulla gone, though, than Cinna moved to repeal Sulla's reforms, the last in particular. Though he was promptly driven from Rome by his co-consul, he raised an army in the south of Italy while Marius did the same in the north, and they returned to take control of Rome. The pair were declared consuls for 86 BC, the seventh and last of Marius' terms in that office.⁹⁵

Sulla was unable to return to Italy until 83 BC, and the *optimates* suffered in the meantime under the political reprisals of Cinna, Marius, and the other *populares*. Sulla's return was marked by the wholesale slaughter of his political opposition, both to remove them from play and to gain access to their funds for political bribes and the land settlements he would need to make for his veterans. Though he had been formally exiled by Cinna and Marius, he took Rome by force in late 82 BC, and both consuls for the year died in the fighting. "...[T]o fill the gap, Sulla (presumably at his own suggestion), was made *dictator*, the first holder of the office for over a century."⁹⁶ This grant was unusual and unconstitutional, though. The normal term of office for a dictator was six months, though it could be renewed as necessary; Sulla was invited to take up the dictatorship for as long as seemed to him to be necessary and appropriate.

Sulla set about securing his power by two means. First, he encouraged a significant cult of personality, seen in the equestrian statue of him erected in the Forum, the adoption of the name *Felix*, 'favored of the gods', and the coinage of the period, which for the first time bears a portrait (Sulla's). This ran a significant risk, though—he could not afford to be seen as claiming the power and station of a *rex*, lest the fate of the Gracchi befall him

⁹⁵ Shotter, *Fall of the Republic*, 42

⁹⁶ Shotter, *Fall of the Republic*, 43

as well. So he set out securing his power in a significantly uglier fashion as well. He began a campaign of proscriptions “by which a list of ‘public enemies’ was posted containing the names of men who could be murdered for a reward.”⁹⁷ This ensured that only if the people could be turned against him in a popular uprising could he be effectively be removed from power, and since the estate of a proscribed person was forfeit to the state and their slaves could be enfranchised as citizens, Sulla’s political patronage could be expanded as needed to ward off that possibility.

When he finished his reforms, he resigned his dictatorship unexpectedly in 79 BC and passed away a year later. Where he might have expected to enjoy a lengthy period of influence as a consular following his renunciation of formal power, there was now a significant vacuum in both military and political leadership. In the interests of space, we will say little about the deeds, great and wicked, of the man who stepped into that void, Gnaeus Pompeius Magnus, in favor of his one-time client and eventual partner in the first triumvirate, Julius Caesar.

Pompey rose to power borne by the arms of the *optimates* desperate for a general who could answer the military failings of their day. He was a brilliant general, the man who brought the East firmly under Rome’s control. He was also a crafty political operator who was quite happy to use the desperation of the *optimates* to his advantage; they soon realized they had made a deal with the devil. Pompey’s clientage was significant, and he was in the habit of boasting of its magnitude; he counted both Cicero and Caesar therein, though he “never forgave Cicero” for having “robbed the indispensable general of the glory

⁹⁷ Shotter, *Fall of the Republic*, 43

of saving the Republic in Italy as he had vindicated its empire abroad” in stopping Catiline’s revolution.⁹⁸

Caesar began his time in high office as *pontifex maximus*, a lifetime appointment he secured in 63 BC at the tender age of 37 by bribing the *comitia tribuna* sillier than his two opponents could, though they were both recognized and venerated *principes*. He followed this with the praetorship in 62 BC, after which he went to southern Spain as the provincial governor in 61 BC. He had already amassed a significant reputation for military prowess in his younger days, and he continued to shine in this respect during his Spanish *propraetorship*.

On his return to Rome, he wanted both a triumph and the consulship in 59 BC, elections for which were held in the summer of 60. Caesar could receive a triumph only in the city of Rome and in his role as a military commander, and he could stand for election as consul only in the city of Rome and as a civilian. He could not play both roles simultaneously, could not wear both masks at once, so he requested that the Senate allow Caesar the citizen to stand for the consulship *in absentia* and Caesar the military commander to enter the city for his triumph. Despite available precedent, the Senate, under the dogmatic and unyielding leadership of Cato the Younger, refused this request.⁹⁹ Caesar was thus forced to choose between a triumph and the consulship. He chose the latter and was elected a consul for 59 BC.

He also made a deal. Caesar had long been a supporter of Pompey, and his political activity to this point had largely been funded by another man, Marcus Licinius Crassus.

⁹⁸ Syme, *The Roman Revolution*, 30

⁹⁹ Scullard, *Gracchi to Nero*, 117

Pompey and Crassus personally disliked one another and had been at odds on a number of issues; Pompey's support to this point had come from the *optimates*; Crassus was supported by the equestrian class, whose interests were often in conflict with those of the nobility. All three, though, had suffered significant rejections by the Senate under Cato's leadership, and Pompey in particular had an army that needed land on which to settle and was growing restive in the meantime. So they made a pact to work together to accomplish their aims, and between them they had the money, clientage, and prestige to carry it off. This pact, though private, history knows as the First Triumvirate.

Once in place as consul, "Caesar at once began to honour the promises that he must have given to Pompey and Crassus. The most urgent matter was to find land for Pompey's impatient veterans."¹⁰⁰ The Senate refused a reasonable proposal, so he turned to the *comitia tribuna* to make it happen in defiance of the Senate. He also, through the tribune P. Vatinius, got through ratification of Pompey's settlements of affairs in the East and passed a measure which satisfied tax collectors in Asia Minor, clients of Crassus, who had made a bad deal and needed to renegotiate their terms to see any profit. By the same route, Caesar secured for himself (among other things) two and eventually three provinces for his proconsular governorship in 58 BC: Cisalpine Gaul, Transalpine Gaul, and Illyricum.¹⁰¹

Caesar busied himself in Gaul for the next ten years or so; we know much of his campaigns in the region from his *Gallic Wars*. He did also, though, have to keep a hand on the political situation in Rome. For several reasons which we will avoid going into here,

¹⁰⁰ Scullard, *Gracchi to Nero*, 119

¹⁰¹ Ibid. Normally, the Senate determined the proconsular and propraetorian governorships in advance of the consulship/praetorship, so that the proconsular governorship for 58, which Caesar would hold after being consul in 59, was determined in 60 BC. The Senate's original settlement on that score had been to give him control of the *silvae callesque* of Italy, a glorified forestry commission; it is not surprising that Caesar found this rather insulting. (Scullard, *Gracchi to Nero*, 118)

the situation between Crassus and Pompey deteriorated. Caesar, needing time to complete the conquest of Gaul, could ill-afford for the two of them to come to blows and was required to intervene between them in 56. They were eventually reconciled to one another, for at least the moment, and were both consuls in 55, after which they retreated to their separate corners for their proconsular governorships, for which they were given unusual five-year remits (Pompey to Spain, though he governed *in absentia* and remained near Rome; Crassus, to Syria).¹⁰²

In 54, things began to go badly wrong for the triumvirs and the hope of stability. First, Caesar's daughter and Pompey's wife, Julia, of whom Pompey seems to have been genuinely fond, passed away, and Pompey refused Caesar's offer to renew the marriage alliance. Second, Crassus attempted to add the Parthian Empire to Rome's territory; he lost seven legions and his life at the Battle of Carrhae. Over the next three years, while Pompey continued to exercise influence in Rome, he did not look after Caesar's interests as well as his own, and Caesar found himself on the verge of losing his command in Gaul as a result.¹⁰³

In December of 50 BC, with the clouds of war clearly on the horizon, the Senate voted 370-22 in an uncharacteristic show of unity that both Pompey and Caesar should give up their commands and disarm; this was promptly vetoed. The holdouts were the extreme *optimates*, led still by Cato the Younger, and they refused to allow the measure. As a result, Pompey was asked to take up command of all the forces in Italy to save the Republic from Caesar, and he reluctantly accepted.¹⁰⁴ The Roman civil war ensued, ending

¹⁰² Scullard, *Gracchi to Nero*, 123

¹⁰³ Scullard, *Gracchi to Nero*, 125-26

¹⁰⁴ Scullard, *Gracchi to Nero*, 126

at Pharsalus in August 48 where, despite Pompey's 2:1 numerical advantage, Caesar carried the day. The war had not been the desire of almost anyone, save the stubborn *optimates* under Cato's leadership; "Caesar himself perhaps put his finger on the point when, surveying the Optimate dead on the battle-field of Pharsalus, he exclaimed, 'Hoc voluerunt'", 'This is what they wanted'.¹⁰⁵ Pompey fled to Egypt, where his immediate demise was arranged by the child-king Ptolemy XII and his sister, Cleopatra, who could see in which direction the wind was blowing.

This left Caesar in firm control of Rome; his enemies were beaten and broken. Where Sulla had ruled by proscriptions, Caesar's policy towards his defeated enemies was clemency. Even the man who would eventually kill him, Cato's nephew Brutus, "at once gave up a lost cause, receiving pardon from Caesar, high favour, a provincial command and finally the praetorship in 44 BC."¹⁰⁶ Caesar himself was not able to return to Italy until the summer of 47, following necessary detours in Egypt and Asia Minor.¹⁰⁷

Once back in Rome, he made the necessary arrangements to settle the veterans of his Gallic legions before leaving Marc Antony in charge of Italy and addressing himself to Pompeian forces gathering in present-day Tunisia to challenge him again. They were led by Cato the Younger and Pompey's father-in-law, Q. Metellus Scipio, and again, despite being at a numerical disadvantage, Caesar carried the day at Thapsus in April 46. Cato himself did not participate in the battle, but committed suicide less than a month later,

¹⁰⁵ Scullard, *Gracchi to Nero*, 127. Translation mine.

¹⁰⁶ Syme, *The Roman Revolution*, 58

¹⁰⁷ Scullard, *Gracchi to Nero*, 144

finding his position in Utica untenable.¹⁰⁸ “His death symbolized the death of the Republic, which he had loyally if short-sightedly sought to uphold with unbridled vigour all his life: under the Principate he was idealized as the martyr of Republican liberty and a paragon of Stoic virtues.”¹⁰⁹

Following this achievement, additional honors were voted for Caesar, who finally celebrated a four-fold triumph for his achievements Gaul, Egypt, Asia Minor, and Africa. He was also made dictator (in fact, for the third time) with an unusually long ten-year term.¹¹⁰ He then left to address the last of the Pompeian forces, this time in Spain, under Pompey’s brother. When news of Caesar’s victory in 45 reached Rome, he was re-elected as a consul for 44 (with Marc Antony as his co-consul), the Senate gave him the title of *Liberator*, and in February 44 the Senate voted to scrap the ten-year term and make Caesar *Dictator Perpetuus*.

This left Caesar in control of every arm of the state—he remained *pontifex maximus*, and he now had complete military and bureaucratic control of the empire. This left him well-positioned to begin a program of reform, one to which Cicero openly urged him for the salvation of the Republic, and begin he did.¹¹¹

Yet Cato, no sooner dead, asserted the old domination over his nephew more powerfully than ever before. Brutus came to feel shame for his own disloyalty: he composed a pamphlet in honour of the Republican who died true to his principles and to his class. ... There were deeper causes still in Brutus’ resolve to slay the tyrant - envy of Caesar and the memory of Caesar’s amours with Servilia, [Brutus’ mother,] public and notorious. Above all, to Brutus as to Cato, who stood by the ancient ideals, it seemed that Caesar, avid for splendour, glory, and power, ready to use his birth and station to subvert

¹⁰⁸ Scullard, *Gracchi to Nero*, 145-46

¹⁰⁹ Scullard, *Gracchi to Nero*, 146

¹¹⁰ Ibid.

¹¹¹ Scullard, *Gracchi to Nero*, 148. For a partial accounting of these reforms, see Scullard, Chapter 7, sections 7-9 (pp. 144-53)

his own class, was an ominous type, the monarchic aristocrat, recalling the kings of Rome and fatal to any Republic.¹¹²

So it came to pass that on 15 March 44 BC, Julius Caesar died at the hands of friends for the good of the Republic, much as had happened to Tiberius Gracchus. In the immediate aftermath, his deputy Marc Antony assumed power as the sole surviving consul, and with him the Master of Horse, M. Aemilius Lepidus. But Caesar had left three quarters of his estate to his great-nephew, Octavian (a bitter disappointment to Marc Antony), which made the young man, then 19 years of age, potentially a significant player in what came next.¹¹³

Octavian decided to press his claim. He was a remarkably shrewd young man, and without legal sanction and by simply conjuring by the name of Caesar, he spirited up eight legions, two of which he spirited away from Antony. Octavian initially had the backing of the Senate, and Cicero persuaded the Senate to give Octavian *propraetorian* authority to command his legions and to send additional legions with him under the consuls for 43 BC against Antony in Cisalpine Gaul, where he was busy besieging one of the assassins. Antony was defeated, but both consuls were killed in the fighting, leaving Octavian in command of not just his own armies but the consular forces as well.

The Senate then turned on him and attempted to give command of the consular armies to Decimus Brutus, the very man Antony had been besieging. They *did* give Brutus a triumph. They also sent Brutus and Cassius to the East with *maius imperium* to deal with the situation there, still in flux after Crassus and his seven legions disappeared into the sand. And they tried to fob Octavian off with a praetorship. Octavian was having none of

¹¹² Syme, *The Roman Revolution*, 58

¹¹³ Scullard, *Gracchi to Nero*, 159-60

it: he refused to turn over command of the consular legions and marched his armies to Rome, where he forced his election as one of the two replacement consuls. To make matters worse for the Senate, Lepidus and his seven legions decided to join Antony.¹¹⁴

Antony, Lepidus, and Octavian made their peace on an island in a river near Bologna, and there formed the Second Triumvirate. Unlike the informal, private agreement between Pompey, Crassus, and Caesar, this one had the backing of the state, giving the three basically unlimited power for a five-year term. “In place of the dictator Caesar, there were now three dictators, although the title was carefully avoided.”¹¹⁵ The Senate also confirmed Octavian’s legal adoption by Caesar; heretofore his use of that name had not been legally proper (not that this ever stopped Octavian), but going forward it certainly was.

Octavian was able to force his way here in part because men looked at him and saw Julius Caesar. He was Caesar’s heir, and much as Cato had been a martyr for the Republic, Julius was now the martyr of something older and, if possible, more important. He was the embodiment of the *mos maiorum* in the eyes of many, with the same cultural stature King Arthur might have should he appear from Avalon today.¹¹⁶ Cato called to the earliest days of the Republic; Caesar called to days before that and to the authority on which the Republic was grounded. Octavian, recognizing this, wrapped himself in this Caesarian aegis—he *got* an army because he was the heir to Caesar’s estate, and he *kept* it because

¹¹⁴ Scullard, *Gracchi to Nero*, 162

¹¹⁵ Scullard, *Gracchi to Nero*, 163

¹¹⁶ In this connection, Cato lacked three things Caesar could claim. First, Cato was a pleb, where Caesar was a patrician. Second, partly because of that, Cato was never officially involved in Roman religious practice; Caesar was the chief priest. Lastly, and perhaps most important in a culture with such an emphasis on military prowess as a cardinal virtue, Caesar won.

his first actions with it, bold, confident, and calculating, showed that he was heir to Caesar's spirit as well. He moreover became *divi filius*, son of a god, on 1 January 42 BC when the Senate was 'persuaded' to recognize Julius Caesar as divine.¹¹⁷ Octavian, now 21, was careful not to let this image slip.

To support this pact, the three needed money and political support. To secure themselves and their finances, they acted on the model of Sulla rather than Caesar's conciliatory program. "They carried out a ruthless proscription, in which in which they signed the death-warrant of some 300 senators and 2000 knights. Since they had forty-five legions behind them and their victims included so many knights, whose share in politics will often have been negligible, their dominant motive will have been the need to confiscate estates with which to pay their troops."¹¹⁸ Among those 300 senators was Cicero, whose invectives against Marc Antony during the Senate's brief period of ascendancy following the assassination of Caesar had earned Antony's ire. Antony's wife is said to have been so upset with the orator that when his head was placed on the rostrum in the Forum, she used it for a football, spat on it, and finally pulled out his tongue and stuck her hair pins through it, all the while mocking him.¹¹⁹

The triumvirs had a rocky relationship, much of which does not bear recounting here. The next event of significance for our purposes was the final end of the Republican cause—they had gathered to the banner of Pompey's son, Sextus, then in control of Sicily. In 36 BC, Lepidus joined Octavian in removing Sextus from Sicily, then ordered Octavian

¹¹⁷ We noted in §1 that the household gods were usually virtuous ancestors. This action by the Senate effectively made Julius Caesar (and other emperors deified later) into the household gods of the state.

¹¹⁸ Scullard, *Gracchi to Nero*, 164

¹¹⁹ Cassius Dio, *Rome* 47.8.4

off the island in an attempt to claim it for himself. His soldiers, though, were war-weary by this point and began deserting to Octavian. Lepidus was forced to surrender, and Octavian “spared Lepidus’ life and allowed him to remain Pontifex Maximus, but deprived him of his triumviral powers: Lepidus’ public career was at an end.”¹²⁰ And then there were two.

In consequence of his victories in Sicily, Octavian was left in control of a formidable and well-trained navy, twenty legions, and the West, including Africa. He was also granted a number of honors, not least of which was the *sacrosanctitas* of the tribunes. Octavian also began presenting himself as the champion of order and prosperity for Italy, the avatar of *tota Italia*, and the guardian of the old ways in word and deed:

The Adriatic was cleared of piracy, the north-east frontier secured, and when he returned to Rome Octavian and his friends...began to adorn the city with new buildings, to provide good water and cheap food, and not least to remind men of Rome’s earlier beliefs and traditions, by expelling astrologers and magicians, banning eastern rites, and repairing old shrines and temples. Octavian was looking beyond his imminent quarrel with Antony.¹²¹

Nor was this quarrel long in coming. In 37 BC, Antony virtually abandoned his wife, Octavian’s sister Octavia, in favor of Cleopatra, with whom he’d begun an affair in 41. He returned Octavia to Italy while she was expecting his child, but he remained in Asia Minor and Syria, where he was joined by Cleopatra. He repeatedly snubbed Octavia thereafter, though she continued to protect and promote his interests in Italy. In 34, he celebrated a triumph in Alexandria, rather than Rome, for his victories in the East. At the same time, at a ceremony there, “Antony and Cleopatra, the latter robed as the goddess Isis, sat on high golden thrones, together with their children. To the assembled people Antony

¹²⁰ Scullard, *Gracchi to Nero*, 169

¹²¹ Scullard, *Gracchi to Nero*, 170

proclaimed that Caesarion was the legitimate son of Julius Caesar (thus by implication the adopted son, Octavian, was a usurper).”¹²² He proceeded to set Cleopatra up as the Queen of Kings in the East and gave his children by her various Roman provinces as her client kings, all on the grounds of his triumviral authority. He was, however, careful to take no royal title for himself.

Even so, that kicked a hornet’s nest in Rome. The following year was spent in a slander campaign as Antony and Octavian flung mud at one another. The image that persists in the popular imagination of Cleopatra as the dark temptress stems from this campaign. At the end of the year (33 BC), the triumvirate reached its legal end. “No official action was taken: Antony kept the title and acted as if still in office, but Octavian dropped the title, and presumably the powers; since he was already sacrosanct and would be consul in 31, he was prepared to take the risk and rely on his prestige, his *auctoritas*.”

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At this point, something remarkable begins to be seen: loyalty oaths, spontaneously given to Octavian personally rather than to the Republic or to Rome. As he later put it, “All Italy spontaneously swore themselves to me and urged me to lead them in the war I won at Actium.”¹²⁴ These oaths were given not just by persons but by whole communities. This, Antony could not match. The two consuls for 32 were both his supporters, and when Octavian successfully prevented them from censuring him in the Senate and began to otherwise vigorously defend himself and attack Antony, both left Rome to join Antony at Alexandria and took over three hundred senators with them. But they had no cause to unify

¹²² Scullard, *Gracchi to Nero*, 173

¹²³ Scullard, *Gracchi to Nero*, 174

¹²⁴ Scullard gives the Latin at p. 175; the translation is mine.

them, as the Republicans had in the previous round of fighting, and personal loyalty to Antony was not enough for them, particularly not with Cleopatra's unescapable and alienating presence (because she was acting as Antony's bank, she could not be ignored).

As a result, when the two ultimately met in 31 BC, the victory went decisively to Octavian. The actual fighting at Actium was rather anticlimactic; Antony's naval rout seems to have been down at least as much to confusion among his forces as anything else, and his land forces in Greece surrendered a week later. Antony himself escaped to Egypt, where what remained of his army deserted *en masse* and he committed suicide. When it became clear that she could not hold Egypt and pass it to her children, Cleopatra did likewise. Octavian dealt leniently with the Romans who had supported Antony, and Antony's children by Cleopatra were raised by his Roman widow, Octavia. Egypt became Octavian's personal province.

This left Octavian as the undisputed master of the Roman Empire. He took some time to settle matters in the East; when he returned to Rome in early 29, the doors of the Temple of Janus were closed again for only the second time in the history of Rome.¹²⁵ After two centuries of war, Rome finally knew peace. "The Republic and liberty had gone; men turned gratefully to their new savior."¹²⁶

This left Octavian in a bit of a difficult situation. The actions of his predecessors in this position (Sulla and Julius Caesar) had each taken a different road, and each had

¹²⁵ Janus, the two-faced god, was the lord of boundaries who looked both inside and out, both before and behind. The doors of his temple in the Forum by tradition stood open whenever the state was at war; his boundaries, like that of the state, were in flux. According to the annalistic tradition, the temple was built by Rome's second king, Numa, and the doors remained closed throughout his reign. They were opened first when his successor, Tullus Hostilius, went to war with Alba Longa. The doors were closed again for the first time for eight years in 235, following the First Punic War.

¹²⁶ Scullard, *Gracchi to Nero*, 177.

perished on that road and dragged the Empire into civil war in so doing. This was not, for Octavian, an acceptable outcome. Instead of taking his hand off the tiller as Sulla had done or persisting as a glorified warlord as Caesar had done, he determined to take a middle course. By trial and error, he carefully prodded public opinion in the direction he needed it to go, and responded as necessary to circumstance. This must be emphasized: the transition that for Sulla had been the affair of a single word (“*relinquo*”) and for Caesar, a year or two, was for Augustus the matter of 15 years. While it seems sudden to us, “to men who lived through it year by year it may seem a far more gradual and natural development.”¹²⁷

In other words, he boiled an imperial frog, and he did it in two phases. His first settlement (27 BC) included a grant of *censorium potestas*, as a census badly needed taking, proconsular *imperium* over the provinces of Spain, Gaul, and Syria (all of which badly needed his attention for different reasons), and he retained the consulship “year after year without a break” during this first settlement.¹²⁸ At this time, the Senate also gave him a new name, Augustus, which had many of the same quasi-religious connotations as *auctoritas* (they share a common root), and a new title, Princeps, a title without constitutional significance but imbued with a great amount of respect—this was the title worn by the great statesmen of old.

Augustus then left Rome, likely to give folks time to get used to the new way of things in a way that didn’t present his person as an obvious target for any resentment. On his return in 24 BC, he was beset with a triplet of crises: first, the Senate’s proconsular

¹²⁷ Scullard, *Gracchi to Nero*, 216

¹²⁸ Syme, *The Roman Revolution*, 315

governor of Macedonia was charged with making war on Thrace without orders; second, a Republican conspiracy against Augustus' life was discovered, and his co-consul for the year was implicated; third, Augustus himself was taken very seriously ill, to the point that he began to make arrangements for after his death. The first was dealt with easily enough: Augustus testified in court that he hadn't given the orders to go to war, and the governor was convicted. With the second, the conspirators fled Rome when they were discovered and were condemned in absentia and executed on capture. The third was more difficult, but he did eventually recover.

At the end of all this, it was time for a fresh start on the settlement as well. He resigned the consulship on 1 July 23; this had the advantage of freeing him from a certain amount of routine business and of ending any resentment from his perpetual tenure as consul both from the *nobiles* who would like to have been consuls themselves but could not while he occupied the office and from any Republicans who noticed that unlike much else that he had done, his tenure as consul had no parallel in the history of the Republic. In exchange, he was granted *maius imperium proconsulare*, making him the final military authority in the Empire, and *tribunicia potestas*, giving him, in addition to the sacrosanctity of the tribunes, the powers of the tribune of the plebs which, as a patrician, he could not have otherwise held. While he could and often did pursue his legislative agenda through others, this gave him the ability to pursue it in his own right. These two powers “remained the constitutional basis of the Principate throughout its history.”¹²⁹

Only one further thing remained to add to this authority: the state religion. As we noted, when Lepidus was ejected from the triumvirate, he was allowed to retain his position

¹²⁹ Scullard, *Gracchi to Nero*, 222

as *pontifex maximus*, chief priest of the Roman state religion. This was typically a lifetime appointment, and in 12 BC, Lepidus passed away. His successor in the role was none other than Augustus himself, for reasons which seem clear enough. With this final grant of authority, Augustus' consolidation of power was completed; to this was added ten years later the symbolic title *pater patriae*.

Scullard sums the situation up well:

Augustus had achieved a unique position. He had received at the hands of the Senate and Roman People a great variety of powers, many of which had precedents in the Republic, but his accumulation and long tenure of these, together with his personal *auctoritas*, raised the First Citizen far above the level of a magistrate and made him in effect, though not in law, a constitutional monarch. His authority both at home and abroad was unparalleled. He commanded the armies, who took an oath of allegiance to him in person, and he made provision for their retirement. Since he had received the right to make treaties, he virtually controlled foreign policy. He governed a large part of the Empire through his deputies, and all new provinces added to the empire likewise came under his administration; if need arose, he could even intervene in the provinces that were still left under senatorial government. The Senate frequently transferred to him various tasks of administration in Rome and Italy which his agents undertook. He took an increasing part in financial, legislative and judicial matters. And behind all his official authority lay his unequalled powers of patronage.¹³⁰

And so the transition was complete. The Republic was dead.

Long Live the Emperor!

4.2 Legitimation Theory

The critical thing to notice about the foregoing history is that it doesn't actually end with Augustus assuming the office of emperor. No such office was created. His power (as opposed to his authority, his *auctoritas*), as with most of his early successors, rested on his concurrent exercise of five different powers for life:

¹³⁰ Scullard, *Gracchi to Nero*, 226

- *Maius imperium proconsulare*, a grant of authority effective throughout the empire and superseding the *imperium* of other proconsuls, and, unlike other proconsular *imperium*, this did not lapse within the borders of the city of Rome.
- *Tribunicia Potestas*, an office created for Augustus which gave him all the authority of one of the plebeian tribunes without the office itself, since as a patrician he could not hold it. This included not just the authority to propose legislation and issue vetos but also the authority to compel compliance with the law by summary judgment (*coercitio*) and the judicial authority to hear appeals (*auxilium*) on decisions from lower magistrates (which is to say, all of them)¹³¹
- *Censoria Potestas*, another office created for Augustus, giving him the censors' authority to regulate public morals, regulate membership in the Senate (including ejecting members), and take a census of the people¹³²
- *Princeps Senatus*, preeminent among the Senate, with authority to summon and adjourn the Senate, set the agenda, speak first on any subject, and a bevy of other parliamentary privileges
- *Pontifex Maximus*, chief priest of the Roman state religion.¹³³

By themselves, these powers did not confer legitimacy on Augustus or on his rule.

These were the traditional privileges of the *nobiles*, men whose families had produced

¹³¹ Scullard, *Gracchi to Nero*, 221

¹³² Scullard, *Gracchi to Nero*, 217. The office of censor itself lapsed after 22 BC, though Augustus continued in these powers. Most subsequent emperors called themselves instead *Praefectura Morum*, prefect of morals, and only employed the title "censor" when they were actually going to take a census.

¹³³ Though not tied to this office, we should mention here that in 30 BC, Augustus had also been granted the right to create new patricians to replace all those killed during the civil wars of the prior century – the butcher's bill in that class was staggering.

consuls, Rome's *de facto* nobility, and the century prior to Actium had severely damaged their credibility and tarnished the prestige of their offices. "Restored to power by a military despot, enriched by proscription and murder, and growing ever fatter on the spoil of the provinces, they lacked both principle to give inner coherence and courage to make the reforms that might save and justify the rule of class and privilege."¹³⁴ But Augustus kept them on all the same and made sure the power of the Senate was restored—as we saw, he didn't have to. That he did was a demonstration of his *auctoritas*, fair enough or strong enough (depending how you look at it) to allow them considerable legislative powers and work hand-in-hand with them.

There are two further things to consider about the nature of Augustus' authority. First, notice how all-encompassing his power is. The offices he held gave him control over every branch of government *and* every branch of the state religion. His mouth spoke the words of the gods; in his left hand he held the levers of the bureaucracy and the loyalty of the old oligarchs; in his right, he wielded the sword of the army. And yet he wielded this power not as a unit but as a piecemeal collection.

Second, notice that the name of his rule and that of his immediate successors is not usually given as "the Empire", nor does it take its name from any of his offices—being *princeps senatus* notwithstanding. Under the Republic, "policy was largely directed by ex-consuls. Those men ruled, as did the Senate, not in virtue of written law, but through *auctoritas*; and the name of *princeps civitatis* came to be suitably applied to the more

¹³⁴ Syme, *The Roman Revolution*, 22

prominent of the consulars.”¹³⁵ By this title, *princeps civitatis*, more than other, Augustus wished to be known, and for this reason we call his time in power “the Principate”.

More than all the offices and titles, then, Augustus’ authority, his *auctoritas*, rested on the man himself, his competence and his ability to guide public policy to Rome’s benefit while keeping all the different pieces of government, from the factional Senate to the plebs to the army, dependent on his power in one way or another. As Syme notes, “it was in virtue of *auctoritas* that Augustus claimed pre-eminence for himself.”¹³⁶ He covered over murder, bribery, and treachery with a carefully constructed façade of tradition, patriotic nationalism, and (yes) family values. Those who saw through the façade saluted him for his skill even as many cursed him for it and privately regarded his actions as legitimate because they were the very actions they would have taken, given the opportunity; those who did not see through the façade saw instead the savior of all Rome. He displayed consummate *virtu*, to borrow a word from Machiavelli, in a day and age when that was much to be prized for the stability it could bring.

In fact, I am confident that Machiavelli would heartily endorse Augustus’ behavior in creating the second settlement of his government, both how he went about it and the form of government he achieved. As Machiavelli said, “a wise ruler will seek to ensure that his citizens always, no matter what the circumstances, have an interest in preserving both him and his authority. If he can do this, they will always be faithful to him.”¹³⁷ Certainly, Augustus did this. It’s tempting to think of Machiavelli’s *Il Principe* as outlining

¹³⁵ Syme, *The Roman Revolution*, 10

¹³⁶ Syme, *The Roman Revolution*, 322

¹³⁷ Niccolò Machiavelli, *The Prince*, in *Selected Political Writings*, trans. David Wootton (Indianapolis: Hackett Publishing Company, 1994), 34; hereafter cited as Machiavelli, *The Prince*.

the legitimation theory of this period; that would be in error. The history as we know it was written by those who saw through the façade, the political elite of the day, who understood what Augustus was doing and esteemed highly the ability to manipulate the political scene through bribery and murder while making sure none of it could stick to you. But most Romans didn't see through the façade. This bifurcates the genesis of Augustus' legitimacy. On the one hand, Machiavelli's theory accounts for Augustus' actions precisely, and so also for the legitimacy of his authority among the political elites who understood his actions—this is the source of his *auctoritas* in the eyes of the elite. On the other hand, his authority, and therefore that of his subordinates, was legitimate to most, especially outside the city of Rome, not because of the actions taken but because of the façade presented, the majesty of his reign—this is the source of his *auctoritas* in the eyes of the common man. For Lonergan, legitimation is a question of understanding and acting authentically, not of content or structure, which we will consider in Chapters 3-6, and odd though it may seem to say, the analysis we will give in the Conclusion can be used to show why one might say even now that Augustus was likely operating legitimately.

Augustus' institutional legacy was a settlement of government that survived more or less intact until the reforms of Diocletian in the late 3rd century AD. His legacy of legitimacy lasted much longer. His *auctoritas* attached itself to his successors and the memory of his greatness, of his *majestas*, ennobled the best of them and haunted worst of them. His very name became a title for the senior emperor when the administration of the Empire began to require more than one.

Likewise, the crime of treason was a crime against the majesty either of the emperor or the people. As expressed later in the Institutes of Justinian, “the *lex Julia majestatis*

(statute on treason) exerts its vigour against those that have raised up anything against the Emperor or the Commonwealth [*res publica*]. By its penalty the guilty man endures loss of life, and his memory is condemned even after death [*et memoria rei et post mortem damnatur*].”¹³⁸ The Julius for whom the law is named is Julius Caesar. In much the same way, questioning the emperor’s choice of heir was nigh unto sacrilege.¹³⁹

The majesty of the emperor, we should note, did require renewal by each successive emperor because the system depended on the person from whom emanated *majestas*. We will not recount the history of the Empire here, but Diocletian was one such man; his reforms revived a dying empire, and he was in many ways a man who commanded respect as much as did Augustus. So also did Constantine in the 4th century AD. These men wore the majestic couture of the emperor and wore it well because they were seen to embody what it was supposed to be. As Machiavelli observed, “Note that Titus, Nerva, Trajan, Hadrian, Antoninus, and Marcus [Aurelius] had no need of praetorian guards or multitudes of legions to defend themselves, because their own way of life, the good will of the populace, and the love of the Senate served to defend them.”¹⁴⁰

¹³⁸ William A. Hunter, *A Systematic and Historical Exposition of Roman Law in the Order of a Code*, trans. J. Ashton Cross (London, 1876), 902; hereafter cited as Hunter, *Roman Law*. The Latin I have supplied for “Commonwealth” is in the accusative (*rem publicam*) in the original text; I have shifted it to the nominative for ease of comprehension. In his exposition, Hunter notes that “In ancient times such an offense was called *perduellio*; under the Emperors, however, more generally *crimen laesae majestas*.” (906)

¹³⁹ Hunter, *Roman Law*, 913

¹⁴⁰ Niccolo Machiavelli, *Discourses on Livy*, in *Selected Political Writings*, ed. & trans. David Wootton (Indianapolis: Hackett Publishing Company, 1994), 111-12 (I.10); hereafter cited as Machiavelli, *Discourses*. It is worth noting here that Machiavelli is not entirely correct in his history; Nerva never gained the respect of his army, and the praetorian guard revolted, forcing him to name a successor who *would* command their respect (Trajan). His reign was otherwise relatively chaotic to the point that even the Senate who had appointed him no longer loved him, but too short for him to come to a particularly bad end; he suffered a stroke and died after 15 months as emperor.

These claims to legitimate authority, grounded in the majesty of the offices of *Caesar* and *Augustus*, were subject to serious challenges only when the man holding the office made it impossible *not* to see the man behind the majesty and recognize that he was, after all, just a man like most others (or in some cases, much worse). When that happened, the Emperor lost his clothes and was quite often assassinated. When a long string of them ruled one after another, chaos reigned and the empire threatened to dissolve in fire and blood.

From this imperial majesty that Augustus created flowed the legitimate authority of the other functionaries of his state. He could not be everywhere at once, and while he held *imperium proconsulare maius*, he still needed men in whom to vest *imperium proconsulare*. He still needed governors and he still needed to support client monarchs. In short order, their power was dependent on the emperor's authority and it came to be exercised in his name.¹⁴¹ In like manner, their subordinates depended on the authority of the local governor or client king, and so on down the ranks. Even the lowest member of the town council in a farming community ultimately owed his authority to the *majestas imperatoris*, the majesty of the emperor.

¹⁴¹ One of the more prominent of the rights enjoyed by Roman citizens following this was the right of appeal in criminal matters to the emperor himself. Once this appeal had been made, the local magistrate could do nothing further in the case; the law recognized that his power had a source, and once appeal had been made to that source, his power had no further effect. This was, though, an appeal of last resort and a road not often taken as the prisoner would be transported to Rome by the state but not housed or fed at state expense while he awaited trial before the emperor, and the wait was routinely years long. For an instance, see the record of St. Paul's trial before the Roman governor Porcius Festus and King Agrippa and subsequent transport to Rome, Acts 25-28. The narrative of Acts ends with St. Paul having awaited his trial before Nero for two years.

Chapter 2: Past Prologue

The Shoals of History

The success of the Augustan Principate's new formula for legitimation, *auctoritas in maiestate fundati*, authority grounded in majesty, far outlasted Augustus himself. As we noted at the outset of the previous chapter, this lasted for 1500 years, until roughly the beginning of the Protestant Reformation. What mattered was the majesty—after Augustus, it was attached to an office, not to a person (his very name became the title of the senior Emperor of Rome at a time when the affairs of state often required as many as four).

In this chapter, we will consider first the longevity of this system. While Augustus represents a significant shift away from the Republic's method of legitimation, which relied on the system to train people rather than relying on the person to train the system, the inheritance and subsequent generalization of legitimate authority founded in majesty required a degree of overarching systematization so that legitimating majesty could be passed peacefully from one emperor to the next rather than being generationally reacquired by force of arms. Such systematization crystalized under Constantine the Great, when

divine approbation became more important than military achievement in passing majesty from one generation to the next. We will consider in brief how this happened, how the system survived two major challenges, and what the resolution of these events says about the system itself. This section will also set the stage for the collapse of majesty as a legitimating force. When the system did collapse, the man from whom majesty flowed was not the emperor in Constantinople but the Pope. Because the players are so different, not just personally but institutionally, at the end, we will want to give some explanation of how the Church went from a despised minority in a pagan empire to the titular heads of that empire.

Second, we will look at the collapse of majesty at the beginning of the modern period and the response to it. Between 1440 and 1517 AD, a series of four events (Lorenzo Valla's *On the Donation of Constantine* in 1440, the fall of Constantinople in 1453, the circulation and posthumous publication of Machiavelli's *Il Principe* in 1513 and 1532, and the Reformation beginning in late 1517) rendered the system of majesty ineffective by either severing majesty from offices to which it had been tied (there were only ever four at most) or showing that the people holding the office were so far from being good that their misbehavior substantially tainted their office. This is most true of the papacy: Just as the Reformation gained steam and people needed a reason to continue to recognize the Pope's temporal authority as legitimate, the reasons on which the Pope had relied for centuries evaporated. From the vacuum of legitimacy this left, a new scheme emerged to invert the old system in most or all of its significant respects: consent theory coupled with utilitarianism (in one form or another) and a basic principle against interfering in other countries' internal affairs.

But this, too, has proven untenable. Since Nuremberg, the world has been alerted to the dangers of operating exclusively by common consent and we have established that there are some reasons to interfere in one another's affairs. So we will consider third the challenges posed by Nuremberg and the response of philosophy to those challenges, taking the work of Rawls and Habermas as our avatars. The challenges consist in a necessary balancing act between holding to the authority of common consent on the one hand and on the other hand, restraining that authority using procedural safeguards and constraints on the available content of the law and the available actions of government towards its citizens in the interests of avoiding the past excesses of the *vox populi*. Rawls and Habermas try to find this balance, but ultimately neither succeeds, and we will consider why. We've tried the two extremes available, and it's not yet been clear where a middle road might lie.

Loneragan can speak to why Habermas in particular finds himself stuck in a sandbar, and he can also help show us the way out of these difficulties, how to skim over the sandbars and understand what makes authority legitimate in any time and place. This chapter will not do that work, but it will hopefully give the reader some reasons to think that work necessary.

1 *Europe in the Middle Ages*

The system that emerged with Augustus relied on the virtue of the people holding certain offices. What is remarkable about the world-altering events of the 1500 years following Augustus' accession is that they *didn't* shift legitimation theories or even substantively challenge them. The questions asked weren't "What does it mean to have majesty?" or "Why does majesty give them the right make demands of me?" The only question of import was "Who has majesty now?" At the beginning of these events, prior

to Constantine's conversion, the answer was only "His Imperial Majesty". After Constantine, there were two more added: "His Apostolic Majesty" and "His Divine Majesty", the Pope and God himself, respectively.¹⁴² For political power following the collapse of Roman authority in the West, it mattered less how *majestas* had been obtained than that it attached to the office—anyone who found himself in that office could wield that political power legitimately. Even if, as was usually the case, the king was functionally independent of the Pope and able to choose bishops within his realm, what mattered was that the king had the endorsement of the Church, that the secular and religious authorities were working hand in glove. As long as the people holding the throne were good *enough*, and as long as some fancy footwork (legally) could plausibly accommodate shifts in the nature of the monarchy, no serious threat to the system could be mounted.

This is not to say that the foundations of the king's authority were irrelevant; far from it. Consider, for instance, the fallout from a drunken outburst of Henry II of England: in the wake of the murder of Archbishop Thomas Becket on his altar at Canterbury Cathedral, Henry very nearly lost his throne because it was perceived that he had ordered the murder. This was an aberration for him; he was generally perceived as a good, strong king in his day, even if we regard him as a bit of a tyrant in retrospect. The lesson of Henry's very public penance, flogging on the steps of Canterbury Cathedral, was clear: no one, not even the king, was above the authority of the Church, above His Apostolic Majesty.¹⁴³ And this gets at what really mattered most. The pageantry and symbolism

¹⁴² Ralph E. Giesey, "Lese Majesty and Absolutism," 1986.

http://www.regiesey.com/Lectures/Lese_Majesty_and_Absolutism_Lecture_for_WFChurch.pdf.

¹⁴³ Ironically, this event is why we know Henry sometimes by another name, Justinian. The legal principle articulated here, that there is not one law for the nobility and another for the people but a single law for all people, is the foundation of common law and would inform the demands of the peerage on Henry's son John when they drafted *Magna Carta*.

of the flogging exists in continuity with the coronation ceremony, which have as their explicit purpose to show the king's authority as flowing from God and the Church. We should not miss the fact that a king not crowned by the Pope or his representative was often not considered to have legitimately received his authority (and thus to be exercising naked power instead).¹⁴⁴ The purpose is to attach the office to the man and clothe him in the majesty of the Church.¹⁴⁵

There are two inflection points at which the system of majesty could have collapsed, and these are coincidentally the points we need to understand to account for the shift of majesty from emperor to Pope: first, the conversion of Constantine the Great to Christianity in 312 AD and the subsequent conversion of the rest of the Empire; second, the events surrounding the end of the Western Roman Empire in the 470s AD and the subsequent surge and ebb of Byzantine influence in western Europe, ending with the collapse of the Exarchate of Ravenna in 751 AD. Our consideration of these events will not be nearly as expansive as our consideration of Rome precisely because they did *not*

¹⁴⁴ Netflix's *The Crown* has a poignant illustration of this during the coronation of Elizabeth II ("Smoke and Mirrors", S1, E5). David Windsor (the former Edward VIII) is often portrayed as a tragic figure, but rarely more so than during the watch party he hosts at his Paris villa. When the cameras cut out during the anointing, he explains to his confused guests that the anointing is "the single most solemn, most holy, most sacred moment of the entire service." It's not being broadcast to the masses "because we are mortals. ... But wrap her up like this, anoint her with oil, and hey, presto, what do you have? A goddess." *The Crown*, "Smoke and Mirrors", episode 1.5, directed by Philip Martin, written by Peter Morgan, Netflix, released November 4, 2016

¹⁴⁵ There is a particularly rich political cartoon from the early 18th century deconstructing the best known portrait of Louis XIV (Hyacinthe Rigaud's 1701 painting, coincidentally Louis' favorite) into three frames. The first shows the grand trappings of his office, the robe, wig, and high heels, which are titled as "Rex". The second, titled with the Latinization of Louis' name, "*Ludovicus*", shows the man shorn of those trappings: a bald, somewhat rotund, and otherwise unremarkable man of 64 whose sunken cheeks betray the inadequacies of 17th century dentistry. The third frame, titled "*Ludovicus Rex*" recomposes the whole portrait. The cartoonist's point is that the king is not the man but the majesty that attaches to him by his office and that without it, Louis is, after all, just another man. Reproduced in Richard Wilkinson, *Louis XIV* (London: Routledge, 2007), plate 4.

shift the reigning theory of legitimation, and we can reflect adequately on the nature of the system of majesty with this briefer account of the history.

1.1 *Constantine's Conversion*

The reader will note, when we left Augustus, he had established his majesty on the grounds of his military achievement; his formal authority over Rome's state religion didn't come until well after his second settlement, and even then, this was decades before Christianity emerged. When it did, Christianity was not a popular religion with the upper echelons of Rome's society, and the religious authorities were more prone to see it as a threat. As we noted above, the systematization of majesty as a legitimating force crystalized under Constantine, and it did so because his conversion to Christianity allowed him to foster a new set of religious values that de-emphasized military prowess as the key to divine approbation, relegating it to status as a mere sign of that approbation.

Constantine's conversion is, as such things go, a comparatively well-known story. Constantine claimed *imperium* over the West following the Battle of Milvian Bridge (October 312). This was the final battle of the campaign, the battle to enter Rome itself, and Constantine had a vision just before the battle: he looked up and saw above the sun the Chi-Ro symbol with the words "*Hoc Signo Vitor Eris*", by this sign be the victor. Constantine had his soldiers put that symbol on their shields and won the battle and the empire.

But to understand why this move away from the traditional religion of Rome, which we emphasized as so vitally important in the previous chapter, did not fatally damage any claim of Constantine to imperial *majestas*, we should say a bit about where Constantine was and where Rome was at this time, both religiously and politically. Constantine was

the son of Constantius, *Caesar* of the West and one of the original tetrarchs under Diocletian.¹⁴⁶ They took power at the end of the third century, which had been a time of crisis and internal strife for the empire. After 26 emperors in 50 years (235-85 AD), the civil wars between them, the losses to external forces, particularly the Germanic tribes and the Parthians, the taxes and currency debasement necessary to pay all the soldiers involved, and several bouts of plague, Rome's economy was in a shambles as hyperinflation continued strong and the internal trade routes on which the empire's economy operated were broken.¹⁴⁷

During this period, Christians were not the most popular of folk. Roman religion had heretofore spread through synchronism with existing cults in their new domains: they maintained that they worshiped the same gods as their foreign subjects, just under different names. Because of how important the state's religions were to its success and therefore to its political system, Rome had long employed a system of religious licensure to ensure that the religious practices of their subjects were not offensive to Rome's patron gods. Judaism was recognized as a licit cult, in part because Jews were a tiny ethnically separate minority and not actively proselytizing. But Christians did actively proselytize, and they (unintentionally) shamed their pagan neighbors with their example of charity both to the living poor and to the dead in Christ.¹⁴⁸ Christians thus discomfited their pagan neighbors

¹⁴⁶ Diocletian took the East for himself. The other members of the imperial college under the First Tetrarchy were Maximian (*Augustus* of the West), Galerius (*Caesar* of the East). *Augustus* was the higher rank, and Diocletian was the senior *Augustus* in the First Tetrarchy.

¹⁴⁷ For an overview of the problems of this period, see Charles Matson Odahl, *Constantine and the Christian Empire*, 2nd ed. (London: Routledge, 2010), 19-34, hereafter cited as Odahl, *Constantine*. I am indebted throughout this section to Odahl's careful scholarship of Constantine's reign and the conversion of the Empire.

¹⁴⁸ Odahl, *Constantine*, 30. For more details, see Peter Brown, *Through the Eye of a Needle: Wealth, the Fall of Rome, and the Making of Christianity in the West, 350-550 AD* (Princeton: Princeton University Press, 2012), Chapter 2, in the section on *Operatio* (42-43); hereafter cited as Brown, *Through the Eye of a Needle*.

on several levels and, as a result, Christianity was considered as separate and illicit no later than Titus' destruction of Jerusalem in 70 AD.

Because of their religious commitments, Christians also refused service in the government and the military. The Church in this era took perhaps more seriously than we generally do today Christ's command that we love our enemies, pray for those who persecute us, and turn the other cheek, so the faithful found military service difficult.¹⁴⁹ Civil service was, if anything, more problematic because believers were not "comfortable attending the pagan festivals and games which were a customary part of public life. They labeled such activities idolatry - the worship of false gods."¹⁵⁰ On these grounds, "the Roman Church in the early third century...forbade membership to imperial officials or soldiers".¹⁵¹ When soldiers and imperial officials converted, it was not uncommon for them to remain as catechumens and delay baptism until retirement.

Christian popularity did not improve when Diocletian (r. 285-305) took power and subsequently created the First Tetrarchy. Part of the problem during the fifty years of anarchy had been the number of rival claimants to the imperial throne, the fact that the emperor could not be everywhere at once, and the vulnerability of the emperor to assassination. An assassination more often than not created a succession crisis, though that wasn't necessary to cause chaos. If the emperor was in Syria dealing with the Persian threat, this was an open invitation to the Germans to invade Gaul, and if he dispatched a force to deal with that, there was a strong probability that the commander would end up as a rival emperor. There was a tradition of co-emperors which had been employed

¹⁴⁹ Matthew 5:38,44

¹⁵⁰ Odahl, *Constantine*, 30

¹⁵¹ Odahl, *Constantine*, 31

successfully in the past, but this was usually employed dynastically by fathers who loved their sons too much to see how bad they were at governance.

Diocletian recognized that one man could not do all the empire needed done, so he made his chief lieutenant Maximian a junior emperor (*Caesar* to Diocletian's *Augustus*), and later elevated him to be a co-*Augustus* with two more trusted officers, Constantius and Galerius, made *Caesars* under them. This new imperial college would work together to implement reforms and repulse the empire's external enemies under the direction of the senior *Augustus* and would train the junior emperors to take the on the role of *Augustus* when the time came, while the presence of so many cooperating emperors would make it much more difficult for any pretenders to press a serious claim to the imperial throne.

They radically reformed the administration of the empire with great success and were eventually able to check the hyperinflation by a new system of coinage which restored the precious metal content to something reasonable. The empire was substantially reordered administratively, provincial boundaries were redrawn and the larger provinces broken up, and then the provinces grouped into twelve roughly equal districts (dioceses), each of which was under the governance of one emperor. The empire's border forts were fully manned again for the first time in decades, and the internal trade routes were again secure. They also advocated a return to traditional religious values. "Diocletian believed that the ancestral customs of Rome were in conformance with the will of the deities who protected the Roman Empire. Pleasing the gods through right behavior and worshipping them with pious rites were at the center of his cultural reforms."¹⁵² And since the senior *Augustus* retained the authority to set policy on matters affecting the entire empire,

¹⁵² Odahl, *Constantine*, 64. For more details on these reforms, see Odahl, *Constantine*, Chapter 2.

including religious policy, Diocletian's comparatively zealous religious conservatism was reflected in imperial policy.

This produced the last, most systematic, and for that reason in many ways worst persecution of Christians in Rome. The details are not important here, but it must be emphasized that this was a thorough and painful persecution. Many of the more lurid stories told about Nero's treatment of Christians are apocryphal; they are usually grounded in what took place under Diocletian and his successor as *Augustus* of the East, Galerius. An edict of toleration had been given by the emperor Gallienus (r. 260-68), and as a result, Christians emerged from the shadows and began to take up prominent positions in government and even in the military. As Diocletian's persecutions began in 303, the better term for their position might be 'exposed'. Galerius, then Diocletian's subordinate *Caesar*, egged him on in this matter (and was, one might even argue, the driving force behind the persecution).¹⁵³

These persecutions were ordered by Diocletian in four different edicts issued in succession over the course of about 12 months beginning in February 303. The first edict ordered the confiscation of the Church's corporate property, the demolition of churches, and civil disabilities for Christians. This edict was enforced throughout the Empire. The other three, which resulted in imprisonment and considerable bloodshed, were enforced harshly in the East, half-heartedly in Italy and Africa, and not at all in Constantius' domains in Gaul and Britain.

At the same time, the western emperors (Maximian and Constantius) had been led to think that they would be able to create dynasties by eventually having their sons,

¹⁵³ For details on the genesis of the persecution and Galerius' role in it, see Odahl, *Constantine*, 63-71.

Maxentius and Constantine, appointed to the imperial college. But in 304, shortly after issuing the fourth edict, Diocletian fell deathly ill, and between that and a series of barely-veiled threats from an ambitious Galerius, he was induced to resign as *Augustus*, to order Maximian to do the same, and to go into retirement in 305.¹⁵⁴ Galerius sought to dominate the new Tetrarchy and refused to allow Maxentius and Constantine to be named as the new *Caesars*. Maxentius he regarded as a “spoiled and incompetent prince”; Constantine had been in service to the eastern emperors since his father had been made a tetrarch in 293, and Galerius knew him to be both competent and independent.¹⁵⁵ Galerius’ assessment of Maxentius was quite accurate, as Maxentius’ later behavior would demonstrate, but Galerius considered Constantine dangerous and a threat to his own tetrarchic hegemony.¹⁵⁶ So he leaned on Diocletian to name Galerius’ drinking buddy Severus and personal bodyguard Maximin Daia as the new *Caesars* in West and East, respectively.

This sat well with very few. Constantius, left as the senior *Augustus*, was able to retrieve his son from Galerius’ service shortly thereafter, apparently much to Galerius’ displeasure—Galerius had been trying to get Constantine killed.¹⁵⁷ When Constantius died peacefully in 306 at York, his armies proclaimed Constantine as the new *Augustus*. Because Constantine was popular with the soldiers of the East, many of whom were aware of Galerius’ lethal animosity towards him, and had shown himself to be his father’s son during his time in the West, “Galerius had little choice but to accept the *fait accompli* -

¹⁵⁴ Odahl, *Constantine*, 72

¹⁵⁵ Odahl, *Constantine*, 71

¹⁵⁶ Odahl, *Constantine*, 71

¹⁵⁷ Odahl, *Constantine*, 77

however, he did so in a way which emphasized his dominant position.”¹⁵⁸ He promoted Severus as the *Augustus* of the West and demoted Constantine to *Caesar*—a position which Constantine wisely accepted for the time being.

During the troubles that followed, Constantine’s corner of the empire was about the only consistently stable place, and it continued to prosper even while the other parts descended again into civil war.¹⁵⁹ Constantius had shifted his religious position from outright polytheism to a kind of monotheism focused on Sol Invictus as the *Deus Summus*, the highest god, and Constantine’s thinking seems to have been evolving along these lines as well.¹⁶⁰ On his return to the imperial seat of Trier in 306, he issued orders to imperial officials under his command allowing Christians within his domains to “resume worship without molestation.”¹⁶¹ This was more to slight Galerius as it was to honor his own religious convictions, but he does seem to have noticed that the persecutions had caused nothing but chaos and bloodshed and had cost the Empire the service of a great many competent people at a time when Diocletian’s reforms in imperial administration demanded considerable growth from the bureaucracy.

Constantine’s accession to the imperial college did not sit well with Maxentius, in light of his own deliberate exclusion, and he started a rebellion at Rome. His father

¹⁵⁸ Odahl, *Constantine*, 79-80

¹⁵⁹ We should note here that the tetrarchic system introduced by Diocletian showed its resilience during this period. Rather than descending back into the chaos of the third century, most of the empire remained stable. The borders continued to be manned and generally well-guarded, and the economy did not suffer overmuch. Unless you were on a battlefield, it was business as usual in most of the empire. The tetrarchy quite effectively confined the chaos. Unfortunately, there were battlefields nearly everywhere at one point or another outside Constantine’s domains.

¹⁶⁰ Odahl, *Constantine*, 78

¹⁶¹ Odahl, *Constantine*, 85

Maximian, “unhappy with his forced retirement”, resumed his role as *Augustus* at his son’s request, and between them they were able to hold off the military reprisals of the western *Augustus*, Severus.¹⁶² They induced so many of his soldiers to switch sides that Severus was left with no option but surrender, and he was eventually executed. Maximian ordered the walls of Rome heightened by ten feet and sought military aid from Constantine, but the most he got was a marriage contract (Constantine married his daughter Fausta) and the promise of military neutrality. While Maximian was in Gaul, Maxentius held Rome against an army led west by Galerius, who had underestimated the size of the city and had not brought enough soldiers to properly invest it for a siege. Moreover, Maxentius started bribing his soldiers away from him, and, concerned he might share Severus’ fate, Galerius retreated.

A subsequent falling out between father and son left Maxentius in control of Rome and Maximian living in the court of his son-in-law, Constantine, much to the old *Augustus*’ chagrin. One of his last formal acts was to elevate Constantine to *Augustus*, something the rest of the imperial college did not recognize, but which Constantine continued to promote on his coins. An imperial conference between Galerius, Diocletian, and Maximian in 308 resulted in Maximian returning to retirement and the promotion of another trusted officer of Galerius, Licinius, as the new western *Augustus*. This displeased Maximin Daia, who had now twice been passed over for promotion, and he arranged for his troops to acclaim him as *Augustus* in 310. Galerius had little choice but to recognize both Maximin and

¹⁶² Odahl, *Constantine*, 87

Constantine as *Augustii* going forward, and they were now essentially equal in stature with Licinius, though Galerius maintained his seniority.¹⁶³

Maxentius was allowed to continue in Italy and Africa until 312 largely because the legitimate emperors had more pressing concerns. Galerius was taken ill in 310 and died in mid-311, days after publishing a toleration edict, formally ending the persecutions, which he never got the opportunity to enforce. Contemporary Christian historians read much of divine significance into his disease, which accounts suggest was probably a penile squamous cell carcinoma.¹⁶⁴ Licinius was pre-occupied in defending the borders of Galerius' domain against barbarian incursions across the Danube. Constantine was dealing with a revolt of sorts by Maximian, who took up the purple one last time until he was captured and forced to hang himself in 310.¹⁶⁵ And Maximin Daia actually made a secret alliance with Maxentius in an effort to counterbalance the influence of Constantine and Licinius.

By the time Constantine was able to turn his attention to Italy in 312, Maxentius had shown himself precisely worthy of Galerius' low assessment of him a decade prior. His people were generally dissatisfied with his rule, and he was seen widely as a tyrant. He maintained control only because his army was extremely well paid. Constantine's progress through Italy was marked by a string of victories against numerically superior but

¹⁶³ Odahl, *Constantine*, 90-91

¹⁶⁴ Odahl, *Constantine*, 96. That he was struck down by a disease originating in the very bodily symbol of his virility and power was not lost on his detractors and occasioned no small amount of mirth. For a comparatively sedate account, see Eusebius, *Ecclesiastical History* VIII.16.

¹⁶⁵ Purple garments were allowed only to *Augusti*; for Maximian to thusly attire himself again proclaimed a new claim to his old authority.

thoroughly demoralized forces, and many cities he never approached declared for him when they heard of the clemency with which he treated those he conquered.

When he got to Rome, however, Constantine was faced with the same problem of scale that had confronted Galerius in 307. He needed divine help, and he “raised his eyes to the sky and implored the *Deus Summus* to reveal his identity and proffer his help.”¹⁶⁶ He had his vision of the Cross in the sun just after midday, and said that in a dream, “Christ appeared to him and admonished him to use the sacred sign of the Christian faith as a defensive talisman for his army.”¹⁶⁷ He was well aware that Maxentius was employing every ritual and superstitious bit of magic he could get his hands on to win the favor of the gods and try to hex Constantine, and Constantine, advised by Christians in his retinue, “must have reasoned that... the sacred symbols of Christ would overcome the superstitious magic of Maxentius. At this moment, Constantine converted to the Christian God.”¹⁶⁸ Maxentius, meanwhile, consulted the Sibylline Oracles for divine guidance. “A passage was discovered which declared that ‘the enemy of the Roman people would perish on that day.’ Interpreting the oracle in his own favor, Maxentius decided to lead his forces out of the city, and face Constantine on the battlefield.”¹⁶⁹ Indeed, the enemy of the Roman people did perish that day: Maxentius’ body was fished out of the Tiber on the morrow.

Constantine’s conversion was evidently genuine. It was a popular narrative in the late 19th and early 20th century to see his conversion as a political calculation. But this

¹⁶⁶ Odahl, *Constantine*, 105

¹⁶⁷ Odahl, *Constantine*, 105. Note that to this point, Constantine had been worshiping Sol Invictus, the unconquered sun, as the highest god in a nearly monotheistic fashion. The placement of the cross in the sun was therefore more significant for Constantine than it might otherwise have been.

¹⁶⁸ Odahl, *Constantine*, 106

¹⁶⁹ Odahl, *Constantine*, 108

makes comparatively little sense. In 312, Christianity was hardly a majority religion; if anything, it was a tiny minority of the population of the empire, largely confined to the working classes and expected to stay there. Clergy were expected to know their place and be concerned principally with looking after the poor.¹⁷⁰ The shift between the early and late 4th centuries on this point can hardly be overstated: “In 343 the Latin bishops...expressed concern...at the prospect of being taken over from on top. Their fears were justified. Only a generation later, Ambrose—a senator and an acting governor—would step directly into the bishopric of Milan...”¹⁷¹ Moreover, Constantine’s actions over the remaining 25 years of his lengthy reign make it difficult to say that he was acting on political calculation alone. “If Constantine calculated, he did so in supernatural terms in an age that took the choice of supernatural protectors seriously. His conversion to Christianity was an act of supreme willfulness, such as only a charismatic Roman emperor could have undertaken.”¹⁷²

Constantine did not immediately convert the empire, but his new religious convictions became common knowledge relatively quickly—the unique sign painted on his soldiers’ shields and standing on their standards did not pass unnoticed. Maximin Daia had revolted, viewing an accord between Constantine and Licinius (who married Constantine’s sister) as a threat to him and offering his support to Maxentius, and the Senate, grateful for their liberation from Maxentius’ tyranny, named Constantine the senior *Augustus* in the reduced imperial college (which Licinius perceived as a slight to his dignity, as the older general and *Augustus* of longer tenure, one which he seems never to

¹⁷⁰ Brown, *Through the Eye of a Needle*, 44

¹⁷¹ Brown, *Through the Eye of a Needle*, 45

¹⁷² Brown, *Through the Eye of a Needle*, 33

have gotten over). This gave Constantine the right to set imperial policy on religion, and he set about establishing Christianity as a licit cult within the imperial religious system. In the West, Constantine set Christianity up as the preferred religion in his domains, but in the East, Licinius merely tolerated it and Maximin Daia, refusing to acknowledge Constantine's authority, had never stopped the persecutions.

The rest of the political story is basically a conflict between the Christian emperors and their pagan colleagues over the status of Christianity in the Roman Empire. Both sides seem to have viewed this as a holy war, and the sides became progressively more polarized through a series of armed conflicts. Before each conflict, as war became more likely, Constantine consistently became more liberal in his religious policies. Like his father before him, Constantine's rule during this time was generally regarded by pagans and Christians alike as mild, more interested in fostering the prosperity of his people than in emphasizing his role as emperor, and his religious policies were no exception.¹⁷³ Constantine recruited for the civil service and the bureaucracy without a religious litmus test, people were allowed to worship as they wished, and the priests of all licit cults, pagan included, continued to receive their stipends and be exempted from the forced labor required of most citizens.¹⁷⁴ And if the bulk of Constantine's imperial patronage for religious building projects went to churches instead of temples, and if the old gods disappeared from their coins, few begrudged him that.¹⁷⁵

¹⁷³ Odahl, *Constantine*, 78

¹⁷⁴ Odahl, *Constantine*, 173-74. The only banned rituals were "private divination for malevolent purposes – to which good people of many religious persuasions objected". (173)

¹⁷⁵ See Odahl, *Constantine*, Chapter 6 for an overview of the church-building program Constantine instituted at Rome. Similar building projects are evident for this period throughout the empire. See *Constantine*, Chapter 7, for an overview of the numismatic changes that took place over the decade 313-23 in Constantine's domains and the contrasting shifts in Licinius'.

By contrast, his opponents routinely either began or intensified persecutions of the Church in an effort to seek the approval and support of the Olympian pantheon. Maxentius had been comparatively capricious on the point, only cracking down in a really determined fashion once Constantine invaded Italy. Maximin Daia was more consistent and ramped up the persecution after Maxentius was removed in 312. After issuing the Edict of Milan with Constantine in the spring of 313, formally ending all religious persecution in the empire, Licinius moved to deal with Maximin, and here the “holy war” narrative begins to come out. “Undoubtedly inspired by Constantine, Licinius had a dream on his journey in which an angel took him to seek aid from the ‘Highest God.’ Maximin, in contrast, took a vow that if his forces should win, he would utterly destroy the Christians.”¹⁷⁶ Licinius led his army in prayer to the *Deus Summus* before the decisive battle, and despite a more than 2:1 numerical disadvantage, routed Maximin’s forces so badly that Maximin, after retreating to Tarsus in Asia Minor, committed suicide.

But where Constantine’s conversion was evidently genuine, Licinius’ seems to have been little more than a passing fancy of political expedience. With the political threats now confined to Constantine himself, the *Augustus* of the East moved back to worshipping the Olympian deities shortly after his victory over Maximin and adopted the more autocratic style which had characterized his eastern predecessors. Over the course of a decade, he too began a persecution of the Church, cashiering Christians from his armies, dismissing them from government posts, and imposing civil disabilities again.¹⁷⁷ In 324, matters erupted into open war, and before the first battle, Licinius “gathered his bodyguards

¹⁷⁶ Odahl, *Constantine*, 120

¹⁷⁷ Odahl, *Constantine*, 174

and commanders together in a sacred grove for divine sacrifices, and declared that the outcome of the coming conflict would determine which emperor was correct in his religious policy, and which deity was the supreme power in the universe.”¹⁷⁸

As he had done at Milvian Bridge more than a decade prior, Constantine used the symbols of the Church as talismans. He had a special standard made, a Labarum, topped with the chi-ro insignia, and created an “honor guard of fifty men distinguished for their personal courage and Christian piety” to carry it.¹⁷⁹ In battle with Licinius, he gave orders that it was to be taken to wherever his troops seemed to be flagging. “This seemed to embolden his troops and frighten the Licinian forces.”¹⁸⁰ Constantine emerged victorious; the war was short—only three battles, two by land and one by sea—and Licinius surrendered and entered a forced retirement in 324, leaving Constantine as the uncontested master of the Roman world.

Aside from the dynastic battles, Constantine had also been active legally. As we noted in the previous chapter, part of the underpinning of *majestas* as created by the emperor Augustus was the divine sanction and authority of being *pontifex maximus*, chief priest of the Roman state religion. Under the tetrarchy, this title was usually held by the senior *Augustus*, thus by Diocletian, Constantius, Galerius, Licinius, and Constantine in succession. The Edict of Milan made Christianity a licit cult within the Roman Empire, which both entitled it to corporate protection and patronage from the emperor as *pontifex maximus* and subjected it to his authority.

¹⁷⁸ Odahl, *Constantine*, 176-77

¹⁷⁹ Odahl, *Constantine*, 176

¹⁸⁰ Odahl, *Constantine*, 178

This made the emperor, among other things, the appeal of last resort for religious conflicts, a role Constantine first took up in the Church with the Donatist Schism.¹⁸¹ Ironically, it was the Donatists' repeated insistence on appealing to Constantine as emperor that led the rest of the Church to accept his authority *de facto*. He first designated their appeal to Miltiades, then Bishop of Rome (by that point already the preeminent see of the Church), under the theory that disputes within the Church should be settled within and by the Church, in accordance with Paul's teachings.¹⁸² When the council of bishops Miltiades summoned to the Lateran Palace ruled against the Donatists, they again appealed their case to the emperor, who called a council of the Church at Arles in 314. When that council also ruled against the Donatists, they *again* appealed their case to the emperor, who was by this point quite exasperated with them. He ruled against them and exiled the Donatist clergy from their parishes and sees.¹⁸³ In and through all this, the Church accepted Constantine as its functional head from a legal perspective, and for his part, Constantine seems to have

¹⁸¹ For details on the Donatist schism and Constantine's attempts to address it, see Odahl, *Constantine*, Chapter 6. The schism had its roots in the Great Persecution. Diocletian had taken steps to make life very uncomfortable for his Christian subjects, including requiring public sacrifices to the Olympian deities on pain of death. Many Christians were hereby martyred, but some, including some clergy, had apostatized. After Galerius issued an edict of toleration from his deathbed in 311 (see Odahl, *Constantine*, 95-96 for details) and Constantine's very public conversion and victory at Milvian Bridge in 312, many of those who had apostatized wanted to return to the Church. Broadly speaking, two schools of thought emerged concerning the repentant clergy: either they were to be received back into communion as clergy after suitable penance or they were not to be received back into the Church, at least as clergy. The former was the position of the Church generally, but a minority in Carthage held the latter view, arguing that apostasy had tainted these clergy such that they could never again properly administer the sacraments.

Through a series of political machinations and a contested election, there were two bishops of Carthage by 312, one willing to accept the penitent apostates, the other (Donatus, from whom the controversy takes its name) not willing to accept them. Both recognized the authority of the emperor; neither recognized the other as legitimate. When they were unable to resolve the dispute internally, they appealed the case to their new Christian emperor.

¹⁸² Odahl, *Constantine*, 132

¹⁸³ Odahl, *Constantine*, 138. Odahl quotes here a substantial part of Constantine's open letter giving his judgment against the Donatists; his frustration and anger are quite evident.

devoted significant energy to learning about Christianity. His orders and rulings where religion is concerned reflect a rapidly growing theological sophistication.¹⁸⁴

By the time of his final war with Licinius in 324, Constantine had also granted the Church a set of authorities which went beyond what was usual for priests. The two most notable pieces both involved jurisdiction over Roman law. First, he granted Catholic bishops the right to hear proceedings on the manumission of slaves. This was usually a time-consuming and expensive process that had to be carried out through the Roman courts; Constantine allowed the master to bring his slave before a Christian assembly and declare him free; documentation signed by the bishop guaranteed the former slave Roman citizenship. Second, he granted bishops the right to hear appeals on other legal cases, and their decisions were not subject to review by the Roman courts. This, he seems to have done in an attempt to, at a stroke, elevate Christian clergy above their pagan counterparts, unclog the Roman court system, and respect that same principle of settling conflicts between Christians within the Church.¹⁸⁵

At this point, Constantine was well on the way to establishing his authority over the Church as part of his *majestas*, much as imperial authority over other state cults had been previously a constituent element. As time went forward, he continued to exercise considerable authority over the episcopate, such that by the time of the Arian controversy, he was considered to have the authority to depose bishops. Within the Church, Constantine's consistent role was that of conciliator and peacemaker; when necessary, this included exiling bishops from their sees when they consistently disturbed the peace of the

¹⁸⁴ Odahl, *Constantine*, 139

¹⁸⁵ Odahl, *Constantine*, 166-67

Church or, if he judged them not to be orthodox in their theology, removing them from the episcopate entirely. What is perhaps most remarkable about this authority is the speed with which the eastern Church accepted it.

The Arian controversy had already been roiling the eastern Church for around five years when Constantine defeated Licinius in 324. Because of the travel restrictions Licinius had imposed on Christian clergy, they had been unable to call a synod to resolve the issues it presented, and the whole affair was left to fester as all sides continued to entrench themselves. Constantine may have been peripherally aware of the conflict in the West, but he was given an earful on the topic by his new subjects over the winter of 324-5.¹⁸⁶ He also discovered about this time that some Eastern churches were continuing to use the Jewish method for scheduling Easter rather than the more common Roman method, and decided that both these issues needed to be addressed.¹⁸⁷

These matters, particularly the Arian controversy and the definition of God himself, were matters of such moment for Constantine that he issued invitations to bishops from all over the empire and beyond its borders to meet for a council of the whole Church in Nicea. Constantine presided over this council personally, and his constant refrain was a call to brotherhood and charity within the Church. His opening address to the hundreds of assembled clergy (including over 300 bishops) harped on this point, and he concluded by taking “the petitions some bishops had given him earlier containing accusations against

¹⁸⁶ Odahl, *Constantine*, 189

¹⁸⁷ Constantine was rather an anti-Semite on the grounds that Jews had killed Christ and that those who clung still to Judaism were in open defiance of the one they called God. He had very little patience for them. See Odahl, *Constantine*, 250 for details; see also Constantine’s letter to the churches of the empire summarizing the proceedings of the Council of Nicea, recorded in Eusebius, *Vita Constantini* III.56-60

one another, and burn[ing] them in a fire”.¹⁸⁸ This set the tone for the whole conference. At its conclusion, a creedal statement was produced testifying to the consubstantiality of the Father and the Son and anathematizing several statements to be found in Arius’ writings. Arius himself was exiled from his home see of Alexandria and two of his supporters deposed.

By Constantine’s decree, Arius and his remaining supporters were not to be harbored within any church in the empire. Yet after the council had closed, two bishops in Asia Minor did just that. Without summoning a council, Constantine removed them from their sees.¹⁸⁹ Likewise, when Arius finally moderated his views and he and his supporters were re-admitted to the Church by another synod at Nicea, Athanasius (by then bishop of Alexandria) refused repeatedly to re-admit him to communion, and Constantine was prompted to exile Athanasius to Trier (modern-day Germany, just west of Luxembourg).¹⁹⁰ What is perhaps most remarkable of all in Constantine’s handling of this episode is that Arius’ rehabilitation into the Church was decreed by a synod at Jerusalem after Constantine himself personally examined Arius and found his reformed theology to be orthodox, and the synod’s decision was accepted by most of the Church.¹⁹¹ Constantine’s reign thus

¹⁸⁸ Odahl, *Constantine*, 196

¹⁸⁹ Odahl, *Constantine*, 203

¹⁹⁰ Odahl, *Constantine*, 260

¹⁹¹ Odahl, *Constantine*, 258, but see 260-63. Because Constantine had not deposed Athanasius, his decision refusing to receive Arius back into communion in Alexandria was still in force, even if he himself was hundreds of miles away. A synod at Constantinople therefore determined that Arius should be admitted to communion with the See of Constantinople, a prospect that Constantinople’s bishop found most uncomfortable. He was never put to the test on the question, though: in 336, on his way to receive communion in Constantinople for the first time, Arius experienced sharp stomach pains and ducked into a public latrine to relieve himself. His bowels had ruptured, and he was later found dead in front of the toilet in a puddle of the resulting excrement and gore. The timing and manner of his death suggested to Constantine that Arius was deceitful in his moderation and had been suitably punished by God. When theological controversy re-emerged after Constantine’s death, “no factions wanted to claim the label Arian.” (263)

marks a turning point not only for the Roman Empire but for the Church, which hereafter accepted the authority of the Roman emperor as binding over it.

By Constantine's death on Pentacost, 337, the transformation from pagan to Christian empire had taken hold among the lesser aristocracy and middle classes, as it had done before Constantine among the urban poor. The authority of Constantine and his successors over the Church was the equal of the influence Augustus had wielded as *pontifex maximus* within the empire. Eusebius tells us he thought of himself as a bishop of the Church charged with affairs external to it,¹⁹² and his funeral arrangements suggest that by the end of his life Constantine thought of himself as a thirteenth apostle (and in his day, he was not alone in that thought).¹⁹³ The empire wasn't totally Christianized by the end of his reign; there was still a significant pagan population, including the Senate and the *nobiles* at Rome, who regarded it as their duty to stand as the cultural conservators of Rome and so stubbornly persisted in the old religion. But outside that insular world, the lesser aristocracy and the middle classes "looked to the court and to the imperial *militia* rather than to the Senate as the arbiters of taste."¹⁹⁴ Constantine retained both the role and title of *pontifex maximus*, but they seem to have meant little by the time he was laid to rest. It is a mark of the esteem in which even the pagan world held him (even while also being a mark of a certain resentment for what they'd lost) that the Senate, despite Constantine's very well-known religious views, posthumously voted him one last title: *divus*.¹⁹⁵

¹⁹² Eusebius, *Vita Constantini* IV.24. Eusebius gives several quotes here from Constantine describing himself as such.

¹⁹³ See Odahl, *Constantine*, Chapter 11 for details.

¹⁹⁴ Brown, *Through the Eye of a Needle*, 253

¹⁹⁵ Odahl, *Constantine*, 276. Given Constantine's overt dedication to Christianity, this was an exceptionally back-handed compliment and was probably intended as such. This was the Senate's ultimate expression of

But in his own day, his role as the head of the Christian Church was limited in his legitimation claims. In this respect, he was largely similar to his immediate predecessors, and to Augustus himself: Constantine's rule was legitimate because he had stabilized the empire and ended chaos. He had proven himself a *princeps* in the mold of the man whose name he wore as a title (*Augustus*), and he had done so with the sword and with sound economic policy, as had Augustus, the 'good' emperors, Claudius Gothicus, from whom Constantine claimed descent (albeit with a wink and a smile), and Diocletian.¹⁹⁶ Because he had done so, he was thought to be favored by the gods, by whichever god he claimed, certainly, and while the *nobiles* weren't thrilled with the religious shift, they could not deny the basic fact that he had resolved the problems of the Second Tetrarchy and left behind him an empire markedly more stable than the empire he had found in 305. Moreover, however grumpy they might be about the fact, the history of Diocletian's persecution was not in the *nobiles*' favor: persecuting Christians had been the principle source of civil unrest during the reigns of Diocletian and Galerius. Constantine's religious eccentricities and those of his successors, all but one of whom were Christian as well, could thus be written off, especially after the reign of Julian the Apostate (r. 361-63) ended in a military disaster against Persia.¹⁹⁷

The emperors continued to hold and exercise the office of *pontifex maximus* until 382, when Gratian gave it up following a dispute with the Senate about whether he needed to supervise pagan rites at the altar of Victory in the Senate chambers. Nevertheless, by

approbation, but they knew that Constantine would have been quite offended by it nonetheless. It was a deliberate insult to his memory which by its very nature nonetheless shielded them from reproach.

¹⁹⁶ On Constantine's putative relation to Claudius Gothicus (r. 268-270), see Odahl, *Constantine*, 94-95

¹⁹⁷ Julian was the last pagan emperor of Rome, partly because of his disastrous end.

this point, the title and office in their pagan incarnation were more or less meaningless as a piece of legitimation—the key political players were all Christians, and this exerted significant social pressure on the *nobiles* who wanted to be close to power at the imperial court. “One should not underestimate the ‘gentle violence’ brought to bear on upper-class society by the permanent presence of a Christian court... To be close to the court was to be increasingly surrounded by persons for whom the old religion meant little or nothing.”¹⁹⁸ Two years prior, Theodosius I had issued the Edict of Thessalonica, formally outlawing pagan practices within the empire, and their suppression of paganism voided any particular significance that might have been accorded to the supreme head of the pagan cults. By this point, to be the religious head of the empire, it meant more to act as a bishop than as *pontifex maximus*, and the most troubled times for both church and empire seemed to emerge when the emperor could not or would not act in that way.¹⁹⁹

The careful reader will inquire here why Constantine does not represent a significant shift in the nature of majesty and therefore in the legitimation scheme. His reign marks the end of military achievement as the genesis of majesty and the investiture of majesty in a permanent religious bureaucracy. In answer, we point to two things. First, as we discussed at some length in the previous chapter, warfare and religion were tied together quite tightly in pre-Christian Rome. It would be wrong to consider military achievement as being without extreme religious significance from their perspective. Religion was quite present and necessary in the ancient Roman legitimation schemes, despite its *sotto voce* presence. The chief of the Roman state religion did not step into the role of emperor; it

¹⁹⁸ Brown, *Through the Eye of a Needle*, 45

¹⁹⁹ Brown, *Through the Eye of a Needle*, 50-52

was quite the other way around, and the office of *pontifex maximus* was important because it was a more enduring symbol of the gods' approval of a given emperor than a successful campaign 20 years past (especially when emperors grew too old to bear the physical strain of a campaign).

Second, Constantine shifted imperial policy to Christianity by force of arms, as we've seen. This did two things: (1) it demonstrated for all to see that the Christian God was mightier in war than the entire pantheons of Rome and Greece and (2) it allowed Constantine to govern according to a new and very different set of religious ideals. The Christian God was shown to be powerful in war, but he had other priorities for his adherents. De-emphasizing military achievement made a peaceful transfer of power possible in a way that would not have been available under the Roman state religion. While the king was still expected to be a strong military commander, this opened majesty to other kinds of men, most notably clerics. But the tools of legitimation didn't change, and military achievement wasn't thrown by the wayside. Majesty was still majesty, just open to a few more than before. The change in majesty's religious sponsor changed how it could be transferred and to whom, but not the core of majesty as a legitimating force.

1.2 End of Empire

Rome's great strength was, in so many ways, that it was a cultural empire as much as a political one. The grant of citizenship following the Social War in the early first century BC was simply an acknowledgement of reality: Italy had been made Roman in everything but name, and this had happened in large measure because Rome and her Latin allies had sent colonies of citizens to create new outposts, new nodes of cultural dissemination, initially just to more firmly control the area. Among Caesar's policies

during his brief time actually in Rome while dictator had been the establishment of numerous colonies all around the Roman world. Gaius Gracchus had begun settling colonies outside Italy during his tenure as tribune at the end of the second century BC, but Caesar drastically accelerated this program.²⁰⁰

In 410 AD, this also proved the Western empire's undoing. The first step on the road to citizenship was status as *foederati* of the Empire, allied peoples who were subject to a military levy and were otherwise given access to the commercial empire of Rome and the protection of her legions. In 376, a tremendous number of Goths, potentially as many as 50,000, displaced by Hunnic invasions of eastern Europe, crossed the Danube (then the Roman border) seeking asylum from Valens, the *Augustus* of the East. Valens granted this request on in the hopes that they would settle into Thrace and Macedonia as a valuable source of agricultural and military manpower. He had reasons for this hope—a similar program of refugee resettlement in the same region involving more than 300,000 Sarmatians had been carried out by Constantine with great success about 40 years prior (334).²⁰¹

These Gothic refugees were not well-treated by their Roman overseers; most of the aid intended for them was stolen and sold off as each military officer along the way took his cut. The governors of the area were also quite harsh and extorted the Goths mercilessly; many were forced to sell children to pay for food. This led to an uprising which reached its apex at the Battle of Adrianople in 378, in which Valens and two-thirds of his army were slaughtered. Peace was not achieved until 382 under Theodosius I, and the terms

²⁰⁰ Scullard, *From the Gracchi to Nero*, 149-50

²⁰¹ Odahl, *Constantine*, 256. Cf. Anonymous Valesianus I.6

were unusual: the Goths were confirmed as *foederati*, but instead of being dispersed into the established Romanized population, as would have been the usual procedure, they were given lands inside the Empire and allowed to remain in a group, maintaining their own laws and discipline amongst themselves.

Circumstances did not improve, largely because of the hubris of the Romans in attempting to deal with them, and as a result, in 410, a large Visigoth army under Alaric sacked Rome itself. The affair was relatively bloodless; Alaric needed to pay his army, and he was after booty, not bodies.²⁰² It was a shock, but it was merely the symptom of a much more significant problem for Rome. The program of Romanization had broken down by this point so that Alaric was actually not the most serious problem; the bigger issue was really that Rome's Germanic allies (read: mercenaries) could not be counted on to fight their kin, and their demands for money grew increasingly extravagant.

The problems proved to be irreversible: Rome's *nobiles* lacked the resolve to stand and fight for their empire. Instead of taking the necessary action, they preferred to posture and pretend action in a myopic pursuit of the *dignitas* associated with their title (and in pursuit of further titles) at the expense of the institutions that underwrote those titles. This meant that there was no one with the *auctoritas* to galvanize the remnants of the Western Empire into action: everyone was out for himself. And so the Ostrogoths eventually put the dying empire out of its misery in 480, and with the end of the empire ended the legitimacy afforded by the Emperor's *majestas* in the West.

This did not create such problems as it may have done, though. Political legitimacy was conferred on the Ostrogoth king, Odoacer, through the legal fiction that he was holding

²⁰² Brown, *Through the Eye of a Needle*, 294

the kingdom of Italy as a client of the Eastern Roman Emperor. Likewise, the Ostrogoths, particularly under Odoacer's successor Theoderic, allowed the Romans to continue to live under Roman law, appoint consuls, etc. (Boethius was the consul and *magister officiorum* during this period), and, though Arians themselves, largely allowed the Roman Church to manage its own affairs. The eastern Emperor still provided *majestas* under which the Western empire's successor states continued to function and claim legitimacy.

This only became more true as time went by. Under Justinian I, the Eastern empire reclaimed Italy, Sicily, most of N. Africa, and part of Spain, between 535 and 555. During this time, Justinian introduced the *Corpus Juris Civilis*, a substantial redrafting and rationalizing of the Empire's laws. Such a unified code was necessary to control what had effectively become a common-law system—no new code of laws had been introduced in a millennium, since the Twelve Tables of the early Republic, though various attempts had been made at codifying the resultant legal morass. This was introduced throughout Justinian's domains, not just the Greek East, but it did not take hold in the West for several centuries because Justinian's gains in the West proved ephemeral. Civil strife soon rendered the Byzantine Empire too weak to hold what it had taken, and two centuries after it was introduced, Roman law left the West with the last Byzantines following the final collapse of the Exarchate of Ravenna in 751.²⁰³

This left the West in something of a precarious position both spiritually and politically. As we noted, Constantine had taken authority over the Church when he converted the Roman state, and his successors were, if anything, more involved than

²⁰³ The marshes around Ravenna made it very difficult to bring heavy siege equipment in, making the area arguably the most defensible port city in Italy. For this reason, it had been the last capital of the Western Empire and was the center of Byzantine authority as well.

Constantine himself was.²⁰⁴ They convened the early ecumenical councils and had final say on the appointment of bishops. At this point, too, there were five principle seats of the Church: Constantinople (where sat the Emperor), Antioch, Rome, Jerusalem, and Alexandria. These five patriarchs exercised concurrent jurisdiction over the Church under the Emperor's watchful eye, though the Constantine had acknowledged the primacy of the Roman see in the late 310s and Justinian I affirmed this in the early 530s.²⁰⁵ But for the Bishop of Rome to look to Constantinople as his authority in an era when Constantinople did not rule in Rome was a problem. The new masters of Italy did not forget Justinian's invasion: what had been done once could be done again, and it was preceded by prominent Romans pleading with him to do it.²⁰⁶ (This crisis, we must note, did not impact the East, where the Emperor still ruled and his *majestas* still grounded the law of both Church and State.)

A more permanent solution was devised sometime in the eighth century, shortly after the Byzantines left Italy. An enterprising cleric, we know not who or when beyond the century, created a document, signed by Constantine, giving the Bishop of Rome

²⁰⁴ The Ostrogoth kings had only interfered in Church business when asked to arbitrate disputes which the Church found itself unable to resolve internally. While the Byzantine emperors kept abreast of happenings in Rome and clearly "knew who their friends were" as evidenced by the gifts they sent west, they had not exercised direct influence. Jeffrey Richards, *The Popes and the Papacy in the Early Middle Ages, 476-752* (London: Routledge & Keegan Paul, 1979), 135; hereafter cited as Richards, *Papacy in the Early Middle Ages*. But when Italy was re-conquered, "the influence of the emperor was felt immediately and Justinian had none of Theodoric's scruples about intervening in papal affairs. After all, unlike Theodoric, Justinian was a Catholic, a Roman and above all God's chosen vessel, charged with ensuring the well-being of his people. He had confirmed Rome's primacy within the church as long ago as the reign of John II [r. 533-535 AD] but this did not mean that the pope was given a license to pursue a religious policy different from that of the emperor. He was expected to toe the line and if he failed to do so, then woe betide him." Richards, *Papacy in the Early Middle Ages*, 139-40.

²⁰⁵ Odahl, *Constantine*, 132; Richards, *Papacy in the Early Middle Ages*, 139-40

²⁰⁶ Boethius was executed in 524 by Theodoric on charges of conspiring to bring the Eastern Roman Empire's armies down on them. While the charges were almost certainly false in Boethius' case, they were almost certainly true of others in the Senate.

(Sylvester I, in Constantine's day) unprecedented powers. This Donation of Constantine did three significant things for the Pope:

1. It formally recognized the authority of the Pope over the other major sees of the Church and gave him authority to decide questions of doctrine and religious practice.²⁰⁷
2. It gave the Pope the same honorary rights as the emperor, i.e. all the trappings of his office, the outward signs of his *majestas*, including the right to specific kinds of servants generally otherwise associated only with the emperors.²⁰⁸
3. It gave the Pope a specific and expansive grant of temporal power over "the city of Rome and all the provinces, places, and cities of Italy or the western territories, and...we have decreed that they be managed and we grant that they should remain under the law of the holy Roman Church."²⁰⁹

This solved the problems of both legal and religious authority. The Pope had been set up by an Emperor long dead as the legitimate authority in the West, in fact as a co-Emperor, and this authority had been irrevocably vested not just in the man but in the office, meaning that the Papacy could in its own right wield imperial *majestas*. This suited the Popes, who were happy enough to claim this power, and it suited the lords of western Europe, who could hereby bend the knee in fiction to someone unlikely to ever be able to make them do it in fact.²¹⁰ Nor was the Pope long in making use of this power. Exploiting

²⁰⁷ "The Donation of Constantine", in *On the Donation of Constantine* by Lorenzo Valla, Appendix (pp. 162-183), trans. G.W. Bowersock (Cambridge, MA: Harvard University Press, 2007), §12.

²⁰⁸ Ibid, §§14-16.

²⁰⁹ Ibid, §17.

²¹⁰ The only time real problems came out of this arrangement were when the pope was actually strong enough to start making significant claims of temporal authority stick, as under Alexander VI and Julius II.

difficulties in the succession of the Eastern Roman Empire, on Christmas Day, 800, Pope Leo III crowned Charlemagne as the legitimate successor to Emperor Constantine VI, whose mother had deposed him to rule in her own right (the West contended that a woman could not do so). This created the Holy Roman Empire.

In one form or another, then, imperial *majestas* survived in the West to underwrite the legitimacy of law until the Reformation. The primary source for this continued to be the Pope, by whom the Holy Roman Emperor must be crowned, but the Emperor himself was a close second. It was a fiction; only rarely were either strong enough to claim actual suzerainty over those who paid lip service to their authority. But it was enough: being able to appeal to either the Pope or the Holy Roman Emperor as the source of their authority saved the lords of western Europe from having to answer inconvenient questions about their right to rule.

2 *Strategies of Modernity*

Under this medieval synthesis of Church and State, regal authority flows from God through the Church and then to the king. By 1400 AD, the only thing that had really changed since the days of Rome was that the head of the State and the head of the Church were often no longer the same person. Care of the souls of the community was paramount and in many places went hand-in-hand with the care of their physical well-being, so that high Church officials in many places exercised direct temporal political authority over their flocks.²¹¹ Under the influence of the papacy, the theory of legitimation at this time said

²¹¹ Consider the upper house of the English Parliament, the proper name of which even today is “The Lords Spiritual and Temporal”. Many Church of England bishops still have *ex officio* seats in the Lords, though their numbers have been curtailed to 26, or about 3% of the current peerage. Of similar note is the French

that as a matter of divine providence, the right men were in the right place at the right time to take the right actions, and to the degree their actions failed, it was far from unusual to interpret it as a judgment from God.

As a practical matter, because all of Europe believed the same thing, followed the same Church, the *majestas* of Christ and his Vicar were a far firmer foundation for the exercise of coercive power than the throne of any king or prince, and as we have seen, where kings and princes did not hold Church titles as well, their authority derived from the Church. The law reflected this. The kings and princes of Europe explicitly traced their original grants of authority to the Roman Empire, and many used Justinian's *Corpus Juris Civilis*, as the foundation of their civil laws. Each claimed to be, in some way, exercising the authority of Rome over her subjects.²¹²

The method of legitimation in this era basically relied on the people involved in government and the tradition backing them.²¹³ While it was always the case that there were no perfect people involved, as long as the people were good *enough* and didn't have major problems in extremely public ways, the authority of tradition would paper over their flaws.

États-Généraux, of which the first was the clergy, and the Electors of the Holy Roman Empire, of whom three were archbishops.

²¹² This claim to exercise the authority of Rome is significant as a common element in legitimation claims of the era. Due to a lack of available written records from pre-Roman civilizations, Rome's authority represented a legal time zero for claims of legitimate authority – no other extant claims rivaled Rome's. Therefore, claiming authority from Rome was a way of legitimating one's authority legally. Effectively, if you could trace your authority back to the first known holder of authority over your lands with sound provenance, you could claim to hold your authority legitimately.

²¹³ This is not necessarily the Marxist or Nietzschean point that the divine is an illusion and that the power always rested with the people – they were just ignorant or duped by the Church into thinking its authority actually came from something beyond the human. To quote a cliché, in politics, perception *is* reality. What is important here is not whether or not God exists but that as a matter of historical fact, people *did* vest their faith in God and those they believed to be his appointed representatives and that they *did* believe this imbued those representatives with the authority to legitimately make law. Whether or not God exists, they believed it, and this belief grounded their perception of the normativity of the law. See §3.3 for a more complete treatment of this point.

The majesty of the Church, the splendor of the monarchy, and the relative virtue of the king and Pope together grounded the legitimate exercise of coercive power.

2.1 Crisis

This medieval epoch collapsed following four seminal events in the 15th and early 16th centuries: Lorenzo Valla's work *On the Donation of Constantine*, first circulated in 1440, demonstrating conclusively that the document was an 8th century forgery; the final end of the Byzantine Empire with the fall of Constantinople in 1453; the circulation and posthumous publication of Machiavelli's *Il Principe* in 1513 and 1532 respectively; and Luther's 95 Theses, submitted to the Archbishop of Mainz in late 1517 and published in 1518.²¹⁴

Valla was an academic, a scholar of philology working at Rome in the early 15th century. When he initially circulated his conclusions in 1440, *On the Donation of Constantine* was hardly the incendiary bombshell it seems in retrospect. "It joined a debate that was already current at the time, especially after a repudiation of the [Donation] in 1433 by Nicolas of Cusa."²¹⁵ We have his correspondence with a cardinal from the period, which is entirely cordial. The Church just didn't regard his conclusions as a serious challenge to their authority.

And we can well understand why: they had been doing business under this *Constitutum Constantini*, this Constitution, for six centuries by this point. Even if the

²¹⁴ The story of Luther nailing the 95 Theses to the door of the church in Wittenberg, while a wonderfully apropos dramatic opening of the Reformation, is unfortunately but almost certainly apocryphal.

²¹⁵ Bowersock, G.W., Introduction to *On the Donation of Constantine* by Lorenzo Valla, vi-xv, trans. G.W. Bowersock (Cambridge, MA: Harvard University Press, 2007), viii; hereafter cited as Bowersock, Introduction to *On the Donation of Constantine*.

document that formed the legal basis of their authority was a forgery, what of it? The Church had more significant issues to contend with than the scribbles of an academic on a question the common people couldn't understand and wouldn't care about. The Council of Basel (1431-1449) had denounced Pope Eugene IV as a heretic and appointed an anti-Pope, Felix V, and this disaster had yet to be properly mitigated. The collapse of the Byzantine Empire in the face of the growing might of the Ottomans was proceeding apace, despite an end to the schism proclaimed by the Council of Florence in 1439. Eugene IV himself had to flee Rome in 1434 disguised as a Benedictine monk (while he was eventually restored to his proper seat, that took until 1443). So Valla's work passed without significant comment in its own day and wasn't issued in print (and then only a small run) until 1506.²¹⁶ It did not gain notoriety until the Reformation took off in 1518-19, and it was eventually placed on the *Index Librorum Prohibitorum* in 1559.

Meanwhile, life in the East had not exactly been uneventful. Despite the schism of 1054, Pope Urban II had roused western Christendom to ride to the defense of the Byzantine Empire in 1095. These Crusaders succeeded in pushing back Muslim rule in parts of the Near East, and whenever the Crusader States were threatened, a new Crusade was called. The Fourth Crusade, though, stopped somewhat short of the Holy Land in 1204 as the Crusaders decided to just plunder Constantinople instead. What they carried off, more valuable than the gold and jewels, were relics by the bushel, and with them a considerable part of the religious authority of the Byzantine Emperor. The Crusaders set up a Latin Empire centered at Constantinople, which was not dispensed with by the Byzantines until 1261.

²¹⁶ Bowersock, Introduction to *On the Donation of Constantine*, ix

The restored Byzantine Empire, though, was a shadow of its former self. The resurgence which Michael VIII Palaiologos helped create, the new dawn for the Greek world, was ultimately unable to sustain itself. By 1265, the Byzantines had regained control of much of modern-day Greece, Albania, Macedonia, and southern Bulgaria, but at the cost of half their possessions in Anatolia. Of the several rump states left after the 4th Crusade, only around half (by territory) were re-absorbed. The Byzantines' principle achievement was the end of the Latin Empire and the reclamation of Constantinople as the seat of Greek Christendom.

Nonetheless, the Empire limped on. Pieces were carved off by the Serbs and Bulgars in the north and the Ottomans in the east. By 1400, all that remained of the Empire was eastern Thrace, Chalcidice, and the Peloponnese, and the Ottomans, hired by the Byzantines as mercenaries in their wars against the Serbs and Bulgars, had made Walachia their vassals and had along with Serbia taken over the Byzantines' other European possessions. Under this pressure, John VIII Palaiologos agreed to a religious reunification with Rome during the Council of Florence in 1439 in an attempt to enlist Catholic support. But all to no avail.

In 1453, Sultan Mehmed II delivered the killing blow at Constantinople. Emperor Constantine XI disappeared into the melee after the walls were breached; his body was never conclusively identified. The Turks were in the habit of decapitating the dead, and while a body was eventually found with the Imperial Eagle sewn into the socks and

stamped into the greaves, the head had been parted from it. It was assumed to be his, though, and was given to the remaining Greeks for burial.²¹⁷

Mehmed also took control of the city's religious function. As we noted above, the Emperors of Constantinople exercised direct control over the church, and after the schism with Rome, this remained true of the Orthodox church. Mehmed now assumed those responsibilities. Under Islamic law, if a city surrenders to the conqueror willingly, it is not to be pillaged, and its Christian or Jewish inhabitants may keep their places of worship; otherwise, there are three days of unrestricted plunder, and all the churches and synagogues become the property of the conqueror, along with all the other buildings.²¹⁸ Many districts of Constantinople, seeing their options, surrendered to Ottoman forces willingly when they arrived, and the citizens and churches in those districts were spared plunder and appropriation under this rule. Others were not so fortunate, and the streets ran red with Greek blood.

On entering the city, the first place Mehmed went was the Hagia Sophia, the Church of Holy Wisdom, seat of the Patriarch of Constantinople, which he immediately turned into a mosque. As the previous patriarch, Gregory Mammas, had fled in 1451, Mehmed also appointed the leader of the opposition to union with Rome, Gennadios Scholarios, as the new patriarch.²¹⁹

²¹⁷ Steven Runciman, *The Fall of Constantinople, 1453* (Cambridge: Cambridge University Press, 1965), 144. Hereafter cited as Runciman, *The Fall of Constantinople*.

²¹⁸ Runciman, *The Fall of Constantinople*, 145

²¹⁹ Runciman, *The Fall of Constantinople*, 154. Mammas had been staunchly unionist, but the union of 1439 had caused significant consternation as there was no one bishop who had the authority to consent for the whole of the Eastern Orthodox church (even if he was Patriarch of Constantinople). He fled more or less because his life was under threat given the continuing fallout.

He also tried to claim the mantle of Caesar, but he was not well-believed outside his own domains.²²⁰ For those forced to recognize his suzerainty, this was enough, but outside the Balkans, no one took his claims seriously. Indeed, far from the earth-shattering event it might have been, the fall of Constantinople was comparatively inconsequential, save for those romantics “to whom the Emperor that fell at Constantinople had been the one authentic emperor, the true heir of Augustus and of Constantine, unlike the upstart in Germany.”²²¹

In fact, the only other consequence of note, for our purposes, is that the Grand Duke of Muskovy, Ivan III, also claimed to have inherited the mantle of emperor. Russia was strongly opposed to the union proclaimed after the Council of Florence, and Ivan was now the only Orthodox ruler truly independent of the Ottomans. “Had [Ivan] not surely inherited the Orthodox Empire? The Conquering Sultan might reign in Constantinople and claim the privileges of the Byzantine Emperor. But the true Christian Empire had moved to Moscow.”²²² It was not by accident that Ivan III began to call himself “Czar”—Caesar—in his correspondence, nor that his grandson, Ivan IV, took it up as his formal title. The Czars continued to exercise this claim to be a third Rome until the Bolshevik Revolution in 1917.

By the end of the 15th century, Europe’s princes thus had four options for *majestas* to ground their authority: they could acknowledge the Holy Roman Emperor, the Pope, the Sultan, or the Czar. On religious grounds, the Catholic West refused to recognize the

²²⁰ Mehmed II added the title *Kayser-i Rûm*, Caesar of Rome, to his styles, and though it was not always used, especially towards the end, it was never removed from the title of the Ottoman Emperor.

²²¹ Runciman, *The Fall of Constantinople*, 167. For a more detailed consideration of Europe’s reaction, see Runciman, *The Fall of Constantinople*, ch. 12.

²²² Runciman, *The Fall of Constantinople*, 178

authority of either the Czar or the Sultan (who claimed also by this point to be Caliph). The Orthodox East, under the rule of the Sultan, could hardly recognize the Czar, whatever he might claim (and certainly the Sultan was unlikely to recognize the Czar as the source of his authority). The Holy Roman Emperor was generally under the thumb of the most powerful German princes (it turned out that few people wanted to *be* Holy Roman Emperor, but almost everyone wanted to be an Elector); the empire was fractured with each prince or Elector functionally independent within his own fiefdom, and the Imperial majesty derived from the Pope anyway through Emperor's coronation.²²³

This left the Pope as the only viable option in practice for those not militarily required to recognize either the Sultan or the Czar. And for the rest of the 15th century, this was sufficient—the Church was not the only entity to pointedly ignore Valla's work, and by that point, so much tradition had been built up on the point that a strong pope like Alexander VI or Julius II might make a claim to majesty worth considering even without the *Constitutum Constantini*. But at the beginning of the 16th century, events conspired to remove even the Pope as a viable option.

Italy in the early 16th century was not an especially happy place. It was the main battlefield for western Europe as the kings of France and Spain vied for position, power, and, they hoped, a slice of the profits from Venice's extremely lucrative Mediterranean trade. Playing by turns pawn and puppet master during this period was a succession of Popes (beginning with Alexander VI and ending with Paul IV). Attempting to fund their independence was a difficult task, and the Church increasingly relied on questionable

²²³ Not helping this was the fact that the Holy Roman Emperors of the period were the first Hapsburgs to sit the Imperial throne. While not yet in control of half of Europe, as they would be three centuries later, their leadership in wars and marriage contracts was already laying the foundations for their family's later hegemony. This made the rest of Europe quite nervous.

revenue streams, such as the sale of indulgences, to ensure incomes kept pace with the outlays they found necessary. Just what outlays the ecclesiastical hierarchy found “necessary” were often themselves questionable—during this period, that included numerous building projects aimed at improving the lives of Church leadership and enhancing the prestige of the Church, most prominently the reconstruction of St. Peter’s Basilica.

In this environment, a slim volume by an unassuming Florentine diplomat began circulating just after the Fifth Lateran Council opened in 1512. In *The Prince*, Machiavelli argues that being a good ruler was not the same as being a holy man, and his most pervasive example of good rulership is the stupendously corrupt and dishonest Pope Alexander VI. The Prince was a figure of suspicion, calculation, blood, and war, not of peace, love, and understanding. The Church and religion generally, far from being his guiding light, was just a means to his end: the stability of the state and the preservation of his rule. Machiavelli’s contribution to this collapse of the Medieval synthesis of Church and state was to sunder the ideal from the real, the competent from the just, the effective from the holy, the king from the Church, and to put the Pope firmly on the wrong side of the divide.

At the same time, the papacy’s extreme corruption had become relatively common knowledge.²²⁴ Among the major issues, later addressed at the Council of Trent (1545-1563), were the non-residence of bishops, especially those who held several bishoprics, and the sale of indulgences (reducing the time one spent in Purgatory) which so outraged

²²⁴ There were numerous problems internal to the Church, which had in some measure been put on hold while the Avignon schism was addressed, but the Council of Constance (1414-1418), which resolved the schism, also demonstrated a clear appetite for reform that, because of the political problems surrounding the Council of Basel-Ferrara-Florence (1431-1449), was not addressed in the 15th century. This prompted the Fifth Lateran Council (1512-1517) and, with the Reformation, the Council of Trent (1545-1563).

Martin Luther. Overall, they were more related to ecclesiastical greed and the abuse of papal authority than anything else. But the Fifth Lateran Council failed to address many of the most critical problems, including the issue of indulgences, and the situation continued to spin out of control, costing the Pope political capital within the Church.

To emphasize the depths of the problem facing the Church during this period, an unhappy modern parallel may be found in the sex scandal that enveloped the Boston Archdiocese in 2002 and quickly spread to other dioceses following revelations that priests had been sexually abusing children, especially boys, and that the Church had taken an active role in hiding the abuse rather than removing the priests from circulation and potentially from the priesthood. The scandals of the 16th century were perhaps less salacious but no less serious. The damage done to the Church's credibility by the failures of the Council of Basel-Ferrara-Florence and the Fifth Lateran Council to address these problems was no less serious than the damage done when the *Boston Globe's* Spotlight team began running their stories on Cardinal Law and the rest of Boston's Catholic hierarchy. If anything, the damage was worse.

The sale of indulgences in the 16th is comparable scandal not because believers suddenly objected to the whole transaction but because of stark contrast between the theology of indulgences and the fact that the sales were going to bishops' living expenses. Bishops' lifestyles were quite lavish by this point, and despite the rents they collected from glebe lands, many were deeply in debt. The bishops recognized that by selling indulgences, they could raise significant funds. The sale of indulgences was authorized in a given bishopric by papal decree, and such decrees were not at all uncommon in the 15th century whenever a prince of the church got behind on his bills or wanted to put an addition on his

palace. The pope also took a cut of every indulgence sold, and much of that money went to building improvements in Rome, most notably replacing the original Basilica of St. Peter, which dated from Constantine's construction spree. And since bishops were often appointed because of bribery during this period, this was a popular way to repay the loans new bishops had taken out to facilitate their appointments, in much the same way provincial governors had used the taxes on their provinces during the Roman Republic. There were even professionals who specialized in indulgence sales. And those targeted for these sales were often those who could least afford to pay, but were nonetheless pushed to choose between food now and penance after death.

Several months after the Fifth Lateran Council closed in 1517, an Augustinian monk named Martin Luther published his 95 Theses. His particular target was the abuses of the doctrine of purgatory and the indulgences sold as a result. He asserted that penance and repentance are not the same thing (Thesis 2), that the Pope has no authority to forgive sins (Thesis 6), that the dying are freed from physical penalties by death (Thesis 13), that no amount of money can buy one's way into salvation (Theses 27, 28, 32), and a great deal of a more polemical nature concerning indulgences and their sale.²²⁵ Even though most did not have the theological sophistication to appreciate everything Luther said there, what was painfully clear from his commentary was that, with the explicit approval of the Pope, high Church officials had been trading favors in the afterlife for temporal gain, and that those most vulnerable to the scheme were those least able to afford the price of an indulgence. This went to the core of who and what the Church claimed to be in a way that

²²⁵ The most striking claim Luther made, though, was to deny that the Pope wielded St. Peter's authority. He said in so many words that the Pope did not have the keys Christ entrusted to Peter in Matthew 16:19 (Thesis 26), and it is for this claim most of all that he was subsequently tried.

the sex scandal can't, and the damage to the Church's reputation and moral authority was extreme.

As the Reformation gained momentum, it was aided by Valla's *On the Donation of Constantine*, published on a large scale for the first time with financial underwriting from sympathetic German nobility. What the Church had shrugged off in Valla's day in the face of other serious issues could no longer be ignored. The common people might still be unable to understand the issues with which Valla grappled, but their political lords could, and Luther and Machiavelli between them gave these nobles a significant reason to care about those issues for the first time as the tradition of deference fractured. Suddenly people needed a reason to continue recognizing the Pope as a legitimate political authority, and in just that moment, the reason on which the papacy had relied for centuries evaporated.

Luther has been credited with starting the Reformation, and while the 95 Theses certainly did touch a match to the ecclesiastical powder keg, the resulting explosion was only possible because the Church was widely recognized as thoroughly corrupt.²²⁶ Among its other results, the Augustan *majestas* of the Pope was irreparably shattered, and the secular state, which had in most places already been exercising tremendous control over the religious practice of its people by 'recommending' those who were to be appointed bishops in their territory, began to exercise this power much more openly. The results were particularly pronounced within the Holy Roman Empire, where the Peace of Augsburg

²²⁶ One of the other three most prominent figures of the early Reformation, Huldrych Zwingli, had begun his career as a Catholic priest and in that capacity first came to Zürich, the eventual center of his reformation efforts. When he was called to account before an ecclesiastical court for charges of inciting unrest and heresy in January 1523, his defense was basically that the court was incompetent to judge him because the ecclesiastical hierarchy was so thoroughly corrupt. Ulrich Gäbler, *Huldrych Zwingli: His Life and Work*, trans. Ruth C. L. Gritsch (Philadelphia: Fortress Press, 1986), 58-59

(1555) included the principle “*cuius region, eius religio*”, the religion of the ruler is the religion of his territory.²²⁷

The secular leaders of the day, freed from the chains of political legitimation that bound them to the Church, began using religion more openly as a political tool. In some places, the Reformation and the new air of *realpolitik* stemming from Machiavelli went hand in hand—Thomas Cromwell, for instance, the man most directly responsible for the English Reformation under Henry VIII and the installation of the English sovereign as the head of the Church of England, was said to be a devotee of Machiavelli’s thought.²²⁸ An appreciation for Machiavelli is evident in Cromwell’s activities on behalf of his prince, particularly the Acts of Supremacy (making Henry the head of the English Church) and the Dissolution of the Monasteries (refilling Henry’s coffers after a series of expensive wars and avoiding an unpopular and burdensome round of taxes). But because Niccolò Machiavelli’s name was in bad odor even then, so much so that ‘Old Nick’ was a pseudonym for the Devil in common English parlance, no one was willing to personally admit to being a devotee of his thought. Cromwell’s actual position on Machiavelli is, thus, a historical enigma.

²²⁷ Augsburg did not achieve a final settlement on the political question of the Reformation, unfortunately. Only with the Peace of Westphalia at the conclusion of the Thirty Years War in 1648 did the religious wars finally end.

²²⁸ Of course, such reports must be taken with a grain of salt. Being fond of Machiavelli’s work was leveled as a political accusation, and in Cromwell’s case, that accusation was leveled by Cardinal Reginald Pole. As Cromwell was instrumental in engineering the split from Rome in 1534 and the Dissolution of the Monasteries in 1536-40 as chief minister to Henry VIII, so Pole was instrumental in overseeing the Counter Reformation in England under Henry’s daughter, Mary I (aka Bloody Mary), in 1554-57.

So the medieval synthesis between church and state collapsed, or rather was transfigured into a new synthesis between state and church.²²⁹ But when the only available understanding of legitimate authority said that it flowed from God through the Church to the king, this created some severe problems. It became very difficult to say why the king could or should have the power of life and death over his subjects, and why this man should be king rather than this other man (or this woman). This crisis prompted responses in two principle categories: assertion of the divine right of kings to rule on the one hand and on the other, consent theories and the first flowering of social contractarianism.

2.2 *Divine Right of Kings*

The assertion of the divine right of kings begins, really, as an attempt by Europe's royal houses to reclaim the majesty of the Emperors, and they did so first by trying to buy the title from the last Byzantine heirs. Many of the Palaiologi, Byzantium's last imperial house, had escaped to Italy as refugees following the fall of Constantinople and the final end of the empire and sought the protection of the Pope who, in hopes of exploiting their heritage, gave them a monthly stipend and encouraged them to remain in Rome. In the following decades, many of the women were married into Europe's royal houses, though not always to the Pope's benefit.²³⁰

By the 1490s, only one remained in Rome, Andreas, living well beyond his means of 50 golden ducats per month (the sum of his papal stipend). He was treated as the heir

²²⁹ A casual reading of the relationship between the two in China under the 1982 constitution may illustrate the distinction. Church and state did not separate at this time; all that changed was the identity of the dominant partner in the relationship.

²³⁰ Runciman, *The Fall of Constantinople*, 182-83

to the Imperial throne, and he so styled himself. “But his behavior was hardly imperial. In 1480 he married a lady from the streets of Rome, called Caterina; and he fell heavily into debt.”²³¹ In an attempt to finance his lifestyle, Andreas signed two treaties, the first in 1494 with Charles VIII of France when he invaded Italy (the same Charles whom Machiavelli treats in *The Prince*) and the second in 1502 with Ferdinand and Isabella of Spain. For his rights, Andreas received an annual pension from Charles for as long as Charles lived (d. 1498) but nothing from the Spanish monarchs, and when he died, his wife had to beg the pope to cover his funeral expenses (104 ducats or about \$500).²³² In both treaties, he signed over *inter alia* his rights to the Imperial throne of the Eastern Roman Empire, and from thence forth both monarchs adopted the style of “majesty”.

In many ways, though, the joke was on them. Andreas surely knew, as did any lawyer of the day worth his salt, that these rights were not his to sell. Under Byzantine law, accession to the Imperial throne required simultaneous election by the Senate, the people, and the army. As the Senate and the army of the empire no longer existed (and had in fact ceased to exist in the year Andreas was born, 1453), Andreas was not the emperor and could not have been made emperor. Nor could he pass those rights to another on his own recognizance.

Nevertheless, one by one, the kings of Europe began calling themselves “majesty”. By doing so, they shifted the grounds on which they claimed political legitimation from God, the Pope, or the Emperor to themselves directly. This can be seen most clearly in France, where, in a break from the *Corpus Juris Civilis*, this shift provided a concrete legal

²³¹ Runciman, *The Fall of Constantinople*, 184

²³² Runciman, *The Fall of Constantinople*, 184

justification for the application of *lèse-majesté* in French jurisprudence without reference to the Roman origins. Judges instead, as early as the late 16th century, assert that the French king's majesty grounds the law.²³³

This left them with a bit of a dilemma—if the king's majesty grounds the law, what grounds the king's majesty? The Church was no longer a viable answer, especially in regions where the Church had been subjected to the authority of the king's majesty. Nor could it be the king's virtue—the medieval epoch had been based in part on just that theory, and its collapse occurred when someone dared point out that the emperor had no proverbial clothes. Rome had only a handful of emperors who could have made the claim stick *de novo* on the grounds of the intersection of their perceived personal virtue, demonstrated military prowess, and apparent divine approbation (Augustus, Trajan, Marcus Aurelius, Diocletian, and Constantine come to mind), and Europe was not flush with such figures in the early 16th century.

The original answer was that the king's majesty grounds itself, that majesty resides in the office on the grounds of the confluence of powers it holds. Europe's monarchs were not ignorant of Rome's history, and they well understood that what allowed Augustus to make the claims he did was that he controlled both the levers of politics and the levers of religion. The effective control over the Church which even those monarchs who remained Catholic retained meant that they could claim the same aura of religious authority afforded to the *pontifex maximus* so many years prior. As we noted above, within the Holy Roman Empire, the Peace of Augsburg (1555) included the principle "*cuius region, eius religio*",

²³³ Ralph E. Giesey, "Lese Majesty and Absolutism," 1986.

http://www.regiesey.com/Lectures/Lese_Majesty_and_Absolutism_Lecture_for_WFChurch.pdf.

Coincidentally, *lèse-majesté divine* was constituted as a separate offense, *lèse-majesté* against the Pope or God.

the religion of the ruler is the religion of his territory, a principle reiterated in other religious settlements thereafter. This formally and legally placed the religious practice of each principality at the discretion of its prince, and this was functionally the case in every monarchy in Europe.

The most forceful statements of this new theory of the divine right of kings came from Jean Bodin in France, who in 1576 published his lengthy treatise on the subject, *Les Six Livres de la Republique*,²³⁴ and from James I of England and VI of Scotland, who in 1598 put out a small pamphlet, *The True Law of Free Monarchies, or the Reciprocal and Mutual Duty Betwixt a Free King and his Natural Subjects*. The substance of these theories is that God has appointed the king to govern his people so that the right person is in the right place at the right time.²³⁵

This was, as we note, an attempt to re-create Augustus' achievement, and it was not entirely without success. In the century following, absolutism reached its zenith in France under the artful and shrewd government of Louis XIV, the sun king. Such was the force

²³⁴ To my immense frustration, this work remains unavailable in unabridged English translation.

²³⁵ I have neglected to treat here a second version of this theory because it failed to gain serious traction. Under this theory, the king ruled by right of succession from Adam, to whom God had initially entrusted the world as its steward. This rested on the assertion of a divine right of primogeniture coupled with the assertion that paternal dominion evolves into regal dominion (a view supported by Hobbes in *Leviathan* (1651), even if not specifically with an eye to supporting this theory).

It failed to gain traction for two reasons. First, it was readily apparent that the right of primogeniture was a relatively recent innovation—even as late as Charlemagne on the continent and the Heptarchy in England, kingdoms were routinely divided among surviving sons. This led to a frightful rate of fratricide, but it was clear that primogeniture did not account for rule following from Adam.

Compounding this difficulty, as Locke pointed out in the first of his *Two Treatises of Government*, no serious attempt can be made to trace Adam's eldest line (to say nothing of the complications introduced if one wishes to exclude women from succession, as many on the continent appealed to Salic law to do). Genealogical records for the human race simply don't go back anywhere near that far. As such, any attempt to assert dominion on the basis of inheritance from Adam is specious insofar as it lacks a credible basis in fact.

of his personality and so unquestioned was his authority that he made divine right look plausible. Not until his successor, Louis XV, took the throne in 1715 was there space to seriously challenge this notion in France.²³⁶

Not everyone, however, was so successful, and both Louis XIV and Louis XV underscore a key ingredient in success under such a system: competence at the top and an ability to exercise power without being seen to, where such can be achieved. Elsewhere, incompetent monarchs had a much more difficult time of it. James I himself is a prime example of this: while his predecessor in England, Elizabeth I, had followed a program similar to Augustus' in carefully crafting an image of might, grandeur, and *auctoritas*, James consistently failed to manipulate England's Parliament and was not above fighting bitterly and publically with them. Subtlety was simply not his strong suit. Added to this was his lack of facility with the actual mechanisms of government—he simply did not have the attention to detail required to run government effectively. The end result was that government was controlled by a series of favorites while the king caroused. This shattered Elizabeth's carefully crafted image of the monarch as a figure larger than life, spouse of the nation, and even James' immensely competent son Charles I could not rectify the damage (and lost his head for his troubles).

Throughout Europe, divine right theory proved untenable because the king was no more virtuous either personally or administratively than any pope (and often somewhat less) and lacked the pope's curtain of religious authority that so few had dared draw back

²³⁶ Louis XV was the great-grandson of Louis XIV and ascended the throne at age five. Unlike his predecessor, Louis was not known for his competence in governance. He lost significant territory, including France's North American possessions, and his military failures were monetarily expensive as well. The disasters of his reign set the stage for the French Revolution, which began fifteen years after his death in 1774.

before the Reformation. History demanded a new explanation for how political decisions can be made legitimately by the king, his ministers, or his parliament.²³⁷

2.3 Contract Theories, Utilitarianism, and Communism

In the 17th and 18th centuries, philosophy gave its answer: consent theory. Hobbes and Locke in England, Rousseau in France, and Kant in Prussia reversed the formula of tradition: instead of authority flowing from the top down, they posited that it actually flows from the bottom up. The people being governed are the ones who institute the government, and they have a right to a voice in that government, however tenuous.

²³⁷ About this time, another strain of religious legitimation claim begins to pick up steam, an apocalyptic liberation theology that begins with certain Protestant sects in England and Germany but eventually gains purchase elsewhere. This was apocalyptic in the Greek sense of revelatory, the coming of a new promised and divinely ordained political order being revealed in history. While it began with certain Protestants, it found fertile ground in the French Revolution in their attempt to create Rousseau's Republic of Virtue.

In its most historically prominent form, it begins with certain numerological considerations, moving to the conclusion that history is divided into two significant empires, pre-Christian and Christian, with a third empire to come in which all humans will be free and equal, the empire of the Holy Spirit (as the first two had been empires of the Father and the Son), to be ushered in by one simply called "the leader". *Mutatis mutandis*, this is the basic ideology underlying the reign of both *il Duce*, Benito Mussolini, and his Third Rome and, along with a uniquely virulent anti-Semitism, *der Führer*, Adolf Hitler, and his Third Reich.

A somewhat parallel strain of thought can be seen in early Evangelical sects, which understood the Apocalypse of John (i.e. the book of Revelation) as saying that the Second Coming of Christ would be preceded by a millennium of peace and harmony on earth. The job of the Christian, then, was to positively contribute to the creation of this new and better world both through their individual lives and through participation in government. This blended well with the general optimism of the late 19th century, especially in the United States during the Third Great Awakening, and animates much of the Protestant social activism during that era. Post-millennialists became disillusioned in large numbers following the horrors of First World War.

Likewise, a somewhat parallel strain of legitimation claims runs through Twelver Shia Islam. Adherents believe that Allah has ordained that there will be only Twelve Imams, true teachers of his will, eleven of whom lived and died by the end of the 10th century. The twelfth, the Mahdi, has been alive since then in a state of occultation, hidden from the world. Preparing the way for his reappearance or unveiling is a part of the duty of Shiite society, and the government running it. Belief in the coming Mahdi underwrote the rule of the Shahs and continues to underwrite the rule of the Ayatollahs, who have grounded their claims to legitimate authority in their custodianship of the world until he returns since the Safavid dynasty came to power in Iran in the 15th century.

For additional discussion, we refer the reader to Eric Vogelin's *Political Religions*, in *Modernity without Restraint*, CW 5, ed. Manfred Henningsen (Columbia, MO: University of Missouri Press, 2000), 19-73.

Philosophy begins to play a markedly prominent role in the legitimation of government here for the first time, and we should pause to note why. There are two primary reasons. First, the intellectual superstructure of the universities was available and relatively well-developed by this point. This had given rise to a far more robust secular educated class outside the nobility, a new elite in law, science, and governance. Coupled with the advent of the printing press, this meant there was both a relatively wide audience for new ideas and a means of communicating those ideas that did not involve shouting in the town square and could be far more readily disseminated over a significant geographic area.

This new/enhanced role of philosophy is a marked contrast from the last major shift we witnessed, Augustus' shift from the *cursus honorum* to *majestas* as the legitimating force of Roman government. At that time, the theoretical backing of your regime could not be communicated to the people so readily, not only because most were illiterate but also because it took a great deal of effort and expense to produce more than a few copies of any manuscript. Those who needed convincing, moreover, the *nobiles*, were largely already involved in politics and tended to congregate in Rome itself as the center of their world, meaning that one needed to have a conversation, a dinner party, or even an assassination to make one's point, not a treatise. The situation in the 17th century was markedly different.

Second, we cannot discount the rise of the sciences and the age of Enlightenment, something new at the time. These philosophers proposed to apply the methods of the sciences (then called natural philosophy) to human communities to understand what made them tick in an effort to understand what could make their power legitimate. This was in sharp contrast with the methodology of the ancient world. As we saw, those who conducted

such inquiries in the ancient world largely did so along lines governed by Solon's dictum that he would not give the same laws to Athens and Sparta—the same legitimation theory did not hold for Rome as did for the Greek city-states, and what mattered to most Romans was only what mattered in Rome. There was, thus, more thought trained on this question of legitimation during the Enlightenment from more quarters and with more results than had ever been the case before. The scientific consideration of the legitimation issue yielded a new set of theories not just on what made the government of England or France or Prussia legitimate but on what made any government legitimate.

Third, the question of legitimation was much more urgent in the 17th century than it had been in the 1st century BC. Notice that Augustus did not abandon the Republic's forms of governance in his second settlement; in fact, he took great pains to preserve them. We noted that there was no formal office or title of "emperor" created for him; he *just happened* to concurrently exercise a suite of powers that gave him control over the entire civil and spiritual administration of the Republic. Some, like Cicero, understood that this was the end of the Republic, but for most, this seems to have been seen as a passing phase, on par with the dictators of the past, such that the Republic's institutions would re-assert their independence once the crisis had passed. They continued on under the old legitimation framework until it was far too late to do anything about Augustus' power. And Augustus never bothered to correct them.

By contrast, the relatively swift collapse of the medieval synthesis created a very urgent question for the intellectual culture. If the king did not have his authority from the Emperor or from God, from whom did it come? This was not an issue of a slow and unnoticed shift from one practice of legitimation to another as Augustus accomplished, this

was an issue of the previous understanding becoming suddenly and thoroughly discredited and therefore simply unavailable. That came with a new kind of demand: a theory was needed that could inform a new practice of legitimation and make it satisfactory to the people, and that theory was needed urgently. This was, we emphasize, a new kind of demand for those concerned with how to live rightly and well, and philosophy answered with a variety of theories.

Strikingly consistent in these theories is a felt need to appeal to history (or ‘history’) to account for how the state came to be.²³⁸ One of the powerful conceptual features of the medieval synthesis was its ability to tell a story about why a certain ruler had his power, even if that story was always the same: God gave it to him. This was a core feature of the coronation ceremony in all cases (and broadly across religions). The ruler might be hemmed in by practical considerations, but what the king willed while acting under his royal authority carried in all or nearly all cases the divine imprimatur.²³⁹ This held true no matter to whose majesty one appealed because one of the core features of majesty in this context was its religious valence. The only real question there was whom one believed spoke for God.

²³⁸ Rousseau acknowledges at the end of Part I of his *Discourse on the Origin of Inequality* that the story he gives is only one of several possible scenarios and is pure conjecture. But he doesn’t think it matters because “the consequences I wish to deduce... will not thereby be at all conjectural, since, on the basis of the principles I have just established, no other system is conceivable... from which I could not draw the same conclusions.” Jean-Jacques Rousseau, *Discourse on the Origin of Inequality* in *The Basic Political Writings*, 2nd ed., trans. & ed. Donald A. Cress (Indianapolis: Hackett Publishing Co., 2011), 29-120, at 68; hereafter cited as Rousseau, *Discourse on Inequality*.

²³⁹ There are, of course, the unfortunate instances where the king’s personal activities were rather directly contrary to biblical principles. One hardly thinks that Henry VIII, for instance, had the divine imprimatur for much of what he did in his married life. Where the king’s personal and public life intersect, the situation is always troubled, but insofar as he acted through the crown and not simply for himself, he did so under the aegis of divine authority.

To match this, the consent theorists had to tell a different kind of story, one that featured God as a much more hands-off figure, if he figured in at all. They couldn't ignore God, not in that day and age, but they could minimize his role. So, for Hobbes, the immortal God is there in only two capacities: as the inspirer of true religion and as a contrast to and the nominal overlord of the sovereign, who is merely a "Mortal God".²⁴⁰ For Rousseau, God as lawgiver is an irritation, an annoyance, someone who sets us up to fail. We need laws, but only to coordinate our activities.²⁴¹ In the *Discourse on the Origin of Inequality*, he is quite clear that "the duty of eternal fidelity serves merely to create adulterers; and...the laws of continence and honor inevitably spread debauchery and multiply the number of abortions."²⁴² Locke is the kindest of all to God, but even he gives a decidedly deist portrait: he sets God up as a distant figure who has created the world and natural law and given it to mankind in common but has more or less left the scene. Kant more or less cuts God out of the frame altogether: religion "is an inner disposition lying wholly beyond the civil power's sphere of influence" and the state is to interact with the church only "to prevent public teachers from exercising an influence on the visible political commonwealth that might be prejudicial to public peace."²⁴³ The people need religion, but for the state, the church is little more than a potential problem to be managed.

²⁴⁰ Thomas Hobbes, *Leviathan*, ed. Edwin Curry (Indianapolis: Hackett Publishing Co., 1994), XII.12, XVII.13, capitalization original; hereafter cited as Hobbes, *Leviathan*.

²⁴¹ Jean-Jacques Rousseau, *The Social Contract* in *The Basic Political Writings*, 2nd ed., trans. & ed. Donald A. Cress (Indianapolis: Hackett Publishing Co., 2011), 153-252, at 163-64 (I.6); hereafter cited as Rousseau, *The Social Contract*.

²⁴² Rousseau, *Discourse on Inequality*, 66.

²⁴³ Immanuel Kant, *The Metaphysics of Morals*, trans. & ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 6:327; hereafter cited as Kant, *Metaphysics of Morals*.

The new story they tell places the *vox populi* in God's former place. Legitimate authority is grounded in the people's will. But this means that they needed to understand why government had been implemented and given its power in the first place: they have to go back to a time when there *was* no government and work forward. Each does it differently, but the basic features are fairly consistent.²⁴⁴ They posit and describe a time before the law came to man, before government was instituted. They are more or less pessimistic in their characterization of our original state (though in all cases this original state involves us trying to survive on our own), so the reasons we elected to leave it vary from one to the next. But in general, at some point life becomes too difficult to continue without a community, which brings with it the need for order and law. In each case, we give our consent to a new government, though the exact terms vary.

The relationship is, for all four of them, explicitly contractual: we contract with one another to set up an authority whose powers and purpose are specified and governed in the contract and which is competent to set up subsidiary authorities whose powers and purpose are not to exceed that of the initial authority. Each side of this grand bargain has a set of rights and obligations under it, and should either side fail to fulfill its obligations, the other is released from the bargain as well. When a citizen does not fulfill his obligation of obedience, the protective power of the state is withdrawn and he is treated, for a time at least, as an enemy. When a state fails to meet its obligations of protection and even-handed adjudication, the people are (usually and with major caveats) freed from their obligation to obey it.

²⁴⁴ This excludes Kant, who found the question of history irrelevant and troublesome. See Kant, *Metaphysics of Morals*, 6:318-19 and our discussion below.

Given the new purpose of government and its new wellspring of authority in the people instead of in God, a new organizational schema was required, and the consent theories generally endorse some kind of popular decision-making. They are remarkably broad on this subject, though. Hobbes is easily the most conciliatory to the old way of doing things: the sovereign is our representative and in the contract, we authorize all his actions, even if those actions are taken directly against our interests.²⁴⁵ Kant, likewise, says that “a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority”, though his concerns are more for the logical contradiction implied in saying that the highest law can be superseded.²⁴⁶ Locke is less conciliatory, endorsing a right to revolution.²⁴⁷ Rousseau has the more flexible approach; he says that different governments will be suitable for different peoples.²⁴⁸ All, though, are hostile to direct democracy and take steps to ensure that government will be, in some sense, representational. Implicit here is a general recognition of the state of education at the time: most people didn’t receive one. There are some practical limitations resulting from this that limit the possible effective participation of the people in their own governance, so each makes provision for representatives who can look out for the people’s best interests since they are basically unable to do so themselves.²⁴⁹

²⁴⁵ Hobbes, *Leviathan* XVII.13, XVIII.5-7

²⁴⁶ Kant, *Metaphysics of Morals*, 6:320

²⁴⁷ John Locke, *Two Treatises of Government*, in *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New Haven, CT: Yale University Press, 2003), Book II, Chapter XIX; hereafter cited as Locke, *Two Treatises of Government*.

²⁴⁸ Rousseau, *The Social Contract* III.9, 210

²⁴⁹ I say this of Rousseau despite the fact that he says that “The English people believes itself to be free. It is greatly mistaken; it is free only during the election of the members of Parliament. Once they are elected, the populace is enslaved; it is nothing.” (*The Social Contract* III.15, 219) He is insistent that the people make the laws, but he also allows for the role of a legislator (II.7-10). Those who *make* the laws do not have to be

With this contract and the very purposive trust implicit in representation come new and previously unheard-of restrictions on royal power and authority. While feudal kings had operated for centuries under the often inconsistent and *ad hoc* practical restrictions of recalcitrant nobility, now for the first time they were forced to operate under *systematic* restrictions limiting the legitimate exercise of their authority in all cases. In this period, we begin to speak of constitutional monarchy in a new way. The monarch is no longer the determiner of the structure of government, though he remains arguably the most important piece. Instead, popular reforms are instituted as the people begin flexing their muscles, typically through their representatives.

The early (and English) theorists were concerned primarily with what government could and could not do, where its powers extended, and our right to resist if those bounds were overstepped. But it was always unclear when the bounds had been overstepped and precisely how one might know where they were. Hobbes more or less thought that there were no boundaries to overstep; the only rights the people retained were rights to resist attempts to deprive one of life, limb, or physical liberty, and even then, the sovereign did nothing wrong in attempting to so deprive one.²⁵⁰ Locke gave as the proper bounds only “when the legislative, or the prince, either of them, act contrary to their trust.”²⁵¹ For the legislature, this means trying “to invade the property of the subject, and to make themselves, or any part of the community, masters, or arbitrary disposers of the lives,

the ones who *write* the laws, so long as it is recognized that the words flowing from the legislator’s pen are not enforceable as law until they have received the assent of the general will. The qualifications for the legislator (II.7-8) make it clear that Rousseau understands the problem of democracy with the populations available in Europe in his day. He later says that true democracy is workable only for “a people of gods”. III.4, 200.

²⁵⁰ Hobbes, *Leviathan* XIV.8

²⁵¹ Locke, *Two Treatises on Government*, Book II, Chapter XIX, §221

liberties, or fortunes of the people.”²⁵² But what does it mean to invade the property of the subject? Can excessive taxation do that? And at what point have we gotten there? Locke had in view the perfidies of James II, but not all cases are so clear-cut.²⁵³ In both cases, there’s a strong sense that one will know the boundaries when one runs up against them, but we all seem to run up against different boundaries.

The later thinkers put more effort into understanding precisely what the bounds were. Rousseau’s work is in many respects considering what terms ought to be given as part of the social contract, but he is also quite interested in how we should structure our laws. He spends substantial time in *The Social Contract* both spelling out the character of the laws with respect to certain structural features (e.g. whatever is a law must be of general applicability to be properly a law). This is not to say that the same laws should be given to all peoples, but that all things meriting the name “law” must be made in a certain way, under certain procedural limitations that will guarantee their validity.²⁵⁴

Rousseau also introduces one further innovation. Rather than simply relying on the rule of the majority (Locke) or the sovereign (Hobbes), Rousseau appeals to the general will of the people, something distinct from simple majority rule on several counts. This is a will distinct from any individual will, so that unlike Locke, we are not just voting in each of our own best interests. This is a will focused on the good of all, and when we vote with the good of all in mind, this may require voting against our own interests to a degree or in certain cases. Moreover, this will does not concern specific, particular things; it concerns

²⁵² Ibid.

²⁵³ For a good summation of what James II had done, see the first part of the English Bill of Rights 1689.

²⁵⁴ Rousseau, far from saying that there is one law for all peoples, spends substantial time in Book II on the caveat that each people will need different laws, and the same laws will not work well for all people.

only general things. And, lastly, it cannot be represented by any person or set of persons short of the whole people. If the people are not consulted in making the laws, they are not part of the general will but are slaves to those who *are* part of the general will. The social contract is logically and causally prior to the general will in being, though they come to be at the same time.

This introduces yet further restrictions on the bounds of lawgiving and the way it may be done acceptably. It is not simply that the law can only be made by the general will about general things, but the questions of property that moved Locke and, to a lesser extent, Hobbes, are now moot. In principle, you surrender your property to the general will (of which you become a part) when you sign on to the social contract. The general will has total control over the parameters of the distribution of property (and will generally return to your keeping the property you brought to the social contract) and over the rules about how individuals under the social contract will interact with one another, and the government exists to implement those laws in specific concrete circumstances. In the degree the government does this well, the government is legitimate. When the government excludes the people from decision-making, it assumes the general will for itself and makes slaves of the people. This implies a myriad of procedural requirements for making a new law legitimately in a way that does not violate the social contract and end with us in chains (though, of course, it always ends with us in chains eventually, to a greater or lesser extent). And it implies a serious restraint on the rule-making authority of government. Whether, for instance, the modern practice of delegating various regulatory rule-making powers to the executive authority, as opposed to enforcement authority, would pass muster for

Rousseau is in doubt—there is a strong argument that this steps into the realm of the general will’s competence.

Kant walks yet further down this road. He wasn’t interested in reinventing the systematic wheel in the way the others were; Kant seems to have had little time for the narratives embraced by earlier authors. Previous political states were the product of inclination and instrumental reason, which are not fit grounds for moral action. The moral worth of an action is found “in the principle of the will without regard for the ends that can be brought about by such an action.”²⁵⁵ This means that previous analyses that appealed to the purposes for which a state was formed are, therefore, not adequate grounds for the state’s legitimacy. “The act by which a people forms itself into a state is the *original contract*. Properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the legitimacy of a state.”²⁵⁶ Exactly how the state came to be is an irrelevant question, even a dangerous one: “for a people already subject to civil law these subtle reasonings are altogether pointless and, moreover, threaten a state with danger”, and any conclusions one might draw are not actionable.²⁵⁷ What mattered for Kant was not *how* the state was formed, but *that* it was formed.

Into the fact of its existence, he read many things, the most striking of which includes a number of restrictions, far more than any previous thinker had given, on the powers of the sovereign—not saying that he lacked certain powers, but saying instead that his powers could only be exercised for certain ends, at certain times, or in certain ways.

²⁵⁵ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. & ed. Mary Gregor (Cambridge: Cambridge University Press, 1997), 4:400; hereafter cited as Kant, *Groundwork*.

²⁵⁶ Kant, *Metaphysics of Morals*, 6:315

²⁵⁷ Kant, *Metaphysics of Morals*, 6:318

He does so on the basis of natural law. With every thinker writing on the subject back to Locke, Kant recognized a substantial vulnerability in Hobbes' initial conception of the sovereign as a mortal deity with no *de jure* limitation. For Kant, this poses a substantial threat to the human right that precedes sovereign authority: "*Freedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only right belonging to every man by virtue of his humanity."²⁵⁸ Included in this are the principles that a man is "his own master" and that one can't be "bound by others to more than one can in turn bind them".²⁵⁹ This right, he says, grounds any others we might have.

Much of Kant's effort in political philosophy was thus dedicated to understanding how the sovereign could and could not behave in the creation of law and the purposes to which the law ought to be bent in attempting to safeguard the right of freedom for every citizen. In the first half of the *Metaphysics of Morals*, the Doctrine of Right, he spends considerable time in the section on Public Authority going into these consequences.²⁶⁰ These are all procedural and legal limitations made to safeguard the people's freedom against actions of a sovereign that may hamper it, even if well-intentioned. The sovereign should not own land, should not impose taxes except through Parliament or something like it, should not control the Church (and can't even pay for its upkeep), should not create a

²⁵⁸ Kant, *Metaphysics of Morals*, 6:237

²⁵⁹ Kant, *Metaphysics of Morals*, 6:237-8. Emphasis removed.

²⁶⁰ Gregor's translation titles this section "Public Right", but she acknowledges in a footnote that the translation of the German here, *das öffentliche Recht*, is problematic because *Recht* can (and in Kant does) mean a variety of things including "right", "law", "justice" (in its procedural sense), and "authorization". "Public Authority" seems to best capture what Kant is discussing in this section, so I have used this translation in place of Gregor's.

hereditary nobility, and should not grant clemency in criminal cases not relating to offenses against the majesty of the sovereign.²⁶¹ All of these restrictions and more besides exist because Kant recognizes that the sovereign cannot always be trusted to use absolute power wisely and well, so he seeks to ensure that no matter who represents the sovereign will of the people or holds the office of ruler, no great harm will come to the people generally.

Of all the contract theorists, Kant thus most clearly illustrates the shift in legitimation taking place here. With the advent of liberalism, the emphasis shifts away from who's running the show to the rules under which the show is being run, from person to process. Among other things, this new emphasis makes republics more conceptually viable in this period as people search for new ways to effectively restrain government power without making government totally ineffective for what it needs to be doing. This usually involves new rules on *how* the government may do what it needs to be doing. The three most striking moments here (which, for the sake of space, we will not consider in detail) are the English Bill of Rights 1689, the US Constitution, and the French Revolution.

Moreover, they sundered the community of nations. Where before, God and the Church tied together all Christendom, national governments were explicitly left in the state of nature with respect to one another. This aligned well with their overall understandings of political legitimacy, but it was also a recognition of and concession to reality. Near the beginning of this period (1648), international law and the nature of the relationships between princes and between nations had been rewritten with the Peace of Westphalia. This set of treaties ended the Thirty Years War, the final religious war following the Reformation, which had engulfed more or less the whole of Europe. The basic principles

²⁶¹ Kant, *Metaphysics of Morals*, 6:324-27, 329, 337

of Westphalian sovereignty are that nations have no business mucking about in one another's internal affairs, that all sovereign states meet each other as equals under international law, and that the territorial integrity of nations is to be respected. As European influence spread globally through the age of empire, the principles of Westphalia came with it, and at the dawn of the 20th century, this system of sovereignty was the prevailing world order.

This shift, we must emphasize, did not happen overnight. The recognition that limits were needed and the experience to outline those limits even in the most general terms evolved over a century and a half. What is important to recognize with this is that with each change, the focus shifts increasingly from person to process. How the laws are made begins to matter more than who makes them. Under an absolute monarchy, the king can make good laws and bad laws with equal facility, if he really wants to. But the king is not the only one with good ideas. So the assumption of this shift is that if we can add opportunities to say 'no' to bad laws when the king doesn't recognize them as such (one hopes), one can prevent bad laws from being made. All men being of roughly equal capacities, it doesn't matter who is in which roles, what matters is how the roles are defined and which roles have to approve a given kind of law or policy. The US Constitution in particular exemplifies this by setting out in some detail the process under which laws shall be made, the offices that shall have the authority to make those laws, certain parts of procedure for those enforcing the laws (certain principles of standing, for instance, are codified in Article III), and restrictions on the objects of law and the methods of their

enforcement. In all this, it does not once reference a person, a family, or a history of governance to say *who* shall hold these offices or be bound by these rules of procedure.²⁶²

The 19th century brought us both the most cogent statement of utilitarianism of the modern period and the rise of communism, but for our purposes, these were variations on a theme; the more things changed, the more they stayed the same. Mill and Marx complete a shift already evident in Rousseau and Kant which began to privilege the collective over the individual and demand sacrifice from the individual in some circumstances when the health of the whole required it. From Mill, “All honour to those who can abnegate for themselves the personal enjoyment of life, when by such renunciation they contribute worthily to increase the amount of happiness in the world...”²⁶³ Marx is rather more demanding: the bourgeoisie “is unfit to rule because it is incompetent to assure an existence to its slave within his slavery, because it cannot help letting him sink into such a state that it has to feed him, instead of being fed by him”, and so must give way to him.²⁶⁴ Both Mill and Marx expound systems for deciding what the limits ought to be, though now there are things the government must not fail to do, not just things the government must forebear from doing. But neither is as prescriptive as Kant; the limits will change with the situation. What matters is the collective good.

²⁶² Content restrictions are a relatively recent innovation. Until Nuremberg, the US Constitution was also unusual in having such stringent civil liberties guarantees, and then only in the amendments, for the most part. The early Federalist Papers argue that such content restrictions were unnecessary because the procedural structure the proposed Constitution laid out would prevent the abuses that prompted the Revolution in the first place. The closest parallel to the US Bill of Rights is the English Bill of Rights 1689, and even that was largely ignored by the reign of George III, as evidenced by the complaints in the Declaration of Independence.

²⁶³ John Stuart Mill, *Utilitarianism*, in *On Liberty, Utilitarianism, and Other Essays* (2nd ed.), ed. Mark Philip and Frederick Rosen (Oxford: Oxford University Press, 2015), 129-30; hereafter cited as Mill, *Utilitarianism*.

²⁶⁴ Karl Marx and Friedrich Engels, *The Communist Manifesto*, in *Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett Publishing Co., 1994), 168-69; hereafter cited as Marx, *Communist Manifesto*.

For this, Marx appeals to the same distinction Rousseau made between the general and individual will, read through Hegel. Marx distinguishes between the individual person and the general will, but now with a twist. Where, for Rousseau, there was a separate government to deal with issues of enforcement, for Marx, the government, the political state, remains as a shackle on human liberty. This sets up a deeply problematic state of affairs for Marx: “the perfected political state is man’s *species-life* in *opposition* to his material life.”²⁶⁵ Put differently, by alienating “his own active function, his life-activity, alienated labor also alienates the *species* from him; it makes *species-life* the means of individual life.”²⁶⁶ Who and what we are as humans, not only individually but collectively and communally, is sundered by the political state and civil society from our collective lives as citizens in society. The citizen is not first and foremost a human being, and his relationship to other citizens is not the relationship he would have to other human beings. By entering this artificial collective and inhabiting these abstract, artificial ‘citizen’ constructs, we make ourselves into a new species, one we are ill-suited to being, and we hold ourselves in place by chains the state that we forge for ourselves.²⁶⁷

The beginning of emancipation is political and it removes state enforcement of differences between us (e.g. property rights, especially those of the landed gentry) or of parts of the national identity (e.g. through a state religion). Breaking down the barriers between people in a political sense, removing things like state religions or private property

²⁶⁵ Marx, “The Jewish Question”, 8, emphasis original.

²⁶⁶ Karl Marx, *Economic and Philosophic Manuscripts*, in *Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett Publishing Co., 1994), 63; hereafter cited as Marx, *Manuscripts*. Emphasis original.

²⁶⁷ Marx is, here, using the analytic tools Hegel supplied to more fully articulate the concerns that Rousseau expressed in his first two Discourses about the corrosive impact of society on the human spirit.

rights, is a start, but they are only removed from the political sphere into the sphere of civil society, not actually destroyed.

The state abolishes distinctions of *birth, rank, education, and occupation* in its fashion when it declares them to be *non-political* distinctions... Nevertheless, the state permits private property, education, and occupation to *act* and manifest their *particular* nature as private property, education, and occupation in their *own* ways. Far from overcoming these *factual* distinctions, the state exists only by presupposing them; it is aware of itself as a *political state* and makes its *universality* effective only in opposition to these elements.²⁶⁸

When the state declares the issues of religion and private property to be not within its sphere, it nonetheless allows them to persist. This is a core problem for Marx. The state's power justifies itself before this point by the stated need to maintain distinctions of birth, rank, education, occupation, property, religion, etc. After it declaims these distinctions as political issues, it grounds its reason to exist in making sure that they do not re-emerge as political. The object of that exercise, then, has been only partially accomplished: the state still has to exist, still has a role to play, because the distinctions remain, and the state now defines itself and its role in opposition to those factual distinctions.

This is political emancipation, wherein “the *state* can free itself from a limitation without man *actually* being free from it [and] a state can be a *free state* without men becoming *free men*.”²⁶⁹ But this is not true or complete emancipation. Political emancipation means only that the chains Rousseau spoke of have moved. “The throwing off of the political yoke was at the same time the throwing off of the bond that had fettered the egoistic spirit of civil society.”²⁷⁰ Political emancipation frees civil society, and it frees

²⁶⁸ Karl Marx, “The Jewish Question”, in *Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett Publishing Co., 1994), 8; hereafter cited as Marx, “The Jewish Question”. Emphasis original.

²⁶⁹ Marx, “The Jewish Question”, 7, emphasis original.

²⁷⁰ Marx, “The Jewish Question”, 19

the state from the need to control civil society with regard to a number of things, but it does not free humans. Rather, civil society now holds the chains and enforces its control through the social order rather than the political order. Even in political emancipation, the phenomenon of a “*private individual* [who] treats other men as means, reduces himself to a means, and becomes the plaything of alien powers” persists.²⁷¹ The fact of the social order requires this. This is why, even when the political state has ended all official recognition of class difference, there is still a distinction between the bourgeoisie and the slave: the chains have moved and, in fact, Rousseau’s division of the human person into the general and individual wills reinforces those chains. The state has washed its hands of these issues, allowing social custom to govern directly.

The goal, for Marx, is to restore the human to himself, to stop the alienation of humans not only from themselves but from what it means to be human through the commodification of labor and the structuring of human life by the social order. “Only when the actual, individual man has taken back into himself the abstract citizen”, that is, only when he has ceased to distinguish between his being as human and his being as social, “and in his everyday life, his individual work, and his individual relationships has become a *species-being*, only when he has recognized and organized his own powers as *social* powers so that social force is no longer separated from him as *political* power, only then is human emancipation complete.”²⁷² The political emancipation of the state and the inclusion of all in the state’s decision-making apparatus is a necessary intermediate step,

²⁷¹ Marx, “The Jewish Question”, 9, emphasis original.

²⁷² Marx, “The Jewish Question”, 21

but it is not, for Marx, the full achievement.²⁷³ But the political emancipation of the state is still a legitimate thing for the government to do—the first legitimate thing governments of his day could do, really, because it is the first step on the road to that full achievement. The legitimation of government at issue for Marx is not procedural but concerned with what will move the state and society towards this fully emancipated state of affairs. The state and society both should be oriented towards the total emancipation of the human so that we can again *be humans*, not just the cogs in the economic, political, and social machinery of state and society. In the degree that they operate to move us towards our ultimate emancipation, they are legitimate. In the degree they do not, they hold us enslaved and cannot be legitimate.

But here also, notice that the focus never leaves the people. What grounds legitimate authority for Mill and Marx continues to be the *vox populi*, when it is properly informed of the situation and oriented to their own good. The people must be properly educated and inspired to seek their own good (this is perhaps more explicit in Mill than in Marx), but even then, there's not really an appeal to a principle beyond the people. The only question is whether the people knows what's good for it and is strong enough to seek that good. Moreover, despite the international upheaval engendered by communism in the late 19th and early 20th centuries, the basic Westphalian order of international relations remained intact (and was honored and insisted upon by the communists more often than

²⁷³ It is worth noting that the full achievement of human emancipation for Marx has yet to be realized anywhere. The legitimation claims of the Marxist revolutionaries, grounded in the liberation of the people, have consistently led to additional state repression and the re-politicization of various parts of life coupled with a stronger police state, entirely contrary to Marx's vision. Since the fall of the Soviet Union, there have been no successful communist revolutions, and the failure to realize Marx's vision of a fully emancipated humanity within even one state, much less the whole of the world, suggests strongly that there is a legitimation crisis in that tradition as well.

not, at least prior to the Soviet Union).²⁷⁴ International relations were structured more explicitly in utilitarian terms, but each people was nonetheless left to its own devices internally, and appropriate *casus belli* remained limited to actions taken in breach of treaty or actions with the effect of disturbing the internal peace of another nation.

3 *Legitimation after Nuremberg*

The Westphalian order ended on 20 November 1945 at the Palace of Justice in Nuremberg. The legal justification for the Nuremberg Trials was provided in Germany's surrender documents, which made the Allied powers the legal rulers of Germany and included provisions for prosecuting crimes committed following the outbreak of war (though not prior to it), but the scope of the charges included events before the war, most notably conspiracy to create the war in the first place. There was some considerable debate about whether these trials should take place at all, or whether the accused shouldn't simply be dragged out and shot, especially after the horrors of the concentration camps became public knowledge.

The crisis this created has prompted a number of attempts to reground the legitimacy of law in a way that can both account for the actions of the Allies at Nuremberg and say why the actions of the Nazis, despite their apparent popular support, were illegitimate in the first place. After we consider the challenges the Nuremberg created, we

²⁷⁴ This is true despite, rather than because of, Marx. For Marx, as we say, the goal is the end of the state in the return of man to species-being, but there are a few steps along the way before one gets there. As a practical consideration, the political emancipation of various political states required first that other states not intervene during a communist revolution to support the existing order. While in principle opposed to the Westphalian order, the Westphalian principles of national sovereignty therefore offered communists an extremely convenient means to tell other states that under their own principles, interfering in a country undergoing a communist revolution was impermissible. With the rise of the Soviet Union, there was less need for such pragmatic compromises.

will consider two of the most prominent responses to those challenges: from the Anglo-American context, John Rawls; from the European context, Jürgen Habermas.

3.1 *Crisis*

Under existing legal doctrines of war crimes and crimes against the peace, there was no way to hold the Nazi leaders accountable for the horrors of the labor camps like Auschwitz, to say nothing of the outright extermination facilities like Sobibór or Treblinka. The actions taken by the Nazis and their collaborators in perpetrating the Shoah²⁷⁵ had been not just permitted but often mandated by the laws of Germany at the time, and no one had any idea of how to punish a government within the existing framework of international law for lawful actions taken against its own citizens.²⁷⁶ Indeed, the view of the British Foreign Office in 1942 had been “that no international court should be set up to try arch-criminals

²⁷⁵ This is the Jewish community’s preferred term for the Holocaust. A holocaust is literally a whole burnt offering as a religious sacrifice, and for entirely understandable reasons, Jews do not typically look at Hitler’s Final Solution with the same positive connotations attaching to such a sacrifice. A shoah is a catastrophe or act of destruction, which fits much better with what happened. I have therefore elected to use the term Shoah to refer to the Holocaust throughout.

²⁷⁶ To this, one must also add the commission of war crimes by German soldiers in Germany. Though the surrender documents initially prepared by the Allies and later repurposed as the Berlin Declaration provided, in the preamble and Article 13, a legal basis for the prosecution of civil crimes by the Allies as the supreme authorities in post-war Germany, and though the Moscow Declaration of 1943 articulated that war criminals should be tried by competent authorities where their crimes were committed, there was no clear authority for war crimes charges against Germans who had acted in Germany.

This difficulty was noted to the British Cabinet on 4 October 1944 by the Lord Chancellor, Viscount Simon, the man with responsibility for the functioning of the British courts. He proposed legislation to extend British jurisdiction over war crimes to war crimes committed against British subjects abroad and relax the rules of evidence in such cases to make it easier to obtain a conviction, “given the practical impossibility of securing convictions otherwise.” This was ultimately shot down as an impermissible “modification of the traditional standards of British justice and of the British judicial system.” Cabinet Minutes, WM 131 (44) 3, National Archives, London, CAB 65/44. For a more complete version of the Lord Chancellor’s proposal, see also the associated Cabinet Memorandum, WP (44) 550, NA, CAB 66/55, circulated prior to the meeting in question. Many of those who would have been tried in the British criminal justice system under the Lord Chancellor’s proposed scheme were eventually tried by the Allies at the subsequent Nuremberg Trials, and human rights and related considerations made frequent appearances in those indictments.

such as Himmler since ‘the guilt of such individuals is so black that they fall outside and go beyond the scope of any judicial process.’”²⁷⁷

As such, a trial was not the certain outcome. This debate is notable for seeing the last serious proposal of a bill of attainder in the United Kingdom. The Moscow Declaration of late 1943, while setting forth a basic framework of jurisdiction for most war crimes (war criminals were to be tried by whomever would usually have criminal jurisdiction over the place wherein the crime was committed), explicitly left open the question of the major war criminals, those whose crimes were not easily localized geographically, including those who had started the war in the first place (e.g. Hitler, Himmler, Goering, von Ribbentrop, Mussolini, etc.).

Shortly before the Tehran Conference in Nov. 1943, Churchill proposed to the British Cabinet that rather than a trial for such figures, the appropriate course would be thus: “the nearest officer of the rank or equivalent rank of Major-General will forthwith convene a Court of Inquiry, not for the purpose of determining the guilt or innocence of the accused but merely to establish the fact of identification. Once identified, the said officer will have the outlaw or outlaws shot to death within six hours and without reference to higher authority. By this means we should avoid all the tangles of legal procedure, and the responsibility for the execution of the outlaws would rest upon the decree of the 32 United Nations, which constitutes a solid and unchallengeable foundation for an Act of State.”²⁷⁸ There was some resistance to this suggestion, but with some modifications (*inter*

²⁷⁷ Ann Tusa and John Tusa, *The Nuremberg Trial*, 2nd ed. (London: BBC Books, 1995), 61-62, quoting Foreign Office Paper, 18 July 1942. LCO 2.2974; hereafter cited as Tusa and Tusa, *The Nuremberg Trial*.

²⁷⁸ Cabinet Memoranda, WP (43) 496, NA, CAB 66/42.

alia, explicitly excluding quislings), Cabinet agreed to put the question before the US and the USSR. Nothing was done at the time, but after about a year, the proposal resurfaced in a telegram Churchill proposed to send Stalin on behalf of the UK and the US.²⁷⁹

However, as things progressed, it became clear that Roosevelt would not agree to summary executions of major war criminals. Many in the British government at the time thought that a war crimes tribunal would be no more than a show trial comparable to “the travesties of justice...in the USSR”, a sentiment to which Churchill seems to have subscribed.²⁸⁰ This was a case pressed quite passionately by the Lord Chancellor, Lord Simon. It seems Churchill “put this forward at Yalta [in February 1945] but Roosevelt felt that the Americans would want a trial. [Stalin] supported Roosevelt on the perfectly frank grounds that Russians liked public trials for propaganda purposes.”²⁸¹ This information only became public knowledge in 2006 (relevant documents having been classified until then), and the official records of Churchill’s account to Cabinet on his return from Yalta contain no mention of the disposition of war criminals.²⁸²

So a trial was to be had, and crimes against humanity were added to the indictment because it wasn’t otherwise clear how to charge them. Many of those now facing prosecution had committed their crimes against, as international law then saw it, their fellow countrymen in ways which, taken individually and considered in happier (and saner) times, would have been purely questions for consideration by domestic courts. But what

²⁷⁹ Cabinet Memoranda, WP (44) 555, NA, CAB 66/56

²⁸⁰ Guy Liddell, “Diary of Guy Liddell, Deputy Director General of the Security Service, June to November 1945,” entry of 21 June 1945, The National Archives, London, reference KV 4/466, p. 14

²⁸¹ Ibid.

²⁸² Conclusions of the Meetings of Cabinet, WM 22 (45) 1, NA, CAB 65/44. See also the confidential annex to that minute, reference CAB 65/51, pp. 77-80, for a far more detailed account of Churchill’s report to Cabinet.

they had done had been legal at the time, and the crimes of those who had orchestrated the whole sordid affair of the war and all that had happened in it could not be easily localized to a single jurisdiction (or even a single nation). Few were charged with these new crimes against humanity, but they were so charged because of the prevailing sentiment that they had to be held accountable at trial and because of the lack of available alternatives under established international law.²⁸³

This abrogated Westphalian sovereignty because for the first time since the Thirty Years War, one nation set out to hold another accountable for their internal actions under a supranational moral standard which the defendant nation had violated. And that standard was human rights. The concept of human rights was itself, of course, nothing new—it arises from the rights we hold under the laws of nature, and the French had gone so far so to lay out a list during their Revolution in 1789—but for one nation to enforce these rights against another on behalf of that other's own citizens was not something that had been done before.

This was something the legitimation theories available in the mid-20th century were not equipped to handle. Hobbes and Locke can account for human rights as natural rights inviolable by the state, but when those rights are invaded and violated, both propose internal solutions to the problem. Hobbes' list of inalienable human rights is quite short (life, liberty, and bodily integrity), and you are allowed to resist when the state tries to violate these. Locke's list (life, liberty, and property) is somewhat more expansive, and his answer to violation of those rights is the right of revolution. The French Declaration of the Rights of Man and of the Citizen broadly outline Rousseau's thought, and even there,

²⁸³ Tusa and Tusa, *The Nuremberg Trial*, 87

Article III notes that “The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.”²⁸⁴ If the internal constraints fail, none of these early contract theorists offer an external solution.

Utilitarianism has the opposite problem—while it can support a notion of human rights, it’s dubious whether it can support a notion of human rights sufficiently robust to reach the high bar of justifying the invasion of another nation in defense of the rights of its own citizens. The core utilitarian principle at the level of society is that one is trying to achieve the best outcome for the greatest number, and implicit in this is a *de facto* assumption that all goods can be compared quantitatively and that qualitative assessments include quantitative implications useful for such comparisons. It’s clear enough that any utilitarian principle of human rights must be subordinated to achieving this best outcome and in fact exists only because that’s normally the best way of securing the best outcome to most of the people.²⁸⁵ But it’s unclear what the citizens of one nation get from regime change in another. The economic opportunities created for western Europe and the United States by the collapse of the Austro-Hungarian Empire and the Ottoman Empire in the aftermath of the First World War hardly seem to make up for the losses in human capital the war required or the horrors of chemical warfare to which the war introduced us. Had Germany not invaded the rest of Europe, it’s even unclear what benefit—strictly on

²⁸⁴ “Declaration of the Rights of Man – 1789,” *The Avalon Project*, accessed 31 March 2017. http://avalon.law.yale.edu/18th_century/rightsof.asp

²⁸⁵ Mill is, in fact, quite explicit about this: “It is proper to state that I forgo any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions, but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.” John Stuart Mill, *On Liberty*, in *On Liberty, Utilitarianism, and Other Essays* (2nd ed.), ed. Mark Philip and Frederick Rosen (Oxford: Oxford University Press, 2015), 14; hereafter cited as Mill, *On Liberty*.

utilitarian terms, with the assumption of quantifiability—the rest of Europe would have derived from militarily ending an intra-Germany Shoah. After all, it was carried out in secret and was happening “over there”, and we can be remarkably blind to things that don’t happen in our own back yards. It’s unclear what set of negative quantifiable impacts to the French Third Republic from a Shoah that never left Germany’s pre-WWII borders would justify military intervention by France in Germany. It’s unclear even what that set of negative quantifiable impacts might be.²⁸⁶

Added to this is the challenge that hindsight is 20/20 while foresight is practically blind. While we could issue universal condemnations of what the Nazis did and could give a utilitarian argument for the Allies intervening far sooner than they did, we do that with an awareness of history unavailable to those who lived it. It is difficult to say that what Hitler ultimately did could have been predicted with enough certainty to justify declaring war on grounds that would have abrogated the Westphalian order. This is not to say that no *causus belli* was available for going to war with Germany—the violations of the Treaty of Versailles provide ample justification, had the Allies been in a position to respond to them; they were not militarily prepared to challenge the technologically superior Nazi war machine in 1937 or 1938 (nor really in 1939 when they were left with no choice, though the gap was smaller than it had been). But none of those touched on Hitler’s treatment of the Jews. Nothing he was known to be doing to them in 1939 provided justification for

²⁸⁶ This includes questions of the sequelae of a substantial drain on the social capital or virtue capital of a neighboring nation. The assumption of quantifiability implicit in utilitarianism tends to lend it a materialist bent, particularly as it was understood during the Depression. I would never argue that having a genocidal tyrant for a neighbor is a desirable circumstance, or even one without some significant and negative potential ramifications. But trying to quantify those impacts so as to make them comparable to the human, materiel, and monetary costs of invading Germany will be devilishly difficult and produce a result that’s uncertain at best, if it’s possible at all.

going to war on utilitarian grounds.²⁸⁷ Through the historical lens available to contemporary observers, even Kristallnacht (10 November 1938) looked like little more than a particularly well-organized pogrom.²⁸⁸ War is a very high bar to satisfy, and we consider crimes against humanity and genocidal activity to be appropriate grounds today only because of Nuremberg.

We face no less a challenge of foresight today, something for which in principle utilitarian theories cannot account. Nuremberg thus transfers us to the postmodern epoch of legitimation theories, where we will consider the work of John Rawls and Jürgen Habermas. Both are, at heart, consent theories, though both are hypothetical consent theories rather than the explicit or tacit consent theories of the modern era. And both continue to focus ever more on the systems restraining government.

These theories face two significant challenges. The first is the challenge of structure. The historical exigence that prompted this new set of theories was the Nazi regime in Germany—the war was somewhat incidental to it—and the evil they committed. The problem lies in the fact that this evil was voted on by the people, and much of the fear

²⁸⁷ This statement requires some justification, but because of the deeply concrete nature of utilitarian considerations, justification will require a significant dive into the history both to understand not just what Hitler was actually doing in 1939 but also what information was available to decision-makers at the time and the ways their responses were shaped by circumstance and by their pre-existing attitudes. Unfortunately, this digression is not nearly so relevant to our core point here as our previous engagements with history have been.

²⁸⁸ See, for instance, the minutes of the British Cabinet's meeting of 16 November 1938, about a week after Kristallnacht. While they note at the outset that there is some urgency to getting Jews out of Germany, and that American opinion in particular was displeased with Britain because it "was near at hand and...should have been able to take some effective steps to stop the persecution of the Jews", they also note at some length the extreme institutional challenges to a mass resettlement program. (Conclusions of Meetings of the Cabinet, ed. Maurice Hankey and Edward Bridges (The National Archives, London, UK, reference CAB 23/18-100), 63:221-30, at 221; hereafter cited as *Cabinet Minutes*.) Notable for its absence, here and throughout Cabinet's deliberations from this period, is an awareness that Hitler was engaged in anything substantially beyond the anti-Semitic policies common in Europe at the time, albeit raised to greater effectiveness with typically German efficiency.

of the success of AFD in Germany's recent elections is derives from the specter of Hitler's rise. Legitimation theories that root the legitimacy of coercive government action in the democratically expressed will of the people have some difficulty accounting for this.

The second is the challenge of ethnocentrism. Each theory of legitimation in the modern era was built on the basis of a particular perception of the world, a particular culture, a particular religion. The shift to an empirical view of culture highlighted the ethnocentrism underlying these modern legitimation attempts: they were built on a core of universal values on the basis of which they claimed normativity, but that core of values turned out to be particular to their cultural context rather than spanning all such contexts.²⁸⁹ So the second challenge has been to build a legitimation theory that will be applicable in all cultural contexts whatsoever.

3.2 Rawls

Rawls answers these challenges with an overlapping consensus and the use of public reason. What characterized societies before pluralism was often an adherence by society and the state to a particular 'comprehensive doctrine.' This means, for Rawls, a worldview, "a rather precisely articulated system" that "covers all recognized values and virtues".²⁹⁰ Such a doctrine may be philosophical or moral, but it was usually religious in nature, and even philosophical or moral comprehensive doctrines tend to take on the force of religion over time (as, for instance, happened with Confucianism). With the advent of pluralism, a given society's comprehensive doctrine didn't vanish; rather, comprehensive

²⁸⁹ See, for instance, Michael Sandel, *Liberalism and the Limits of Justice*, 2nd ed. (Cambridge: Cambridge University Press, 1998), or Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009)

²⁹⁰ John Rawls, *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2005), 13; hereafter cited as Rawls, *Political Liberalism*.

doctrines proliferated. Pluralism, for Rawls, is most importantly characterized by a plurality of comprehensive doctrines.

3.2.1 Legitimate Law

Legitimate law-making in a pluralist society begins with a basic set of principles (for Rawls, they're his Two Principles of justice as fairness) which we can all affirm—just don't ask us why.²⁹¹ This is the overlapping consensus. No external force proposes basic principles to govern our well-ordered society with which we then concur from within our comprehensive doctrine; rather, the thought is that within each reasonable comprehensive doctrine is to be found an affirmation of the basic principles of the well-ordered society *as arising from within the comprehensive doctrine* rather than as introduced by some external arbiter.²⁹² This is what saves Rawlsian society from being a dressed-up Hobbesian *modus vivendi*—we all agree because we happen to have independently arrived at the same conclusion, not because we argued with one another until we came up with something that didn't violate anyone's comprehensive doctrine.

The principles on which this overlapping consensus settles define the domain of the political. The role of the overlapping consensus in legitimation, then, concerns the state primarily—the exercise of coercive state power is legitimate only when it occurs within

²⁹¹ I am explicitly prescinding from the vexatious question of whether Rawls' Two Principles are in fact the ones that would be the subject of an overlapping consensus. At least in *Political Liberalism*, his arguments for the Two Principles arise from the original position, not the overlapping consensus, insofar as the veil of ignorance excludes knowledge of the comprehensive doctrines. The Two Principles thus cannot function as determinative of the overlapping consensus – if they did, the fact of their coercive normative force would drop us back in a *modus vivendi*, the very place Rawls is desperate to avoid. As such, I view the content of the Two Principles as having a negligible impact on legitimation in Rawls; the important thing is the role they play in defining the domain of the political and the means and methods of public reason. There's no reason to think another set of principles could not appropriately play this role.

²⁹² Rawls, *Political Liberalism*, 144-45

the domain of the political. It represents boundaries on coercive state authority and ensures that the exercise of this authority occurs only within the agreed-upon set of principles. The domain of the political also sets boundaries on legislation—as a form of state action, the enactment of law is illegitimate outside the domain of the political.

But though an overlapping consensus is a necessary condition for legitimate government, it is not a sufficient condition. It remains possible to have a legitimate state making laws within the domain of the political in an illegitimate (i.e. non-public) way. For a sufficient set of conditions, we must include the use of public reason, which

is characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship. The subject of their reason is the good of the public: what the political conception of justice requires of society's basic structure of institutions, and of the purposes and ends they are to serve. Public reason, then, is public in three ways: as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public, being given by the ideals and principles expressed by society's conception of political justice, and conducted open to view on that basis.²⁹³

Four things in particular should be noticed in this. First is *who* reasons. It is not merely the people, nor the people as religious or constituted in their comprehensive doctrines (people clearly can and do exist in extra-civic modes as well, but such facets of life are entirely outside the scope or competency of public reason). Rather, it is the people as a set of equal individual citizens, as political rather than religious-or-similar entities. In the context of the overlapping consensus, those who reason are individuals in society operating exclusively within the domain of the political as both creators and subjects of the law.²⁹⁴

²⁹³ Rawls, *Political Liberalism*, 213

²⁹⁴ Rawls, *Political Liberalism*, 215

Second is the object of public reason. The reason of individuals as citizens concerns the means, ends, and structure of public institutions. These are not the institutions of comprehensive doctrines (e.g. churches) but the institutions of civil society, a significant part of the necessary background structure for achieving social justice. And the scope of the institutions which are the subject of public reason is bounded by the domain of the political. Rawls does note, though, that public reason's particular object is limited to "what we may call 'constitutional essentials' and questions of basic justice."²⁹⁵ Most other political questions, e.g. tax and environmental law, do not require the use of public reason.

Third, public reason, like all reason, includes "guidelines of inquiry that specify ways of reasoning and criteria for the kinds of information relevant for" the questions pertinent to that form of reason, in this case political questions.²⁹⁶ Public reason has a method and a set of guiderails, and that method and those guiderails are themselves defined in and through the overlapping consensus: reasons are acceptably public insofar as they are acceptable to all on the basis of the principles emerging through this consensus.

Fourth, where they reason is also of paramount importance. This "where" is only tangentially concerned with physical locations. Far more important are the institutional arrangements for the expression of this public reason. It must be, as the name implies, public. True, public reason is not a thing of closed-door meetings and back-room dealings but something to be conducted and concluded in the light of day, open for all citizens to examine and evaluate, but this means more than simply that it be conducted in public fora. It means also that the reason has to take place at a level accessible and comprehensible to

²⁹⁵ Rawls, *Political Liberalism*, 214

²⁹⁶ Rawls, *Political Liberalism*, 223

most citizens. Extended discourses carried on before the whole citizenry are not public in this sense if carried out in so technical and complex a language that most citizens cannot grasp the import of what is being said. Such reasoning, howsoever correct it may be, cannot be reasonably said to be open to the public's view.

So, for Rawls, the exercise of coercive state force is legitimate only when it occurs within the domain of the political (as concerns both subject and object), and constitutional law-making in particular is legitimate only if it is conducted by citizens as political law-givers and law-subjects, only if it concerns subjects within the domain of the political, only if it utilizes reasons and methods of reasoning acceptable to all by virtue of arising from or being within the overlapping consensus, and only if it takes place publicly, in full view of a citizenry able to understand. Constitutional law created in this way will set the terms for all other law and lends its legitimating force thereunto. This constitutes a complete necessary and sufficient set of conditions on the legitimacy of law and the coercive state enforcement thereof in Rawls.

His answer to the challenge of structure is to appeal not to procedural but political restraints. For the previous contract theorists we've considered, the restraints on the power of government came from a careful accounting of what any legitimate government could and could not do based on reasons deriving from natural law or from the historical purposes for which government was instituted. This reached its apex in Kant. But Rawls has chosen instead to consider how the reasons dictating the procedural constraints on government are constructed and his method demands that those reasons come not from natural law or from history directly but from the *vox populi* itself. Any government must act within the domain of the political as defined by society's overlapping consensus on principles as considered

behind the veil of ignorance: “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.”²⁹⁷ Actions taken outside of that context, whether with respect to statutes on problematic subject matter or problematic enforcement of otherwise valid statutes, are not legitimate and should not be taken. The constraints are no longer procedural but political.

His answer to the challenge of ethnocentrism similarly turns on society rather than government. Rawls strives to embrace reasonable pluralism by ensuring that one comprehensive doctrine is not privileged over another in the creation of constitutional and lesser laws. The goal is that adherents of all reasonable comprehensive doctrines should be able to participate in the political. The qualifier of the ‘reasonable’, as opposed to ‘rational’, is important here. Rawls acknowledges W. M. Sibley as the progenitor of his thought on the reasonable and the rational, and considering what Sibley has to say on the point may help us understand what Rawls is after.²⁹⁸ In doing so, however, we should bear in mind that “Sibley’s account of the reasonable is broader but consistent with that expressed by the two basic aspects of being reasonable” employed by Rawls.²⁹⁹

Sibley’s purpose in his article “The Rational Versus the Reasonable” is to achieve some semantic clarity on the distinction between the two terms. He is evidently frustrated that they are frequently used interchangeably even in technical philosophical work. The

²⁹⁷ Rawls, *Political Liberalism*, 137

²⁹⁸ Rawls, *Political Liberalism*, 49, fn. 1; WM Sibley, “The Rational Versus the Reasonable”, *The Philosophical Review* 62, no. 4 (Oct. 1953): 554-560; hereafter cited as Sibley, “The Rational Versus the Reasonable”.

²⁹⁹ Rawls, *Political Liberalism*, 49, fn. 1

distinction he draws is between the rational agent, who pursues his goals by the most effective means available, and the reasonable agent, who has a certain disposition and so sets his goals in a certain way.

Sibley opens by citing Hume's remark that it's not irrational to prefer the destruction of the world to a scratch on my finger, and Sibley concurs with that remark to a point: what he finds questionable in that assertion is whether I "really wish to purchase an insignificant amount of personal welfare at the cost of calamity to others" or have really appreciated that "the destruction of the whole world might well have worse consequences to me than the scratching of my finger."³⁰⁰ I am rational insofar as I (1) "have an informed awareness of the nature of the ends I am proposing to achieve", (2) decide on mature reflection between two conflicting ends that which "I judge to be of more value to me than its competitor", (3) "select those means which, on the best available evidence, are the most effective way of realizing those ends", and (4) act accordingly.³⁰¹ But notice that the selection of ends depends on my valuation of those ends, and there is nothing here that says I must take the impact to others into account. What is at issue is the value of those ends *to me*. Something similar is lurking unstated in the impact of the selected means. In his conclusion, he sums it thusly: "Knowing that a man is rational, we do not know what ends he will aim at in his conduct; we know only that, whatever they are, he will use intelligence in pursuing them."³⁰²

The rational selection of ends depends on the valuation of those ends, and that, for Sibley, divides the reasonable from the unreasonable. The reasonable agent, Sibley says, is

³⁰⁰ Sibley, "The Rational Versus the Reasonable", 556

³⁰¹ Sibley, "The Rational Versus the Reasonable", 555-56

³⁰² Sibley, "The Rational Versus the Reasonable", 560

one who is willing “to see the matter...from the other person’s point of view, to discover how each will be affected by the possible alternative actions; and...to be disinterestedly influenced, in reaching a decision, by the estimate of these possible results.”³⁰³ In other words, the reasonable agent is the one whose evaluation of ends takes into account not merely the impact *for me* but the impact *for others*.

Nonetheless, the way in which one takes this into account is also significant. Sibley uses as his example two men, A and B, engaged in a business transaction where A has the ability to take all the profit and leave B with nothing and no recourse. A is already well-off, whereas receiving nothing will be ruinous for B. But it may be that A will take account of B’s troubles and judge rectifying them as being of less value than padding his already well-lined pockets. If we then judge that A has acted unreasonably in appropriating all the proceeds to himself, “we are implicitly required to assume some point of view which is a *standard* one.”³⁰⁴ Therefore, “we must inquire from *whose point of view* it is better that B should receive the money.”³⁰⁵

Clearly A and B don’t have the right point of view; even if they do concur with the normative perspective, their reasons for doing so bear suspicion. Instead, Sibley says, “We locate this standard in the point of view of an informed, impartial, sympathetic spectator C.”³⁰⁶ C is able to sympathize appropriately with both sides and be *actually* disinterestedly influenced by their situations and ends, and will almost certainly conclude that A acts unreasonably if he acts to keep all the money. It is from C’s perspective, *and not* A’s or

³⁰³ Sibley, “The Rational Versus the Reasonable”, 557

³⁰⁴ Sibley, “The Rational Versus the Reasonable”, 559

³⁰⁵ Sibley, “The Rational Versus the Reasonable”, 559

³⁰⁶ Sibley, “The Rational Versus the Reasonable”, 559

B's, that we evaluate the reasonable in the situation. We should emphasize here that A and B cannot simply be relied upon to adopt C's perspective whenever a neutral perspective is required. Because of their interest positions, even if they can do so in some or most cases, they neither can nor are likely to be willing to do so in all cases whatsoever. If, then, there is no C, we cannot be assured of a truly sympathetic and impartial spectator.

The significance of this for Rawls becomes clear once we point out that Sibley's A, B, and C need not refer to just a single individual. This is very much the way the jury process works in the United States. The jury is asked to decide whether the facts of a specific case (1) fit under a given heading of law, e.g. was a murder committed here, and (2) demonstrate the defendant is guilty of the alleged crime beyond a reasonable doubt or, in civil cases, liable for an injury or abuse. The jury can be sympathetic and impartial (and so reasonable in Sibley's sense) because the jury doesn't have a reason beyond the evidence to take one side or another. During *voir dire*, judges and attorneys for both sides are to be zealous in ensuring that prospective jurors don't come in having prejudged this case. Efforts are undertaken to ensure that the jury can be impartial and sympathetic, and then to inform the jury—in other words, to create a collective Mr. C. This is possible because the scope of a given case is limited to a small subset of the individuals covered by a given law. There are always more neutral people available to decide between the parties' competing claims. We then take the jury's assessment of the situation as normative, as reasonable.

Rawls' account of the reasonable and the rational takes this foundation from Sibley and applies the distinction on a national scale. Rawls' account is somewhat more limited than Sibley's, but as he says, it's broadly consistent. For Rawls, reasonability has two applicable basic aspects: (1) The reasonable person is willing "to propose principles and

standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so”, “terms all can accept.”³⁰⁷ As we saw above, that the terms could be acceptable to all is key, even if they are eventually rejected by the political consensus.

(2) The reasonable person is willing “to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime.”³⁰⁸ These burdens of judgment are the sources of disagreement between reasonable people, and might be better called the hazards of judgment. He gives a list of several such sources in *Political Liberalism*. Of especial significance for us are potential disagreements about the relative weight that contrasting concerns should be given, including contrasting normative considerations; differences in cultural and experiential backgrounds which shape “the way we assess evidence and weigh moral and political values”; and indeterminacy in hard cases.³⁰⁹ These hazards of judgment face in two directions: first, they create the risk of alienating reasonable citizenry who find themselves in the minority on important issues. Second, they exist where the answer is not obvious, so being wrong is a very real possibility, and because they are operating for Rawls at a political scale, the consequences of being wrong are usually significant. Juries operate in a context set to limit the possible outcomes of collective decision-making process, and even there, without touching practices like jury nullification, there is often a range of possible outcomes to choose from, each creating winners and losers to a greater or lesser

³⁰⁷ Rawls, *Political Liberalism*, 49, 50

³⁰⁸ Rawls, *Political Liberalism*, 54

³⁰⁹ Rawls, *Political Liberalism*, 56-57

degree.³¹⁰ With legislation, no such guard-rails exist, and there are a plethora of relative winners and losers especially when the law is federal, national, and supposed to benefit everyone. And this problematic situation is practically unavoidable. I interpret Rawls here as meaning that the reasonable person will accept responsibility for the possibilities of alienating the minority and of being wrong.

Again, for Rawls, we accommodate reasonable pluralism by ensuring that all adherents of reasonable comprehensive doctrines are able to participate in the political. A comprehensive doctrine is an exercise of theoretical and practical reason that “organizes and characterizes recognized values so that they are compatible with one another and express an intelligible view of the world.”³¹¹ A *reasonable* comprehensive doctrine, for Rawls, is a comprehensive doctrine that is willing to forego the application of state power to “correct, or to punish, those who disagree with us”—it does not insist on conformity to itself in either the harder totalitarian mode or the softer mode of its adherents’ presumed superiority.³¹² Only a comprehensive doctrine that is willing to engage in public reason, that is, public discourse on law and policy in terms accessible to and potentially acceptable to all, to structure their lives together can be said to be reasonable. With reasonable comprehensive doctrines, “we always assume that citizens have two views, a

³¹⁰ Jury trials are usually not so neatly binary as we’d like to think. In civil trials, the jury generally has to deal with not only determining who is liable for a loss but the amount of the loss, the degree to which each party is liable, and the amount of the award, which may include punitive damages on top of any remuneration for direct damages. On the criminal side, juries aren’t restricted to a binary guilty/not guilty verdict but can be instructed to consider convicting on a lesser included charge if they believe the state has overcharged the defendant but that the defendant still committed a crime.

³¹¹ Rawls, *Political Liberalism*, 59

³¹² Rawls, *Political Liberalism*, 138. See also Lecture II

comprehensive and a political view; and that their overall view can be divided into two parts, suitably related.”³¹³

For each citizen, this “imposes a moral, not a legal, duty—the duty of civility—to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason.”³¹⁴ This duty concerns not just citizens’ conversations with one another (as citizens rather than as private individuals) but also their votes—citizens are obligated to base their votes on public reasons alone, to the exclusion of considerations from their own comprehensive doctrines, when constitutional issues or questions of basic justice are at stake.³¹⁵ This means that where religious citizens wish to advance a political agenda from their comprehensive doctrine, they must translate their religious reasons into reasons which are publically accessible.

3.2.2 Two Problems

This leaves Rawls open to two difficulties worth noting here, one probably soluble, concerning the disproportionate burdens imposed by the duty of civility on religious citizens, one potentially not, concerning the political ascendancy of the reasonable.

The first is the question of citizens whose “religiously grounded conception of justice tells them what is politically right and wrong, so that they are unable to discern ‘any

³¹³ Rawls, *Political Liberalism*, 140

³¹⁴ Rawls, *Political Liberalism*, 217

³¹⁵ Rawls, *Political Liberalism*, 219

“pull” from secular reasons.”³¹⁶ Habermas notes this objection, which he cites as originating in Nicholas Wolterstorff, with considerable concern: “the liberal state, which expressly protects such forms of existence as a basic right, cannot at the same time expect *all* citizens in addition to justify their political positions independently of their religious convictions or worldviews.”³¹⁷ It turns out that publicly accessible reasons aren’t actually comprehensive-doctrine neutral; they’re secular in character, and many citizens in modern polities come with secular comprehensive doctrines. This means that for them, the duty

³¹⁶ Jürgen Habermas, “Religion in the Public Sphere: Cognitive Presuppositions for the ‘Public Use of Reason’ by Religious and Secular Citizens” in *Between Naturalism and Religion*, trans. Ciaran Cronin (Cambridge: Polity Press, 2008), 114-47, at 128, quoting Nicholas Wolterstorff in Robert Audi & Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Lanham, MD: Rowman & Littlefield Publishers, 1997), 105; hereafter cited as Habermas, “Religion in the Public Sphere”.

The force of this objection is illustrated in *Burwell v. Hobby Lobby*, 573 US ____ (2014). This case turned on the question of whether a closely held corporation could exercise a religious freedom claim under the Religious Freedom Restoration Act (RFRA), and Justice Alito’s majority opinion was controversial in at least two respects. First, it found that corporations are, in fact, legal people capable of exercising rights (though, curiously, without citation to *Citizens United v. FEC*, 558 US ____ (2010)). Second, while expressing extreme doubt as to whether publically traded corporations would assert rights under RFRA on a number of practical grounds – “For example, the idea that unrelated shareholders...would agree to run a corporation under the same religious beliefs seems improbable” (*Hobby Lobby*, *supra*, slip op., at 29) – the Court nonetheless said that corporations could, in fact, have religious values which would be entitled to protection under RFRA, with the not-so-tacit expectation that only closely-held corporations would be putting forward those claims.

In reaching this decision, the Court’s majority considered quite a range of questions, but they explicitly refused to consider one which might be of some relevance to ethical questions of reproductive rights vs. religious rights: the reasonability of the religious beliefs in question. The Greens, the family that owns Hobby Lobby, believed that a quarter of the contraceptives they were mandated to cover are abortifacients and that it would therefore be wrong of them to facilitate acquisition and use of those contraceptive measures. This is a natural outworking of their religiously-grounded opposition to abortion and not a belief for which they could present secular reasons; secular reasons are not available in part because science is not competent to answer the question of when life begins. The Court recognized that secular reasons were not available, and rather than demanding that the Greens justify their beliefs, Justice Alito reminded the dissent and the Department of Health and Human Services (HHS) that whether a religious belief is reasonable is a “question that the federal courts have no business addressing” (*Hobby Lobby*, *supra*, slip op., at 36). The principle dissent and HHS had, he said, “Arrogat[ed] the authority to provide a binding national answer to this religious and philosophical question, ...in effect tell[ing] the plaintiffs that their beliefs are flawed” (*Hobby Lobby*, *supra*, slip op., at 36-37) – they had, in other words, imposed the burden that Habermas is concerned with here.

³¹⁷ Habermas, “Religion in the Public Sphere”, 128

of civility amounts to nothing they would not be doing if it didn't hold. It also means that the state, civil society, or both are imposing an additional burden on those affirming religious or otherwise non-secular comprehensive doctrines by requiring them "to split their identity into public and private parts the moment they participate in public discourses" in a way not required of secular citizens.³¹⁸

Nevertheless, "only secular reasons count beyond the institutional threshold separating the informal public sphere from parliaments, courts, ministries, and administrations", so religious reasons must be translated into secular reasons to cross that institutional threshold.³¹⁹ Habermas wants to correct for this by parsing the duty of civility into a duty of translation that falls equally on both sides of the secular divide. Religious citizens "may express themselves in a religious idiom only on the condition that they recognize the institutional translation proviso."³²⁰ To balance the burdens, "secular citizens must open their minds to the possible truth content of [religiously coded] presentations and enter into dialogues from which religious reasons might well emerge in the transformed guise of generally accessible arguments."³²¹ Whether the burdens are then evenly distributed rather than shifted to secular citizens is questionable, but this at least has the two sides talking and participating in the political process and leaves the political process open to non-secular citizens without closing it to secular citizens in a way not immediately identifiable under the duty of civility as Rawls expresses it.

³¹⁸ Habermas, "Religion in the Public Sphere", 130

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Habermas, "Religion in the Public Sphere", 132

The second problem is more troubling. Rawls re-encounters the problem of ethnocentrism in attempting to define an overlapping consensus, and he does so because of how he has dealt with the question of the reasonable. In universalizing the political discourse, Rawls has removed the possibility of an informed, impartial, sympathetic spectator, Sibley's Mr. C. C is not and cannot be simply an idealized perspective insofar as we cannot assume simply that A and B can adopt and deliberate on the matter from a neutral perspective at will. Even if they can in many cases, it seems clear enough that this will not hold in all cases whatsoever. We are no longer here in the situation of the jury—there are no more spectators, and no one is impartial. As we said above, C must be a real person, and once the political discourse has been universalized, there is no one left to be Mr. C.

This is further complicated by the sources of disagreement between reasonable people that Rawls lays out, most especially in his acknowledgment that we all approach these questions from defined experiential and cultural perspectives.³²² This is a hazard of judgment that can be avoided only if such a neutral spectator is available, but if we have reasonable people with a panoply of perspectives (which Rawls thinks we do, with some reason), then we also re-encounter the problem of whose perspective is to be normative. It becomes difficult to say that one experiential or cultural perspective will be the standard by which reasonable people judge cases without raising anew the specter of ethnocentrism. Indeed, once we bring all people into the conversation, as Rawls wants to do, there is no one left to be impartial.

³²² Rawls, *Political Liberalism*, 56-57

Instead, all we have left are A (the unreasonable) and B (the reasonable). For Rawls, the pluralism which one must accommodate is always reasonable pluralism. In practical terms, the overlapping consensus is the political conception that “the reasonable doctrines endorse...each from its own point of view”, which means that in defining the domain of the political and settling basic questions of constitutional law, one need not take account of or accommodate any comprehensive doctrine which cannot accommodate the overlapping consensus.³²³ Rawls seems to advocate, then, what one might call a tyranny of the reasonable.

This comes into full view in *The Law of Peoples*, where he scales up his thought to address the international order. Consider his human rights regime:

The list of human rights honored by both liberal and decent hierarchical regimes should be understood as universal rights in the following sense: they are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally. That is, their political (moral) force extends to all societies, and they are binding on all peoples and societies, including outlaw states. An outlaw state that violates these rights is to be condemned and in grave cases may be subjected to forceful sanctions and even to interventions.³²⁴

One could be forgiven for thinking that Rawls is here advocating that nations should operate together under a comprehensive doctrine, albeit one with a rather fuzzy value hierarchy, which seems to have been defined by the overlapping consensus of the reasonable. This overlapping consensus led to the creation of a list of human rights as a matter of constitutional law, and it is now to be imposed on the world, by force if necessary, despite the fact that many cultures don't have a native concept of human rights. This excludes such cultures from the company of the reasonable and makes them outlaw states

³²³ Rawls, *Political Liberalism*, 134

³²⁴ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 80-81; hereafter cited as Rawls, *The Law of Peoples*.

by default.³²⁵ And he never does explain on what grounds the reasonable may be imposed (forcibly, if necessary) on either the domestic or international scale on those he's defined as unreasonable, those who have been shut out of the political process creating constitutional law. The end result is that in the ascendancy of the reasonable, a great many are left behind. And when their new political masters (and they *are* masters insofar as they have closed the discussion to those they deem unreasonable) begin making and enforcing law, it looks from the perspective of those deemed unreasonable like the conflict between Sibley's A and B played out on a far grander scale, with the reasonable playing the part of B. Even if the reasonable can and usually do see things from all sides and take adequate account of the interests of the unreasonable in coming to their decisions, 'usually' is not 'always', and Lord Acton's axiom yet holds: power corrupts, and absolute power corrupts absolutely.

A population so ruled without the effective opportunity to be heard in the creation of the law and no available recourse against what they see as injustices feels its impotence begins to hate their overlords. As time passes and additional perceived injuries and slights accrue, this hate begins to structure their value system: what the 'reasonable' do or demand is wrong not because of some external criterion (though it may also be wrong on those grounds) but because the 'reasonable' do it or demand it. Once this happens, once the scheme of valuation is defined by resistance against an Other, *ressentiment* has set in. And then legitimate government has become impossible—the use of state force to keep the 'unreasonable' in line becomes not just optional but necessary to the continuance of the state.

³²⁵ Rawls, *The Law of Peoples*, 90, fn. 1; 93-94, fn. 6

Rawls here finds himself in rather a difficult position, caught between Scylla and Charybdis, and I do not believe Rawls supplies the tools to navigate this strait. On one side, the ‘reasonable’ qualifier on ‘reasonable comprehensive doctrine’ cannot be sacrificed without minimally returning us to a *modus vivendi* of the kind Rawls is desperate to avoid and very likely opening things to the kind of ideological repression that characterizes communist dictatorships and Islamic theocracies in the present day. This would sacrifice the solution to the structural challenge in service to answering the challenge of ethnocentrism and would ultimately fail to satisfactorily answer either challenge.

On the other side, history demonstrates what happens when the unreasonable are subjected to forcible repression: in Rawls’ century, military repression from Czarist Russia to China to Cuba and beyond fueled the rise of communism, notable as an unreasonable *secular* comprehensive doctrine, to the point that the communists became strong enough to militarily check the liberal world order in Vietnam. As always in politics, perception is reality, and in our century, the unreasonable perceive themselves to be the victims of less violent forms of repression. We could all recite the list of pejoratives that define the unreasonable now, but as a rule, they are of lower socioeconomic standing, usually do not hold graduate degrees (and may not have a college education at all), are often deeply religious, and tend towards the political right. They perceive globalism as economic repression, enriching the ‘reasonable’ global elite at the expense of the working classes in the first world and human rights abuses in the third world (e.g. the garment industry, the post-NAFTA US auto industry), and the exploitation of imported (and often undocumented) labor, with the perceived goal of keeping labor costs down, profit margins up, and political power in the hands of the ruling elite. This technocratic elite will go to

considerable lengths to show themselves as sympathetic and impartial in their decision-making, but nevertheless never appears to listen all that closely to those whom their policies damage without sustained mass protests. The present-day ‘unreasonable’ perceive political correctness as a form of social repression that uses shame to construct a cultural panopticon for their minds, and perceive the educational system as another tool of social repression insofar as it is a substantial nexus for enculturation with a decidedly left-wing bent (particularly in higher education). These perceived repressions set the stage for the rise of right-wing populism from the US (Trump) to the UK (Brexit) to France (*Rassemblement National*, Marine Le Pen) to Germany (*Alternative für Deutschland*) to Austria (Sebastian Kurz) to Italy (Five Star Movement) to Hungary (Viktor Orbán), etc. These are all different valences of *reaction*, and we would be remiss if we did not ask, “reaction against *what*?” Repression, perceived and/or real, by the ‘reasonable’ is a demonstrably effective way to create a significant population governed and fueled by *ressentiment*, generally with dangerous results.³²⁶

³²⁶ I should here acknowledge that repression as a general rule does lead to *ressentiment* and that this is not the only way repression happens. But other forms of repression, e.g. repression of racial minorities, don’t traditionally arise because of questions of reasonability as Sibley or Rawls have understood that word. In the context of slavery in the United States and Europe, for instance, repression (and really oppression) was driven by a refusal to acknowledge the African as human, preferring to think of him as another form of ape, or, if his humanity was acknowledged, questions were raised about his ability to reason. Likewise, in the context of Nazi Germany, genocide was justified on the grounds that Jews were just barely human, if that, while many other races were only marginally better, and that these lesser forms of life had to be cleared away in order for the Aryan flower to properly bloom. The same is true of repression on the basis of sex, going all the way back to Aristotle, who opined that women were just defective men.

I have not raised these specters in the body of the text because even though all repression ends in *ressentiment*, repression can spring from one of several geneses, and I am concerned here to discuss a particular point of genesis in Rawls. The repression stemming from the tyranny of the reasonable is a lesser form of repression partly because it usually doesn’t employ physical violence and partly because it lacks the overtly dehumanizing aspects of many other grounds of repression, racism included. But as a result, it also tends to be markedly more insidious, and it does end in the same kind of *ressentiment*.

3.3 Habermas

Habermas conceives the problem rather differently. Before the modern era, we all operated with a shared background consensus on the facts and norms of the world that was structured by “archaic institutions that present themselves with an apparently unassailable claim to authority.”³²⁷ In these institutions, factual claims “and normative expectations merge and harden into an unbroken complex of convictions linked with motives and value orientations.”³²⁸ Because institutional authority made itself felt “*within* [actors’] social lifeworld” and “[t]he lifeworld, of which institutions form a part, comes into view as a complex of interpenetrating cultural traditions, social orders, and personal identities”, it was able to hold together the disparate lifeworlds and provide an anchor for each society’s self-understanding, value orientations, and conceptions of justice.³²⁹ “By putting a hold on the communicative flux of reasons, and thereby stopping criticism, authoritative norms and values provided a framework for communicative actions that remained withdrawn from the vortex of problematization.”³³⁰ The institutional framework was, in other words, not functionally open to challenge or critique, so it could provide a stable tie by which to bind our lives together.

3.3.1 The Generation of Positive Law

For Habermas, the problem facing modern society is that this institutional authority has, inch by inch, been broken off and tossed into the vortex of problematization. This

³²⁷ Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge, MA: The MIT Press, 1996), 23; hereafter cited as Habermas, *Between Facts and Norms*.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ Habermas, *Between Facts and Norms*, 36-37

means that the framework structuring our communicative actions (among other things, our actions of agreeing on how and why to do things, what things to do, and who will do them) has shattered. Even if the forms and procedures of opinion- and will-formation and decision-making survived, they did so as empty shells. People within each society no longer agree on the reasons that could or should count as persuasive, no longer understand themselves in roughly the same way (and so are not committed to the same course of development), and often no longer agree on fundamental principles of justice. The lifeworlds thus begin to drift apart.

Beyond this, Habermas is cognizant of the split into various functional systems that characterizes the modern differentiated society. He notes with some concern that the systems of economy and state have emerged from the wreckage as functionally separate and self-regulating, providing of necessity a framework for communicative action. But as “the economy and state...develop systemic logics of their own”, they “push citizens into the peripheral role of mere organization members. As self-regulating systems, economy and administration tend to close themselves off from their environments and obey only their internal imperatives of money and administrative power.”³³¹ His concern is that as each goes along, each will develop its own ways of doing things, its own culture, its own common sense (to borrow a term from Lonergan) cut off from and unresponsive to the other’s culture and common meanings and the common sense pertaining to other dimensions of people’s lives.³³² This would render a common society functionally impossible.

³³¹ Habermas, *Between Facts and Norms*, 78-79

³³² We will spend some time understanding this term and its implications for Habermas below.

Habermas answers these challenges with positive law. Since the problem is basically that our norms have become untethered from the facts of our world and that we are all no longer operating with the same basic set of norms, the solution will be something that reconnects our facts and norms, our lifeworld to others', and a legitimate solution will be one that doesn't do so by force first and foremost but can be agreed by all concerned. Here, the nexus of legitimation is not the government or the procedures under which it operates but the law itself. For Habermas, law ties together our disparate lifeworlds by forcing us to act as though we have at least some things in common; law ties together our differentiated systemic spheres by translating between them and between the individual and the systemic spheres. In doing so, law fills the role formerly occupied by religion and tradition under the medieval framework. In an age that has to address reasonable pluralism, law, rather than culture, tradition, or religion, is what dictates the terms of our lives together, how we interact with one another. And to legitimately do that, law must come from each of us at the same time, or at least be able to come from each of us, and be worthy of our respect.³³³

But this entails certain procedural requirements and the institutionalization of certain schemes of communication, from which he derives his five basic types of human rights and much of the rest of his system of legitimation. These rights, though, Habermas doesn't want to understand in the 'usual' way, as natural rights held in virtue of being human. Rather, human rights, which "are inscribed in citizens' practice of democratic self-determination, must...be conceived from the start as rights in the juridical sense, their

³³³ Jürgen Habermas, "Remarks on Legitimation through Human Rights" in *The Postnational Constellation*, ed. & trans. Max Pensky (Cambridge, MA: The MIT Press, 2001), 113, 115; hereafter cited as Habermas, "Remarks on Legitimation".

moral content notwithstanding.”³³⁴ Human rights, in other words, are first and foremost legal rights which form the first principles of our common lives together by ensuring access to the discourses about law, the new anchor of our lifeworlds, and they must come out of a discourse through which we seek mutual understanding and arrive at a shared opinion. The basic rights necessary for participation in discourses that follow are those that “free and equal citizens [must] mutually accord one another if they want to regulate their common life legitimately by means of positive law”.³³⁵

These subsequent discourses will be of three kinds: moral, ethical-political, and pragmatic. Moral discourses settle questions of justice as “we convince ourselves of duties we *have*”.³³⁶ These moral discourses result in a “rationally motivated consensus” on universal moral norms.³³⁷ Because the norms are universal, they must result from a similarly universal discourse using reasons everyone can agree to in the same way, a discourse that “transcends the boundaries of every concrete legal community, giving one some distance from the ethnocentrism of one’s immediate surroundings” as each participant (which should properly take in the whole of humanity) puts him- or herself “in each individual’s situation, worldview, and self-understanding”.³³⁸

These universal, discursively concluded moral norms provide the ground rules for each community in determining their respective value orientations. There are some value orientations that are simply invalid under the previously concluded moral rules. But that

³³⁴ Habermas, *Between Facts and Norms*, 104

³³⁵ Habermas, “Remarks on Legitimation”, 116

³³⁶ Habermas, *Between Facts and Norms*, 157, emphasis original

³³⁷ Ibid.

³³⁸ Habermas, *Between Facts and Norms*, 183, 162

leaves a wide field of potential orientations, and in the ethical-political discourse, we develop our communal self-understanding, “who we are and who we seriously *want to be*”, and conclude “which obligations we *ought* to enter into or *take on*.”³³⁹ This discourse must be open to all those who will be bound by the resultant norms and settles the kinds of reasons which will hold sway in pragmatic discourses and, with the existing moral norms, forms limitations on what we may do in pursuing our interests. It also settles the legal norms that procedurally structure those pragmatic discourses.

Once those are in place, disparate interests can begin to bargain in pragmatic discourses, exercising autonomy both privately (asserting liberties of property and contract, etc.) and publicly (attempting to influence political opinion- and will-formation on concrete courses of action), limited by the substantive content of the moral and legal norms from the prior discourses. These limits concern both what parties may propose as compromises in what Habermas calls ‘strategic’ interactions and what kinds of issues may be eligible for this kind of discourse—it would be wildly inappropriate, for instance, to apply “compromise procedures...to moral or ethical questions, so that these get *redefined* into strategic questions without anyone’s noticing or calling attention to the fact.”³⁴⁰ We furthermore structure these negotiations procedurally in line with the established moral and legal norms so that they can produce fair compromises by averting “the danger that asymmetrical power structures and unequally distributed threat potentials could prejudice the outcome of bargaining”—in other words, we do what we can to limit the potential for coercion.³⁴¹

³³⁹ Habermas, *Between Facts and Norms*, 180, 157, emphasis original

³⁴⁰ Habermas, *Between Facts and Norms*, 177, emphasis original

³⁴¹ Habermas, *Between Facts and Norms*, 177

All three of these discourses are constantly ongoing, constantly evolving. The norms produced hereby both ground a legitimate law and (in the case of legal norms particularly) *are* that legitimate law because they are grounded not just in the will of the people but in the result of real attempts to come to consensus on the major issues, agreement on the middling ones, and compromise where pragmatic options are not mutually exclusive. This grounds political power built on the “communicative power of citizens. The exercise of public authority is oriented and legitimated by the laws citizens give themselves in a discursively structured opinion- and will-formation.”³⁴² Legitimacy lives not at the level of moral norms but the level of legal ones.

As used for the validity component of legal validity, the expression ‘legitimacy’ designates the specific kind of prescriptive validity (*Sollgeltung*) that distinguishes law from ‘morality.’ Valid moral norms are ‘right’ in the discourse-theoretic sense of just. Valid legal norms indeed harmonize with moral norms, but they are ‘legitimate’ in the sense that they additionally express an authentic self-understanding of the legal community, the fair consideration of the values and interests distributed in it, and the purposive-rational choice of strategies and means in the pursuit of policies.³⁴³

So, for Habermas, the exercise of coercive state force is legitimate only when (1) attempting to implement or enforce legal norms (2) that have been discursively concluded by the whole community, including all those who will be impacted, in light of and reflecting their authentic communal self-understanding (3) within a framework of and consistent with the moral norms concluded in a discourse which considered its questions from every perspective and (4) respecting the juridical human rights standing at the foundation of society.

Further specifications concerning the structure of government to one side, Habermas has built a flexible, adaptive understanding of law and the systems by which it

³⁴² Habermas, *Between Facts and Norms*, 170

³⁴³ Habermas, *Between Facts and Norms*, 156

is generated. By wedding the creation of law to discourse in this way, he avoids Hobbes' problem of authorization without input. By forcing administrative power to root its own self-understanding in and limit its scope by the communicative power of the community, he curtails the ability of the state to move in ways contrary to the considered common opinion and will created through the ethical-political discourse and problematically direct its own development while also leaving administrative power free to consider the follow-on pragmatic issues of enforcement. Interpretation through the judiciary and enforcement through administrative power stabilize behavioral expectations and allow the law to give "a socially binding character to procedurally correct results" and reconcile moral and ethical norms to the facts of our lives together.³⁴⁴ In other words, Habermas has successfully pulled together the shattered pieces of the old normative framework which were set adrift in the vortex of problematization by the collapse of the archaic traditional background consensus and bound them together with new glue: the will of the people, defined and understood discursively.

3.3.2 Positive Law & the General Bias of Common Sense

Unfortunately, he has not extracted this rebuilt structure from the vortex of problematization—it has not returned to terra firma. We still face a problem of norms insofar as the rational acceptability of reasons is unable to ground moral norms in the way he wants. The strength of the archaic background consensus, which Habermas has missed because of his way of characterizing it, was precisely its appeal to something beyond the human, something metahuman, in grounding the moral norms of traditional society.

³⁴⁴ Habermas, *Between Facts and Norms*, 179

Neither society nor the institutions themselves understood these institutions as being the final authority. A given institution's "apparently unassailable claim to authority" was always grounded outside and above the institution, beyond the human itself.³⁴⁵ I am not advocating for a return to the archaic institutions and the old ways of making law and binding society together—no return is possible—but if we understand what made them strong as a legitimating force, it will be easier to understand why Habermas' legitimation scheme is weak precisely where the archaic institutions were strongest.

Sacred institutions were (and remain) the purveyors and interpreters of basic truths concerning both facts and norms which structure the lives of the faithful both individually and communally. In the western European context, as we've seen, legitimate authority flowed not *from* the institution but from God *through* the institution to the king. This is a scenario repeated often outside the European context as well, if not always so formally and not always with a deity—consider, for instance, the Confucian concept of the mandate of heaven. Those truths were taken as authoritative, dispositive reasons in the discourse that established the moral norms, and as we saw with Constantine, they were in fact not always withdrawn from problematization. Even when not problematized, they were subject to interpretation in a more or less juridical fashion. But the norms themselves were not seen as our doing, and both those norms themselves and the perceived fact that they were metahuman in origin formed the core of the community's self-understanding.

In insisting on abandoning the natural law understanding of human rights in favor of a positive law understanding, Habermas has swept away the last vestiges of the normative power of the sacred and gained a partial answer to the challenge of

³⁴⁵ Habermas, *Between Facts and Norms*, 23

ethnocentrism. One of the most significant points of contention has always been the question of whose metahuman reality will be supplying these authoritative, dispositive truths. By insisting on a positive law understanding of human rights, Habermas has sidestepped this question to allow us to have this discussion in a way that can still appeal to the sacred if participants so choose but that is not necessarily subject to the acrimony such appeals have usually generated.³⁴⁶

But Habermas has also lost something critical for his project. It was precisely the metahuman that grounded normativity in the background consensus maintained by sacred institutions. This consensus did not collapse because of reasonable pluralism, which seems to be Habermas' assumption—indeed, as we've seen, the collapse of the background consensus in the West *created* the relevant kind of pluralism. It collapsed when people stopped accepting the reasons put forward by sacred institutions as authoritative and dispositive. That happened not because people stopped believing but because the humans running the institutions were exposed as abusing their authority as conduits of the divine or metahuman in one way or another or were unwilling or unable to persuasively integrate facts from other sources into the background consensus. Their failure, in other words, was to overreach by withdrawing too many things from problematization and placing them behind the veil of the metahuman, eventually without being able to articulate a rationally acceptable reason for doing so other than their own institutional authority. It is now in the discourse of precisely such humans that Habermas wishes to ground moral and legal norms.

³⁴⁶ For details on the nature of religion's redefined role in this discussion, see Habermas, "Religion in the Public Sphere", esp. 130-143.

The trouble with grounding moral and legal norms in human discourse is that the developmental process to which those norms are then subjected is basically reactionary, so that positive law is properly created in a basically reactionary mode, something Habermas acknowledges:

The development of the constitutional state can be understood as **an open sequence of experience-guided precautionary measures against the overlapping power of the legal system by illegitimate power relations that contradict its normative self-understanding**. From inside the legal system, this appears as an *external* relation between facticity and validity, the familiar tension between norm and reality that again and again provokes a normative response.³⁴⁷

This relationship appears external because “the facticity of legally uncontrolled social power...penetrates law *from the outside*” and law develops to counter that social power or bring it under legal control.³⁴⁸ For Habermas, then, the normativity of the legal response is effectively grounded in the answer to two questions: (1) Does it answer the challenge it purports to deal with, which is to say, is it effective? (2) Was it enacted within the pre-existing framework of both procedural and content-restrictive constitutional law consistent with the discursively concluded moral norms? The second question is interesting and important for Habermas as a way to understand the rights he believes we must have in the foundation of a legitimate state, but it does not answer the challenge left open by the first question, highlighted in the bolded section of the above quote. Notice the sequence in the developmental cycle: it is “an open sequence of experience-guided precautionary measures”.³⁴⁹ The sequence is open insofar as it doesn’t have a predetermined line of development. The measures in that sequence are precautionary and

³⁴⁷ Habermas, *Between Facts and Norms*, 39, italics original, bold mine.

³⁴⁸ Ibid, emphasis original.

³⁴⁹ Habermas, *Between Facts and Norms*, 39

guided by experience, meaning that they exist to prevent the recurrence of past errors and problems. From inside the legal system, these problems appear as being external to it, but occur in at least some cases because of distortions in the law from the intrusion of uncontrolled social power into the process of law's development. The creation of new law happens as a response to this intrusion, guided by the experience of the intrusion, and is intended to prevent future intrusions of that type.

I should emphasize at this point that the problem we consider here is not with the function of law as reconciling the validity of moral norms with the facticity implicit in pragmatic discourses. The problem is with the process by which those legal norms are developed. As we noted above, legitimate legal norms are developed in a discourse open to all who will be bound by them and “express an authentic self-understanding of the legal community, the fair consideration of the values and interests distributed in it, and the purposive-rational choice of strategies and means in the pursuit of policies.”³⁵⁰ Certainly, they are intended to do so in a way that ensures justice for all in the community. But neither this intention nor the discursive process by which legal norms are, for Habermas, properly created is proof against error in that process of development, and developmental errors inhibit this ideal functioning of the law. For Habermas, “legal norms have an artificial character; they constitute an intentionally produced layer of action norms that are reflexive in the sense of being applicable to themselves. Hence the principle of democracy...must also *steer the production of the legal medium itself*.”³⁵¹ Habermas has thus characterized positive law as, in effect, a highly purposive and artificial version of what Lonergan would

³⁵⁰ Habermas, *Between Facts and Norms*, 156

¹⁹⁸ Habermas, *Between Facts and Norms*, 111, emphasis original

call common sense, and this leaves law open to the same general, developmental bias plaguing common sense. The problem which Habermas has created is that even a perfect process would be susceptible to error because of the imperfect humans performing it. Lonergan's analysis of the general bias of common sense can help us understand why but does not itself present a perfect solution to the problem.

For Lonergan, common sense is a communal fund of shared insights and underdetermined judgments concerning concrete situations and values—not looking beyond that if at all possible. Put another way, it's the common meaning shared by a community.³⁵² It exists as both the jargon and inherited wisdom which allows one to pursue a discipline and a shibboleth that marks one as a practitioner of that discipline. “Common sense...is a specialization of intelligence in the particular and the concrete. It is common without being general, for it consists in a set of insights that remains incomplete until there is added at least one further insight into the situation at hand.”³⁵³ It “has no theoretical inclinations” and it accretes only “by the discovery of solutions that will work.”³⁵⁴ Its focus is always on the practical, always on the concrete, even if sometimes one is operating within a discipline geared towards the theoretical.

But “[t]o err is human, and common sense is very human.”³⁵⁵ The general bias is common sense's error. “The realm of common sense is the realm of persons and things *in*

³⁵² Bernard Lonergan, “The Analogy of Meaning”, in *Philosophical and Theological Papers 1958-1964*, ed. Robert Crocken, Frederick Crowe, and Robert Doran (Toronto: University of Toronto Press, 1996), 201-02; hereafter cited as Lonergan, “Analogy of Meaning”.

³⁵³ Bernard Lonergan, *Insight: A Study of Human Understanding*, 5th ed., ed. Frederick E. Crowe and Robert M. Doran (Toronto: University of Toronto Press, 1992), 199; hereafter cited as Lonergan, *Insight*.

³⁵⁴ Lonergan, *Insight*, 201

³⁵⁵ Lonergan, *Insight*, 250

their relations to us”, but common sense doesn’t recognize the limitation this implies.³⁵⁶ “Of the objects in this realm we speak in everyday language, in which words have the function...of completing the focusing of our conscious intentionality on the things, of crystalizing our attitudes, expectations, intentions, of guiding all our actions.”³⁵⁷ But when faced with demands for a systematic account of persons and things in its realm, what Lonergan calls the ‘systematic exigence’, common sense can’t give one. “The systematic exigence not merely raises questions that common sense cannot answer but also demands a context for its answers, a context that common sense cannot supply or comprehend. This context is theory...”³⁵⁸ So the limitation on common sense is its inability to really give an adequate systematic account of anything. But that doesn’t stop it from trying, and the result is the general bias of common sense.

Because common sense does not reach beyond the practical, it lacks the tools to appreciate what other disciplines have to offer. It is fully convinced of its own omniscience:

It easily is led to rationalize its limitations by engendering a conviction that other forms of human knowledge are useless or doubtfully valid. Every specialist runs the risk of turning his specialty into a bias by failing to recognize and appreciate the significance of other fields. Common sense almost invariably makes that mistake; for it is incapable of analyzing itself, incapable of making the discovery that it too is a specialized development of human knowledge, incapable of coming to grasp that its peculiar danger is to extend its legitimate concern for the concrete and the immediately practical into disregard of larger issues and indifference to long-term results.³⁵⁹

³⁵⁶ Lonergan, *Method in Theology*, 79, emphasis mine

³⁵⁷ Lonergan, *Method in Theology*, 79. This is why, for instance, talking through things tends to provide clarity on concepts or courses of actions which had previously been nebulous or uncertain – putting words to them focuses our intentionality in a new and powerful way.

³⁵⁸ Lonergan, *Method in Theology*, 79

³⁵⁹ Lonergan, *Insight*, 251

The place one sees a distinction between common sense as Lonergan sets it out here and the law as Habermas wants to understand it is only in its self-understanding: common sense of the organic variety Lonergan describes does not realize that it exists as a specialized development of human knowledge; the law knows it only too well. The hubris that grounds the law's developmental bias is itself grounded in the law's very artificiality and specialization. It knows what works because it's the product of a lengthy project in attempting to regulate human behavior according to rational norms—there is no situation with which it cannot contend. To be sure, law as practiced does not always seek only the immediate and concrete good, the successful, what will work. But its development is inextricably tied to the practical and concrete because of its orientation to implementation and enforcement. When concrete problems arise, particularly in ways that damage the social order, “Laws are passed and bureaucracies created in attempts to make sure that such infractions never happen again. But even if these reprisals seem to make common sense, often their long-term consequences are not thoroughly considered.”³⁶⁰ Law interacts with theory only insofar as it has to, and only in moments of rare and transcendent statesmanship does law “concern [itself] with ultimate issues and ultimate results.”³⁶¹

Notice that I have not said that common sense is practical in a way the law is not. Common sense appropriates theory when necessary, but only to the degree necessary and without necessarily being in any sense aware of what it is doing. Its interaction with theory is restricted to the creation of rules to thematize certain sets of judgments for the sake of convenience and compactness. Rather than describing all the different circumstances in

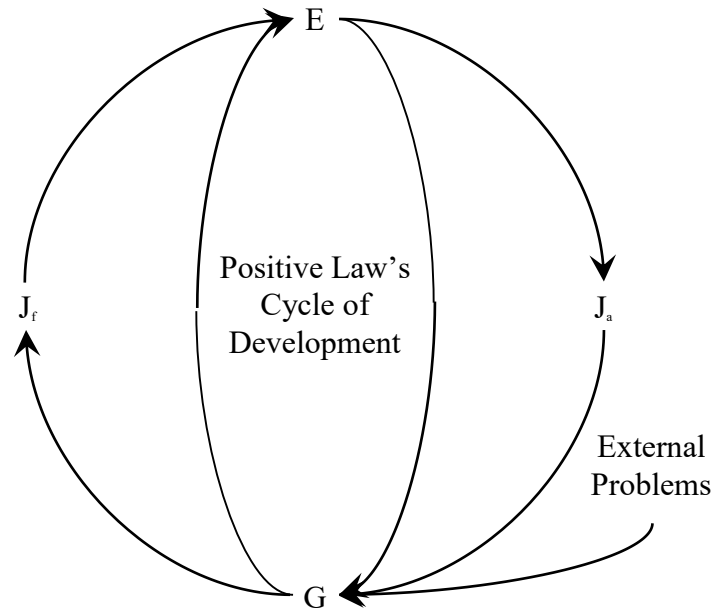
³⁶⁰ Patrick Byrne, *The Ethics of Discernment* (Toronto: University of Toronto Press, 2016), 320; hereafter cited as Byrne, *Ethics of Discernment*.

³⁶¹ Lonergan, *Insight*, 620

which cars could be coming down the road, we impart the judgment that one ought to look both ways before crossing. We only go into detail about sight lines, visual obstructions, road conditions, and braking distances when it is clear that our interlocutor (usually a child) has not brought all the relevant underdetermined judgments under that heading or is not appropriately attentive to the facts that would fully determine the judgment. Common sense must also answer a challenge of performative non-contradiction, which is to say, two common-sense judgments that contradict one another cannot hold sway at the same time. Law answers the same challenge, and sometimes (but not always) an additional challenge of systematic non-contradiction—the same thing cannot be both legally demanded and legally impermissible at the same time for the same person. Even so, old laws which have been held unenforceable under superior norms are often not scrubbed from the books, sometimes out of symbolism (as with laws about respect for the US flag), sometimes out of apathy or a lack of space on the legislative calendar (as with, for instance, laws criminalizing sodomy in Kansas).³⁶²

³⁶² 4 USC §1-10; KS Stat §21-5504(a)(1) (2017) . The laws about proper treatment of and conduct toward the US flag are unenforceable under interpretations of the First Amendment’s freedom of speech guarantees that regard conduct as a form of protected speech. The Kansas statute criminalizing sodomy was rendered unenforceable following the Supreme Court’s decision in *Obergefell v. Hodges*, 576 U.S. ____ (2015).

Law's development is a recursive cycle driven almost entirely by concrete problems. In the first instance, this is a pattern of behavior in the interactions between one system and another or between two participants within a given system, in other words a problem external to the system of law, but in later recursions, it may be



problems arising from enforcement.³⁶³ The legislators (overwhelmingly lawyers) then undertake to generate an effective solution to that problem (G). The executive arm of government proceeds to implement and enforce the new law (E). This exposes deficiencies in the law that require further legislation to fix or, in the vacuum of attention left by the concrete solution to the previous concrete problem, shifts the spotlight to a new problem requiring legislation. Generation leads to enforcement that leads to new generation that leads to additional enforcement.

The courts may intervene at any point of this process after the first generation of law (J), though such intervention is not strictly necessary.³⁶⁴ Intervention on the left side,

³⁶³ In fact, all recursions are driven by problems arising from enforcement which require changes to the law. But this does not close the possibility that a new external problem may require the generation of new law independent of enforcement issues with existing laws, as when a sufficiently novel technology is created (e.g. gene splicing)

³⁶⁴ In the American system, we should note, the courts' responsibilities exceed simply intervening in the law's development cycle. Judicial activity of the sort at issue here comes primarily from courts of appeal in the United States. Trial courts usually function as forums for the adversarial vetting of fact-claims and provide concrete redress to injured parties under the law once the facts have been established, making their function predominantly part of E. They participate in either J insofar as their fact-finding function is often a necessary first step in appellate courts' involvement.

prior to (or not concerning) implementation and enforcement, **J_r**, challenges the law itself as impermissible under superior existing norms; this is a facial challenge. A facial challenge can also be brought after enforcement has begun, of course, but a facial challenge does not challenge the way the law has been (or will be) applied. Rather, it asserts that any possible application would violate superior existing norms. This is the only point at which law might be driven by something other than concrete problems, but under most systems, rules of standing are such that one must be able to demonstrate that a concrete injury would plausibly result from enforcement of a new law in order to bring this type of challenge. Intervention concerning implementation and enforcement, **J_a**, challenges how the law has been applied as either violating superior existing norms or performatively contradicting parallel norms.

This cycle is driven at every point by the need to find concrete solutions to concrete problems. Positive law gets into theory only when it experiences that systematic exigence, only when it has to, when it is made to, and then only reluctantly—consider, for instance, that a series of man-on-the-street interviews would evince few to whom Hobbes, Locke, and Rousseau are even familiar names. What matters on the generative side of the cycle is only whether a solution to the problem will be effective, not generally whether the solution is in line with principles or theories except insofar as laws not conforming to established principles and theories will be voided. Even then, the game is far more often to see how close to the line one can walk than to comply with theory.

This is true even of the courts, who occupy a special quasi-normative place in this cycle. Jurists require that both law's generation and law's enforcement conform to certain rules, usually interpreting higher legal norms to create a framework for implementing those

through lower legal norms and direct enforcement, and when their opinions carry the force of law, the law's progenitors take those rules into account in crafting their laws. But even the rules expressed in those opinions are haphazard in generation (despite the best efforts of competent jurists) and responsive to concrete situations which demand the systematization of both generation (e.g. the *Lemon* and *Sherbert* tests) and enforcement (e.g. *Miranda* warnings) in certain respects. These rules are subject to revision and sometimes left by the wayside in later cases when shown to be unworkable, as happened to the *Sherbert* test in *Employment Div. of Oregon v. Smith*, 494 U.S. 872 (1990).³⁶⁵ Even canons of construction are not fixed or necessarily consistent, except as required by each jurisdiction's court of last resort, and then they are required by that court only because variation in the canons of construction has created problems and divisions between lower courts.

Nonetheless, law resists attempts to force it into the realm of theory and rather appropriates theory soundbite by soundbite to support the latest move in its developmental cycle. One quickly loses track of the number of experts in a wide range of disparate fields who have been misquoted, taken out of context, or misunderstood, generating law, regulation, and policy wildly inconsistent with the theory they actually endorsed because those responsible for creating and enforcing the law were simply not interested beyond supporting what they saw as practical solutions to a practical problem (and, if we're being cynics, the public relations boost of associating the expert's name with the law's development). As a result, it lags behind developments in society, preferring to give *ad*

³⁶⁵ *Sherbert v. Verner*, 374 U.S. 398 (1963), remains a relevant decision, despite being overruled, insofar as the test it promulgated was later enshrined in the Religious Freedom Restoration Act of 1993 (RFRA), a statute passed in response to the Court's decision in *Employment Div. of Oregon v. Smith*.

hoc responses to crises instead of anticipating and addressing them prospectively, even if imperfectly.

This is not helped by the often high-rabid disagreements between experts. Habermas would give the news media as the filter and synthesizer of complex facts for a public that is ill-equipped to understand the theory and often apathetic to its application. But this is made deeply problematic by developments in the information age: as the name implies, we have more information from more sources than ever before, and this gives rise to a plethora of competing syntheses and filters according to competing narratives such that it is possible to take several opposed positions on the same issue, each of which is extensively reliant on actual (as opposed to ‘alternative’) facts and each of which can claim its share of well-regarded experts. As a result, no one source presents all the facts anymore but only those facts that support their case, much to the frustration of the legal sphere. This is only made more complicated when attempting to create law on a prospective basis as under those circumstances, facts are replaced by reasonable assumption and informed speculation. This leads to a developmental bias in favor of only dealing with concrete situations and can often lead to compromises of the moral and ethical norms which had been previously discursively settled.

All of this is to say that there doesn’t seem to be a reason to think that a rigorous discourse by itself will remedy the problems evident in using humans to ground this normativity of moral and legal norms. We make mistakes quite consistently, and the way we go about making law through discourse is extremely vulnerable to those errors because our focus is so consistently on what’s gone wrong today and how we can fix it and because we have such a difficult time getting facts into the discourse, much less into proper

perspective—history is littered with examples of precisely such errors. We're left without a good way to recognize where we've gone wrong until we run up against new problems created by our past 'solutions' (and even then, we may not have gone wrong, we may be instead confronting unavoidable consequences of what was at the time the right thing to have done). Given that rigorous discourse is not proof against even disastrous error, it is difficult to say that therein we can find legitimacy for the law.

4 *Conclusion*

Now that we have brought our story up to the present day, notice the change that has taken place in legitimation from the medieval period. We've moved from a system that says that laws and actions are legitimate because of who makes them, to a system that says these laws and actions are legitimate because of how we choose the people responsible for acting, and finally to a system that says that laws and actions are legitimate because of the rules of procedure under which they were made. In each step, we've moved away from ensuring that the people running the show are the kind of people who will act correctly because that is what they are inclined to do, not because there are rules saying they must. In each step, we've moved towards ensuring proper behavior with rules of ever increasing scope and complexity, restructuring the system instead of the people running it.

But at each historical crisis point, and in each crisis of legitimation, the problem has come when the people in charge behave badly in ways the system doesn't presently control or decide they want something badly enough to circumvent the system, not because the system breaks down of its own accord. In the Roman Republic, it was first a priestly class that had stopped being priests but wouldn't give up power, then a recalcitrant nobility who grew entirely too accustomed to being absolute lords of their own fiefs to work

together for the good of the state. At the end of the Middle Ages, no one was left who could credibly claim majesty. And thereafter, a series of bad actors demonstrated just how vulnerable the systemic solutions were to abuse, culminating with the Nazi regime.

What is demanded, then, is an approach to politics that can adequately appeal to theory, and a theory that is sufficiently useful to the concrete world of law. This is not something common sense, with its attention to the concrete to the exclusion of theory, can readily supply. We have discussed the inadequacies of a system that pays too little attention to theory; we could have as easily discussed the inadequacies of a system that pays too little attention to the concrete. What we seek, then, is a method by which we can pay sufficient attention to both sides of the coin, to both theory and concrete fact, “a human science that is concerned...not only with knowing history but also with directing it.”³⁶⁶ This will require an approach attuned to the world as it is, flexible enough to recognize that two people in the same situation aren’t necessarily there for the same reasons and can’t necessarily take the same actions to alter the situation, and that the correct situational alterations for one person will not be right for another. But this approach cannot be so grounded in reality that it simply reflects reality. It must be able to push reality in a normative direction. It must be something that we as humans can deal with—an approach to politics that would be appropriate for a race of gods will not be appropriate for us. And more than that, we have to use it appropriately, not ignoring reality. As blind acquiescence to reality is irresponsible; blind conformity with theory is unreasonable.

An approach of this kind will let us understand what it is we are doing while challenging us to consider whether that is (or ever was) the right thing to be doing given

³⁶⁶ Lonergan, *Insight*, 253

our circumstances. What neither Habermas nor Rawls have done is take a proper account of the people who in a large measure constitute those circumstances. Lonergan's notion of common sense is not the solution to their problems, though the general bias of common sense does point out some pitfalls that a method of legitimation relying on systemic and procedural restraints will have to address. More importantly, it points to a difficulty with the people charged with operating these systems and following these procedures, and this is something neither Rawls nor Habermas are equipped to handle. We will consider Lonergan's approach to politics, which is capable of dealing with this problem, in Chapters 4-6 with the ultimate aim of laying out in the Conclusion a method for evaluating the concrete operations of particular individuals, societies, and institutions in their unique concrete circumstances. But to understand how authenticity can focus on people without being ethnocentric and what it will mean for it to exist through that matrix, we will first need to consider Lonergan's understanding of authenticity, which will occupy us in Chapter 3.

Chapter 3: What is Authenticity?

Now that we have recounted the history leading us to this legitimation crisis, we are in a position to begin to articulate Lonergan's answer to it. For Lonergan, legitimacy is the product of authenticity in the individual, the community, the institution and its sub-community,³⁶⁷ and the matrix of all three operating together. This is a matter of the concrete operation of each and, because it involves each working together concretely, its normativity does not prevent it from being flexible enough to consider governance in various modes and any number of historically concrete circumstances, such as we have encountered in the previous two chapters, as legitimate. To begin to approach what Lonergan means by "legitimacy," then, we will first need to understand authenticity in the individual, the community, and the institutional sub-community, which will occupy us in

³⁶⁷ We will tease this distinction out further in Chapter 6, but for Lonergan, the institution itself is a framework coordinating human action, while the institutional sub-community is the group of people acting within that framework. Authenticity is not carried in the institutional framework but in the sub-community operating according to that framework. "Dialectic of Authority", 6.

Chapters 4, 5, and 6 respectively. But before we can do that, we will first need to understand what Lonergan means by “authenticity.” That will be our task in this chapter.

Trying to understand Lonergan on authenticity is rather like Augustine trying to understand time: “What then is time? Provided that no one asks me, I know. But if I want to explain it to an inquirer, I don’t know.”³⁶⁸ Even if I know precisely what Lonergan intends by the word ‘authenticity’, trying to convey that meaning to another is a very different matter. Yet that is just the task with which we find ourselves presented in this chapter. “So human authenticity is never some pure and serene and secure possession. It is ever a withdrawal from unauthenticity, and every successful withdrawal only brings to light the need for still further withdrawals.”³⁶⁹ For Lonergan, authenticity is not something we *have*. It is something we *do*. We are authentic only insofar as we operate authentically, only insofar as we consistently and persistently discover and withdraw from unauthenticity.

Our discussion of Lonergan’s understanding of authenticity in the following four chapters will differ from other published treatments. For Lonergan, authenticity concerns three components: meanings and values, processes by which those meanings and values are arrived at, and those responsible for performing those processes. Previous considerations of Lonergan on authenticity have generally treated all three at once and thus treated authenticity as an integrated and whole way of being, and with good reason. But previous considerations of Lonergan on authenticity have generally considered what authenticity looks like for the individual *and not* in communities and institutional sub-

³⁶⁸ Augustine, *Confessions*, trans. Henry Chadwick (Oxford: Oxford University Press, 1991), XI.17; hereafter cited as Augustine, *Confessions*.

³⁶⁹ Bernard Lonergan, *Method in Theology*, 2nd ed., ed. Robert Doran and John Didosky (Toronto: University of Toronto Press, 2017), 106; hereafter cited as Lonergan, *Method in Theology*.

communities except insofar as the individual is involved in either.³⁷⁰ These three are different kinds of entities responsible for performing the processes that result in authentic meanings and values, and because each process is proportionate to the entity performing it, the process each kind of entity engages in will be different. We are thus forced to consider here in this chapter only the common thread between all three, authentic meanings and values, and we will address ourselves to the processes and those responsible for performing them in the subsequent three chapters. It may nonetheless be helpful in contextualizing the discussion of meanings and values to state in brief what the entity and process are for the authentic individual. We will then proceed to discuss meanings, values, their relationship to one another, and what makes them authentic.

³⁷⁰ Patrick Byrne's *The Ethics of Discernment*, in his discussion of the human good, comes closest to what we will be doing here. Byrne tends to draw his examples from literature, and he considers in that discussion the building of a well in a village in Malaya in Nevil Shute's *A Town Like Alice*. He considers the ways in which the new well will impact village life, the established goods of order, and the value considerations engaged in by the women of the village, whom it will most directly benefit, the village elders who must approve the project, and the English woman proposing and financing the project.

But unlike what we will do, he gives only limited consideration to the nature of the institutional structures of the community. Byrne's discussion reaches its most expansive in noting, "In reality and in value, each and every human decision and action affects the story of human history. It effects the story *as a whole* – how the *whole* story turns out – not just the last episode with which the story ends." (327) This is certainly true. But even here, Byrne is considering the impact of the actions of *individuals* on the history of communities and institutional sub-communities, not the way communities and institutional sub-communities operate to guide history themselves.

We, though, will be explicitly considering that: we have asked what could make government legitimate, for Lonergan, and we are discussing his notion of authenticity with that goal in mind. We will need to give explicit consideration to how laws are made and how other modes of cooperation are brought into being. Our approach and focus is different, therefore, from a project asking after what it means to be ethical in Lonergan's sense. Byrne's discussion will be invaluable for us, especially in the following chapter on individual authenticity, but we are nonetheless doing something different.

Patrick Byrne, *The Ethics of Discernment* (Toronto: University of Toronto Press, 2016), chapter 11, esp. 322-30; hereafter cited as Byrne, *Ethics of Discernment*.

1 *Authenticity, a Precis*

The authentic individual is a knower, valuer, and doer engaged in a process of self-transcendence springing from questioning, from inquiry.³⁷¹ The unrestricted desire to know everything about everything is part of what we affirm in our self-appropriation of ourselves as knowers, and out of this springs our questions of fact. Likewise, in the self-appropriation of ourselves as valuers and doers, we in part affirm “our desire for everything good that is the source of our questions for value reflection, choice and action.”³⁷² In inquiry, we push beyond ourselves: our inquiry intends knowledge we do not yet have, values not yet apprehended or actualized, and to obtain them, we must intend more than we are at the present moment. This is not the heavenly transcendence of humans in the presence of God as in Augustine or Aquinas, nor is it transcendence in the form of ‘moments of clarity’ as are advocated in Heidegger or Kierkegaard, but a constant recursive process of self-transcendence.

The process of individual authenticity thus means first living our lives in questions, always in questions. When we stop asking questions, when we stop being open to the tensions that herald inquiry’s arrival, when we stop being willing to consider the source of our felt discomfort, we stop being authentic. When we close ourselves off to some questions, either because we don’t care about them or because we don’t think anyone should care about them, we stop being authentic. When, for whatever reason, we refuse to consider some possible answers to our questions or refuse to hear answers, we stop being

³⁷¹ Lonergan, *Insight*, 658

³⁷² Byrne, *Ethics of Discernment*, 211

authentic. And, on the other hand, when we refuse to be open to the possibility of further pertinent questions because we think we have the answer, we stop being authentic.

Second, when questions are pertinent yet unpursued, they tend to nag us by discomfoting us until they are resolved. And this is the first major roadblock to authenticity. But the authentic life does not simply consist in cognitive and affective inquiry. It implies and requires that the authentic individual take action in accord with the judgments of fact and of value at which we arrive. These actions bring about authentic meanings and values. We will say more in the next chapter about the cognitional and ethical structures by which, for Lonergan, we come to know the world and act in it, but the end of that process when performed authentically is a decision realized in actions that produce authentic meanings and values.

These three, the entities, the processes, and the meanings and values produced, are for Lonergan co-equal as bearers of authenticity. But in his study of legitimation, there is a definite priority given to meanings and values, for two reasons. First, the authenticity of communities and institutions depends on the authenticity of the meanings and values they generate, as will an evaluative method that considers the fruits of their operation, as Lonergan suggests. The question that got us here was specifically the actions of government, and the realization of meanings and values in laws, regulations, and concrete government action will be the first and most important measure of its authenticity and so its legitimacy. Consider the following passages from the “Dialectic of Authority”:

The exercise of power is twofold. For men live in two worlds. From infancy they live in a world of immediacy, a world revealed by sense and alive with feeling. Gradually they move into a world mediated by meaning and motivated by values. In this adult world the raw materials are indeed the world of immediacy. But by speech one asks when and where, what and why, what for and how often. Answers cumulatively extrapolate from what is near to what is ever further away, from the present to one's own and to others' memories

of the past and anticipations of the future, from what is or was actual to the possible, the probable, the fictitious, the ideal, the normative.

As exercised within the world mediated by meaning and motivated by values, power resides in the word of authority.

...

So we come to a distinction between authority and authorities. The authorities are the officials to whom certain offices have been entrusted and certain powers delegated. But authority belongs to the community that has a common field of experience, common and complementary ways of understanding, common judgments and common aims. It is the community that is the carrier of a common world mediated by meaning and motivated by values. It is the validity of those meanings and values that gives authority its aura and prestige.

...from an empirical point of view culture has come to be conceived as the set of meanings and values that inform a common way of life.

Such meanings and values may be authentic or unauthentic. They are authentic in the measure that cumulatively they are the result of the transcendental precepts, Be attentive, Be intelligent, Be reasonable, Be responsible. They are unauthentic in the measure that they are the product of cumulative inattention, obtuseness, unreasonableness, irresponsibility.

Authenticity makes power legitimate. It confers on power the aura and prestige of authority. Unauthenticity leaves power naked. It reveals power as mere power. Similarly, authenticity legitimates authorities, and unauthenticity destroys their authority and reveals them as merely powerful.³⁷³

Notice that the common thread running through this entire selection is the emphasis on meanings and values *as products*. In the world of speech, meanings and values mediate our interactions with one another and constitute the world we share together.³⁷⁴ Within *this* world interpersonal power is exercised, as opposed to the immediate world of the raw material that we experience as infants before the world of speech. This is not to say that power cannot have physical effects in the immediate world of raw material—it certainly

³⁷³ Lonergan, “Dialectic of Authority”, 4-6

³⁷⁴ This is the *Lebenswelt* that forms the backdrop against which communicative action performs its integrative function for Habermas. As he points out, though, a pluralistic modernity includes societies composed of numerous *Lebenswelten*, and it’s not always clear how they can integrate with one another – they are not mediated by the same meanings or motivated by the same values. For Habermas, this is the cue for law to begin its work. Habermas, *Between Facts and Norms*, 21-23, 25-27.

can, as, for instance, mining operations demonstrate. But if “the source of power is cooperation” and “the carrier of power is the community”, an event is an exercise of power only in context of cooperation, and cooperation relies on shared meanings.³⁷⁵ Therefore, should the exercise of power become meaning~~less~~, it ceases to be an exercise of power as Lonergan has defined it.

As exercised within this world mediated by meaning and motivated by value, “power resides in the word of authority,” to which “the aura and prestige” of legitimacy is lent by “the validity of those meanings and values”.³⁷⁶ The full meaning of this will not be available until the end of Chapter 6, but in speaking of the word of *authority* as opposed to the word of the *authorities*, we mean that it’s the word of legitimate power as opposed to the word of those in a given institutional position. That power, as exercised, creates meanings and values in its exercise, and the progress over the prior state evident in those meanings and values is what lends the pronouncements of authority its aura and prestige. It stays authoritative in this sense only insofar as it continues to bring about meanings and values that achieve progress, and we will consider what that looks like in the Conclusion.

So the word of authority is subject to a constant regenerative cycle, constantly renewing itself *as authoritative* in its processes by its results. We saw this in action in the previous chapter when we observed that Rome only faltered when its emperors were unable to demonstrate majesty. That majesty is what gave them *authority*, and when they were reduced to mere *authorities*, they could no longer hold together the vast state that the authority of their predecessors had built.

³⁷⁵ Lonergan, “Dialectic of Authority”, 3

³⁷⁶ Lonergan, “Dialectic of Authority”, 4

Community, built of and by those with whom we share this world of meaning, is the common carrier of meanings and values. Community is structured by both customary and formal schemes of cooperation (institutions), and the word of authority, in which the power of the world mediated by meaning and motivated by value resides, rests “to a great extent...in the sum total of current institutions.”³⁷⁷ So also the authorities within and created by these institutions are legitimate insofar as they seek authentic meanings and values.

And these meanings and values are bearers of authenticity.³⁷⁸ “They are authentic in the measure that cumulatively they are the result of the transcendental precepts, Be attentive, Be intelligent, Be reasonable, Be responsible. They are unauthentic in the measure that they are the product of cumulative inattention, obtuseness, unreasonableness, irresponsibility.”³⁷⁹ Lonergan does go on to say that “[a]uthenticity and unauthenticity are found in three different carriers: (1) in the community, (2) in the individuals that are authorities, and (3) in the individuals that are subject to authority.”³⁸⁰ But in each case, they are authentic at least in part because they are pursuing authentic meanings and values, which is to say, meanings and values derived and created by means of a normative process of cognition and ethical decision-making.

Authenticity is thus the product of this normative, recursive process of inquiry, the process itself is authentic insofar as it brings about authentic meanings and values, and the

³⁷⁷ Lonergan, “Dialectic of Authority”, 5

³⁷⁸ Note that this is not to say that meanings and values as authentic are not situated within cultures, institutions, and communities. It is, however, to say that they are separate bearers of authenticity. Such cultures, institutions, and communities as are authentic will be so not only in producing authentic meanings and values but also in *how* they produce those meanings and values.

³⁷⁹ Ibid.

³⁸⁰ Lonergan, “Dialectic of Authority”, 6

responsible person is authentic insofar as he or she performs an authentic process authentically. Process can convey authenticity only insofar as it conforms to the transcendental precepts. Each process exists concretely and it is intended to achieve a particular aim, be that knowing and evaluating the world as it exists or making specific changes of a particular kind in that world. And each process will be attentive, intelligent, reasonable, and responsible, or it will not.

Individuals, communities, and institutions carry authenticity insofar as they pursue meaning and value through normative processes (i.e. through the transcendental precepts). This means, at least in part, that an individual, community, or institution must engage in the normative processes of knowing and doing *purposively*. We will explore in greater detail what this means for the individual in Chapter 4, but in brief, it means understanding how we know and choose to act, affirming that, and choosing to work with it in setting and pursuing more particular goals. Moreover, in Chapters 5 and 6, we will need to consider what it might mean for communities and institutions to operate along similar lines.

But an individual, community, or institution can also luck into meanings and values that would otherwise be the product of an authentic process. Intentionally engaging in the normative processes of being human is the only way to be authentic, which is to say, to realize authentic meanings and values consistently, but it's not the only way whatsoever to realize those meanings and values. This is part of why, for instance, communist dictatorships can achieve some limited success with their reforms: In the suffering of the common man and attempting to correct it, the communist comes to a set of meanings and values that would be authentic had he otherwise arrived at them, but because he did not come to this through authentic processes, he is left (at best) unsure of how to act on those

meanings and values, which is to say, the distortions in his ways of knowing and valuing lead him to erroneous conclusions about how to correct this suffering. As a result, communist reforms tend to retard progress at a minimum and can ultimately leave the people worse-off than they had been. Such dictatorships find one set of authentic meanings and values but do not generally find more. This leaves us with a caveat that will bear re-emphasis in the following chapters: finding authentic meanings and values once or twice is not a guarantee that an individual, society, or government is being authentic—“authenticity is reached only by a long and sustained fidelity to the transcendental precepts. It exists only as a cumulative product.”³⁸¹ Put another way, even a stopped clock is right twice every day. To be right more often, it needs to be operating normatively.

We should moreover note that the authenticity of meanings and values is dependent on their context: “...what is authentic for a lesser differentiation of consciousness will be found unauthentic by the standards of a greater differentiation.”³⁸² In other words, individuals, communities, and institutions are on lines of relative development or breakdown/decline. Since the normative process of inquiry is both recursive and infinite because our questions are serial and we never run out of questions, the expectation is that the meanings and values resulting from that process will change as the individual, community, and institutions develop through new insights and their application. Our situationally-dependent questions can live to see their once-authentic answers grow outdated, which requires fresh answers, prompting us to do new things, to realize new and

³⁸¹ Lonergan, "Dialectic of Authority", 6

³⁸² Ibid.

different meanings and values, contributing to the evolution of the situation in which we are operating.

Concrete processes have “normative line[s] of development” along which they shift and change as “insight into concrete situations” show how the situation is changing and prompt changes in process to account for or accommodate those changes, thereby “chang[ing] the situation and giv[ing] rise to new insights.”³⁸³ This means that every specific, concrete process, such as bureaucratic procedures, will be appropriate only some of the time, and that application of that process when it’s not appropriate would be, itself, irresponsible and therefore unauthentic. It also means that often, old goals and practices are superseded and should be left behind. So a failure to reconsider old meanings and values that once were authentic can make them unauthentic if answers from a normative process elsewhere prompt such a re-examination and re-evaluation. Lonergan calls this the “sin of backwardness” committed by those “that fail to live on the level of their times.”³⁸⁴

I say this with the caveat that there are a few universally applicable processes, processes that are appropriate to every time and place, the proper application of which will always be authentic. This includes the structure of conscious intentionality, as Lonergan understands it, and the structure of ethical intentionality as Byrne has outlined it, and we will consider how these play into the authenticity of the individual in Chapter 4. These processes are distinguished from all other possible human processes in that the constant availability of these processes for application by each conscious individual is part of what

³⁸³ Lonergan, *Insight*, 620. His comments there are specific to goods of order but are, I think, applicable broadly to all concrete processes whatsoever operating authentically.

³⁸⁴ Lonergan, “Dialectic of Authority”, 6

it means to be human, and for Lonergan, proper application of these processes is normative.³⁸⁵

This also gives us the place to which Lonergan points as the signpost for an authentic institution or culture: authenticity results in progress, inauthenticity results in decline. The normative process, the transcendental method, moves along a normative trajectory. Perfect pursuit of meaning and value through the transcendental precepts over an infinite time period would yield a normative set of meanings and values, and the meanings and values produced at each step along the way, if they are the cumulative result of attentiveness, intelligence, reasonableness, and responsibility, will represent an improvement upon and evolution from the previous generation.

But, as we said at the outset of this section, as compared with authenticity in individuals, authenticity in community and in institutions is concerned with different processes and different entities are responsible for their performance. The tie that binds the three together is the meanings and values. So while we will deal with process and responsible entity in Chapters 4-6, we need to discuss meanings and values here.

2 Meanings

Lonergan's writings on meaning break generally into two categories defined by two different methodological approaches. He explains this in a lecture from 1963, second in a series of three, entitled "The Analogy of Meaning":

One could start logically by asking, 'What is meaning?' and pointing out that any answer to the question either would have a meaning or it would not. If it had no meaning, it would

³⁸⁵ Lonergan, *Method in Theology*, 21. One might quibble on whether a thoroughly drunk person, for instance, can properly engage in these processes; the processes are still available to him or her even so, though. One will simply have a vastly more difficult time engaging in these processes well when drunk.

be useless and senseless; but if it did have a meaning, you would be presupposing what you are talking about; you would be in some sort of a circle. But a second thought on the same topic brings to mind that meaning is in a sense self-explanatory. The meaning of meaning is a meaning. The question answers itself. [One] could proceed either analytically or descriptively to state that a little more concretely.³⁸⁶

Lonergan is picking up here that meaning is, in some senses, a basic term—we know what we mean by meaning, and trying to articulate that mostly just confuses the issue. But there are two ways of attempting to profitably articulate it, and our discussion in this section will follow this division between analytic and descriptive method. Lonergan never gave up on either approach, and despite his pessimism in 1963, he elsewhere did define meaning as act at least four times between 1957, the year he published *Insight*, and *Method in Theology* in 1972, and it will be helpful for us to have that in hand going forward.

Before we proceed, though, we should attend to a linguistic anomaly that can create some confusion in this discussion. We use the word ‘meaning’ and other forms of the verb ‘to mean’ in several different ways, referring to act, subject, and object. It is clear enough that there’s a distinction to be drawn between what I’m doing when I mean something and what is meant in that act, but we use the same word, ‘meaning’, for both. There are reasons of grammar behind this—it’s an unfortunate accident of morphology—but we should nonetheless pay attention to whether the word is being used as an active verb or the present participle as a substantive adjective.³⁸⁷ In an attempt at disambiguation, we will differentiate in what follows between what I’m doing when I mean something, meaning as act, and what is meant, meaning as object. We will also speak of the meaning subject, that

³⁸⁶ Lonergan, “Analogy of Meaning”, 184

³⁸⁷ I am aware that some dictionaries list the participle of ‘to mean’ as only ‘meant’; that is the past participle, and used almost exclusively as a substantive adjective interchangeable with meaning-as-object.

is, the subject who is engaged in an act of meaning. When we say that someone means X, that is always a meaning subject performing meaning as act where X is meaning as object.

2.1 Analytic Approach

An analytic approach to the question of meaning tries to get at what meaning *means*, what it means to mean something, what meaning *is*. In “The Analogy of Meaning”, Lonergan describes it this way:

An analytic approach would be through the notion of being, the inquiring mind which intends everything and which unfolds itself on the level of experience (the level of data of sense and/or consciousness), secondly on the level of understanding and conception, and thirdly on the level of reflection and judgment. This gives us a meaning on the level of experience, a meaning on the level of understanding, a meaning of a different type on the level of judgment. The analogy of meaning is simply the comparison of those three levels of operation.³⁸⁸

An analytic approach will talk first about what meaning as act *is*, then differentiate between several kinds of meanings as acts and their objects. Our discussion will follow a similar division. In the end, Lonergan carries his analogy a touch further than he suggested he might in “The Analogy of Meaning”. The stages that he does suggest, however, are the three stages of cognitional structure, which we will discuss in detail in the next chapter.

2.1.1 What Is Meaning as Act?

We begin with four instances of Lonergan articulating what meaning *is*, and though each has a different cast, they all have the same object in mind. During a rumination on the nature of one’s perception of Gasson Hall in a series of lectures he gave at Boston College in 1957, Lonergan said that what one means in saying that one sees Gasson Hall

³⁸⁸ Lonergan, “Analogy of Meaning”, 184

is that one has “a construct. You get that construct insofar as you have an intentional act, a meaning.”³⁸⁹ So whenever I see Gasson Hall (or any building), the image before me is not what I mean by ‘Gasson Hall’—I mean the whole of the structure itself, not my perception of it from any given angle or composite thereof. Likewise, when one explains a thing, one intends that thing as one knows it and one intends to communicate one’s knowledge of that thing to another.

In his 1962 lecture “Time and Meaning”, he expands on this somewhat in a discussion of “the ontology of meaning”: “the real divides into the ‘natural’ and the ‘intentional’; the intentional order is the order of meaning.”³⁹⁰ By the ‘natural’, here, Lonergan means the material thing as unknown and unperceived in its natural order and context, but by the ‘intentional’, he has in mind an aspect of reality on a different level than concrete materiality of the thing. Intention in this sense recognizes a different order of reality of a thing—it accesses the intelligibility of that thing. The idea of a unicorn exists in the intentional order even if there are no actual unicorns—when we ask whether there are unicorns, the question sets the conditions for what could serve as an answer to it, and those conditions must include some conception, some meaning as object, of an intelligible thing or an intelligible set of conditions defining ‘unicorn’. Likewise, what makes a crown more than a lump of metal arranged in a certain way is the meaning as object with which it is imbued. One who wears it is known as a figure of authority, able to make and enforce

³⁸⁹ Bernard Lonergan, *Phenomenology and Logic*, ed. Philip McShane (Toronto: University of Toronto Press, 2001), 257; hereafter cited as Lonergan, *Phenomenology and Logic*.

³⁹⁰ Bernard Lonergan, “Time and Meaning”, in *Philosophical and Theological Papers 1958-1964*, ed. Robert Croken, Frederick Crowe, and Robert Doran (Toronto: University of Toronto Press, 1996), 105; hereafter cited as Lonergan, “Time and Meaning”.

law, because of the meaning-as-object imbued in the crown by a communal meaning-as-act.

The distinct reality of the intentional order is even clearer if we turn from human constructs to human communities, which are held together by constitutive meaning. “When we speak of meaning [as act] as constitutive, we do not mean that meaning [as act] is the sole constituent, but that it is *a* reality. It is something without which that reality does not exist.”³⁹¹ To say that something is meaningful, then, is to say that it is imbued with a particularly significant intentional act (or set thereof) which constitute part of its reality for the meaning subject. This is the case with people, places, things, and events alike. Something could be meaningful either humanly or naturally. But in both cases, what we have said here holds. The point of differentiation between the humanly and naturally meaningful is that the humanly meaningful is imbued with its meaning by human intention, while the naturally meaningful is not.

In another lecture, this one at Georgetown in the summer of 1964, he reiterates this thought that meaning as act is a form of intention. “Finality may be conscious or unconscious. Conscious finality [is] intention. Fundamental intention is comprehensive, global, determinable. Meaning is a determined intention.”³⁹² Meaning, then, is a form of

³⁹¹ Lonergan, “Analogy of Meaning”, 184

³⁹² Bernard Lonergan, “Avery Cardinal Dulles’s Notes for Lonergan’s ‘A Five-Day Institute: The Method of Theology,’ 13-17 July 1964, Georgetown University” in *Early Works on Theological Method I*, ed. Robert Doran and Robert Croken (Toronto: University of Toronto Press, 2010), 379; hereafter cited as Lonergan, “Georgetown Lectures”.

These are, admittedly, the notes of an attendee, rather than Lonergan’s own lecture notes. I have included them here as a midpoint in the development of Lonergan’s thought on meaning. Insofar as I rely on them, I have checked them against the other set of extant notes from these lectures, made by Sr. Rose St. Mary Wilker and available from the archives of the Lonergan Research Institute, reference 2495ADTE060. Her notes are less complete than Card. Dulles’ and tend to be more interested in the theology than the philosophy, but nonetheless can provide a valuable second source to verify the contents and language in Card. Dulles’ notes.

finality. To understand all the terms, we need to appeal to *Insight*. Finality is the potential of being that drives development, “the dynamic aspect of the real.”³⁹³ It has a direction, even if we are not sure what that direction is. This is the immanent principle of transcendence as a movement beyond existing limits, beyond the present state of affairs, as opposed to an external *telos*, a final cause.³⁹⁴ When finality is conscious, it is intention, but the fundamental intention at issue is comprehensive rather than determinate—the unrestricted notions of being and value and unrestricted being-in-love. When that intention is determined, it is specified to a particular object, and this determinate intention is meaning as act, pushing us beyond what we know and who we are now.

This becomes more complex but no less true in Lonergan’s later work. In *Method in Theology*, “Meaning, when fully developed, intends something meant”,³⁹⁵ only it’s not always the case that the “something meant” is readily distinguished from the act of meaning. Art, along with certain other carriers of meaning as object, conveys elemental meaning. As we will discuss below, art as expression is an act of potential meaning, in which the act of meaning and its object are not yet distinguished.³⁹⁶ “It is the conscious performing of a transformed subject in his transformed world”, and it intends that transformed world.³⁹⁷ The specifics of the transformation in that elemental meaning are

In technical work where each word is of significance, I am loathe to rely on a single source where a second is available. In the present instance, Sr. Wilker’s notes corroborate the language in Card. Dulles’ notes for the most part.

³⁹³ Lonergan, *Insight*, 472

³⁹⁴ Lonergan, *Insight*, 476. This is a point on which he was at pains to be clear.

³⁹⁵ Lonergan, *Method in Theology*, 61

³⁹⁶ Once art has been considered and critiqued, there is also a formal act of meaning available to the critic or historian.

³⁹⁷ Lonergan, *Method in Theology*, 61. We will consider why and how this can be below, in discussing the constitutive function of meaning.

the topic of debate in art criticism, but “the proper apprehension and appreciation of the work of art is...to participate, to try it, to see for oneself.”³⁹⁸ The act of meaning still intends something meant, but neither the act nor the meant are articulable because they are not intelligibly distinguished.

So also, our questions are meanings as acts, intending particular objects, and our insights are meanings as objects, the intelligibilities that are the proper objects of our inquiries and not just the phantasms that prompted our questions in the first place.³⁹⁹ At the level of cognitional structure, this means that our understanding and judgment intends the world and things in it—they intend being. As we’ll see in §3, in an analogous way, our feelings, as intentional responses, intend values.

2.1.2 Kinds of Meaning

Lonergan distinguishes between four elements of meaning: “(1) sources of meaning, (2) acts of meaning, (3) terms of meaning, and (4) the core of meaning.”⁴⁰⁰ He does this in both *Insight* and *Method in Theology*; while the foregoing quote comes from *Insight*, we will largely rely on his account in *Method in Theology* for two reasons. First, in *Insight*, he’s giving this list in service of talking about the notion of being—it appears in the middle of Chapter 12—and “the core of all acts of meaning is the intention of being.”⁴⁰¹ Second, partly as a result of this, his account in *Insight* is both less complete and less

³⁹⁸ Lonergan, *Method in Theology*, 62

³⁹⁹ For Lonergan’s thought on the multiple intentionality of insights, see Byrne, *Ethics of Discernment*, 139-142.

⁴⁰⁰ Lonergan, *Insight*, 381

⁴⁰¹ Lonergan, *Insight*, 382

fleshed-out than his account in *Method in Theology*—there are fewer kinds of acts and terms given and they are spelled out with less care and detail.

We have given the quote from *Insight* because *Method in Theology* does not mention the core of meaning. We bring it up here partly to emphasize a shift in Lonergan's thinking. Already, we have shown that Lonergan thinks meaning has *effective* and *constitutive* functions—it creates reality, creates being, of a certain kind. This is not presented in his writings from the 1950s, including both *Insight* and *Phenomenology and Logic*. In those works, the emphasis is on the ability of one to mean things that are already real—Gasson Hall, for instance. “The false judgment is false precisely because it *means* a state of affairs that is the opposite of the state one *intends* to affirm, namely, the state that truly is.”⁴⁰² One can intend things that have no being beyond that intention, certainly, but once they “are known to be unsuccessful determinations of being...the core of meaning, the intention of being, [becomes] uninterested.”⁴⁰³

Our discussion of his later work will consider a middle ground—meaning as *creating* being—between meanings as intending “the state of affairs that truly is” and meanings that fail to achieve that, like the meaning of unicorns, which is in some sense specious.⁴⁰⁴ We can, in that way, recover the core of meaning as differentiating the *relations* of intentional acts to being. This comes in four kinds: (1) false, (2) specious, (3) representational, and (4) creative. A false relation to being is what Lonergan described above about false judgments. A specious relation to being considers his examples of the

⁴⁰² Lonergan, *Insight*, 382, emphasis mine.

⁴⁰³ Lonergan, *Insight*, 383

⁴⁰⁴ Lonergan, *Insight*, 382

unicorn and phlogiston.⁴⁰⁵ A specious relation is different from a false relation in that, where the false relation to being intends to affirm a state of affairs that truly is and fails, a specious relation knowingly intends a state of affairs that isn't and won't be. I can still say a great many things about unicorns and phlogistons even knowing that they don't exist and, at least in the case of phlogiston, never will exist. A representational relation to being is the obverse of a false relation: where the false relation "intends to affirm...the state [of affairs] that truly is" and fails to do so, the representational relation succeeds and reflects (with some degree of accuracy and specificity) a state of affairs that really *is*.⁴⁰⁶ A creative relation to being is prospective, making or sustaining intelligibilities by its existence.

The sources of meaning "are all conscious acts and all intended contents" and break into the "transcendental or [the] categorial. ... The transcendental notions ground questioning. Answers develop categorial determinations."⁴⁰⁷ These sources can be almost anything, from the intelligibilities in the world around us to the intelligibilities we ourselves create to the values of both actual and possible intelligibilities. Quite literally anything, including acts of intention in general, can be a source of meaning insofar as they are the phantasms prompting insights and feelings as intentional responses. Our unrestricted desire to know everything about everything, to realize the good, and to be in love unrestrictedly, about which we will say more in the following chapters, draw us beyond

⁴⁰⁵ As phlogistons will be a recurrent example, we should take a moment to explain what a phlogiston is (or rather, is not). In 17th and 18th century chemistry, the phlogiston was a substance, the presence of which was thought to make other substances flammable. The higher the phlogiston content of the material, the more flammable was. This explained why wood, for instance, reduces to ash with much less mass when burned – the phlogiston in the wood was released into the air, to be recaptured by other plants. Phlogiston theory was conclusively disproved in the late 18th century through the efforts of Antoine Lavoisier and Elizabeth Fulhame and replaced with present theories on oxygenation as the mechanism of combustion.

⁴⁰⁶ Lonergan, *Insight*, 382

⁴⁰⁷ Lonergan, *Method in Theology*, 71

ourselves and are sources of meaning themselves insofar as they bring us to intentional acts with objects beyond us as we are now. The answers we get to the questions raised in that process can themselves become expressed in patterns that form the phantasms that in turn prompt new intentional acts. Moreover, those answers give rise to categorial meanings, helping us sort the things around us into useful groups.

A term of meaning is simply what is meant, meaning as object. Since we are discussing meaning as an intentional act, it would generally be more normal to talk about the meant as the object of the intentional act of meaning, and we will adopt that usage, but there will still be occasions where ‘term’ is the better word and will be used accordingly. This term or object of meaning as act changes a bit with each act of meaning, and we will discuss how as we discuss each act of meaning.

For Lonergan, acts of meaning are of five kinds: “(1) potential, (2) formal, (3) full, (4) constitutive or effective, and (5) instrumental.”⁴⁰⁸ When speaking of constitutive and effective acts of meaning together, he says they are “active” acts of meaning, and we will follow that usage.⁴⁰⁹ As we noted at the beginning of the section, Lonergan’s “Analogy of Meaning” is between acts of meaning and the three levels of cognitional structure, expanded in *Method in Theology* to include the level of ethical operation with the question for deliberation, “Is it worthwhile?”⁴¹⁰ While we will discuss cognitional structure in proper detail in the next chapter, it will be helpful in differentiating these acts of meaning to give a brief statement of cognitional structure here. We begin to know by being first presented with an experience, and we ask “What is it?”, or an analogue thereof. When we

⁴⁰⁸ Lonergan, *Method in Theology*, 71

⁴⁰⁹ Lonergan, *Method in Theology*, 72

⁴¹⁰ Lonergan, *Method in Theology*, 35

have an insight (or a series of insights) in answer, we are on the level of understanding. We then ask, “Is it so?” The answer is, at least at first, a conditioned judgment: “It is so if x, y, z , etc.” Once those conditions are satisfied, we are left with a virtually unconditioned judgment of fact, the truth value of which is the same as an unconditioned judgment, a judgment that is true under all conditions. What we have accessed in that judgment is an intelligibility, the unity, identity, whole that stands behind data on the basis of which we differentiate one object or construct from another.

“In the potential act, meaning is elemental. There has not yet been reached the distinction between meaning and the meant”, between meaning as act and meaning as object.⁴¹¹ This is the sense in which, when a tree falls in a forest, we do not instantly distinguish between the sound of the crash and what it portends. This is the sense in which “data are potentially intelligible, but” are not actually intelligible until acted on by an intelligence.⁴¹² His first example here is the smile, which carries this potential meaning and communicates it intersubjectively but does so without analysis. The proper object of the meaning as act is thus not yet distinguished—we as yet have no awareness of the intelligibility of that smile—so there is a moment in which we know it means something but can’t yet put into words precisely what. This is meaning as both act and object at the level of experience.

“The formal act of meaning is an act of conceiving, thinking, considering, defining, supposing, formulating.”⁴¹³ In both *Insight* and *Method in Theology*, Lonergan treats the

⁴¹¹ Lonergan, *Method in Theology*, 71-72

⁴¹² Lonergan, *Method in Theology*, 72

⁴¹³ Lonergan, *Insight*, 381; *Method in Theology*, 72. The two passages are identical.

object of the formal act of meaning as a concept, a composite of experience and the possible intelligibility grasped by insight into that experience, that has not yet faced judgment.⁴¹⁴

“One is meaning precisely what one is thinking about, but one has yet to determine whether the object of one’s thought is merely an object of thought or something more than that.”⁴¹⁵

In a formal act of meaning, we’ve had the initial insight and answered the “What is it?” question, and the object of the formal act of meaning is that answer. We have a conception of what we’ve been presented with, we’re just not sure as to its accuracy. We have our initial access to intelligibility, but it yet needs verification. This is meaning at the level of understanding.

“The full act of meaning is an act of judging.”⁴¹⁶ Here we determine whether a formal object of meaning really is so or not. Does it have any reality to it beyond what it has as an object of thought? If so, what kind? This full act of meaning determines the status of the term of a formal act of meaning. Full acts of meaning may be affirmative or negative. If the formal act of meaning is about a unicorn, the negative full act will conclude that there are no unicorns, judging that there are presently no conditions under which the formal object of meaning might describe an actual state of affairs. A negative full act of meaning is not therefore *meaningless*, nor does it strip meaning from its associated formal act of meaning, it merely regards the formal object of meaning as having a specious relation to being and finds no reason to pursue the matter further. If the formal object of meaning

⁴¹⁴ For this use of the word ‘concept’, see Bernard Lonergan, “Cognitive Structure”, in *Collection*, 2nd ed., ed. Frederick E. Crowe & Robert M. Doran (Toronto: University of Toronto Press, 1988), 207; hereafter cited as Lonergan, “Cognitive Structure”.

⁴¹⁵ Lonergan, *Method in Theology*, 72

⁴¹⁶ Lonergan, *Insight*, 381; *Method in Theology*, 72. The two passages are identical.

cannot, on reflection, satisfy its conditions, then the negative full act of meaning shows it to be false.

Lonergan is careful to mention in this connection that there are “different spheres of being.”⁴¹⁷ We know that there are perfect geometric triangles, and we know that our sun is a ball of flaming gas, analogous to trillions of others observable in the night sky. But triangles do not exist in the same way as stars—no one has ever seen a perfect geometric triangle, defined by three non-collinear points each of which is passed through by two one-dimensional straight lines, because we all experience our world in three dimensions. They stand in different spheres of being, and while these spheres are radically different from one another in many respects, “they are not simply disparate. The contents of each sphere are rationally affirmed”, which is to say, the contents of each sphere are (or can be) the objects of virtually unconditioned judgments.⁴¹⁸ The spheres of being differ because the conditions under which their contents could be affirmed differ. In each case, the formal and full acts of meaning prompt us beyond the world of pure experience and add something to that world; this is the world mediated by meaning, and getting us there is meaning’s first function.

The active act of meaning in both its constitutive or effective modes is, by nature, creative, and these acts of meaning “come with judgments of value, decisions, and actions.”⁴¹⁹ Meaning is effective insofar as it makes things happen. “Men work. But their work is not mindless. What we make we first intend.”⁴²⁰ That intention is what our work

⁴¹⁷ Lonergan, *Method in Theology*, 73

⁴¹⁸ Lonergan, *Method in Theology*, 73

⁴¹⁹ Lonergan, *Method in Theology*, 72

⁴²⁰ Lonergan, *Method in Theology*, 75

is meant to accomplish, and it is what drives us to that work. We consider whether a thing would be worthwhile to do, and in consequence of a decision that it would be worthwhile, we go and do it and get others to join us in one way or another, if we can. Effective meaning “persuades or commands others or...directs man’s control over nature.”⁴²¹ We noted above that a crown without meaning is just a lump of metal; it would be more accurate to say that the lump of metal does not become a crown without two effective acts of meaning. The first physically reshapes that lump of metal into a circle roughly the size of one’s head with embellishments of various kinds, and that itself depends on a past series of other effective acts of meaning. The second effective act of meaning makes the crown a mark of authority and imbues it with the meaning as object of a community who will follow the will of the one wearing that crown on at least some points. This act of meaning is the constitution of the state by which power is vested in the one wearing the crown in the hopes that he or she will demonstrate authority, what Hobbes was pointing to in *Leviathan* XVII. We will discuss this in Chapter 6.

Effective acts of meaning, then, *change things*. By contrast, constitutive acts of meaning sustain or slowly alter what is initially created by an effective act of meaning. Constitutive acts of meaning can also be the foundation for further effective acts of meaning. The coronation, for instance, when one receives the crown for the first time, is not about the crown but the king or queen who will be wearing it. That ceremony is an effective act of meaning that vests power in the wearer of the crown, but the crown as the mark of authority pre-exists the coronation—it must or it could not play its part. The dedication of a new crown is a separate function and one not always undertaken,

⁴²¹ Lonergan, *Method in Theology*, 328

historically. The coronation, thus, is a constitutive act of meaning with respect to the crown as much as it is an effective act of meaning with respect to the new monarch. Likewise, at other ceremonial occasions where the crown is brought out either for the monarch to wear or for display, the crown plays its role because it is already a mark of authority and is already imbued with the meaning as object of a community who will follow the one wearing it. These occasions don't change the meaning as object of the crown so much as reaffirm it, and so are constitutive acts of meaning.

For instance, the British Crown is present at each sitting of Parliament. A wood version of the Imperial State Crown tops the canopy over the Speaker's Chair in the House of Commons, and a version in gilt and enamel sits over the throne, itself a permanent fixture in the House of Lords. The crown motif is a consistent feature of Speaker's Chairs throughout the Commonwealth and, both in the UK and in other Commonwealth countries, it represents the authority of the sovereign over Parliament, including the right to dissolve Parliament at her (or his) will, and the sovereign's participation in the legislative process. That lawmaking knowingly takes place under such an aegis without serious complaint is a continued reaffirmation of the authority of the monarch who wears that crown and of the nature of Parliament and its individual members. They are choosing who they want to be individually, who they want to be collectively, and who they want the Queen to be. They are not making these choices *de novo* nor making choices that represent a radical break with existing meanings, as would be the case with an effective act of meaning, but rather, they make these choices as sustaining the meanings as objects of which the state is built.

This is the third function of meaning as act. Its object is a state of affairs to be maintained, and that state of affairs may be an institution, "the memories of other men, the

common sense of the community, the pages of literature, the labors of scholars, the investigations of scientists, the experience of saints, the meditations of philosophers and theologians.”⁴²² Constitutive and effective acts of meanings differ in that effective acts of meaning can bring about substantial changes: “Insofar as it is effective, [an act of meaning] persuades or commands others or it directs man’s control over nature.”⁴²³ The state of affairs the effective act of meaning brings about is sustained by ongoing constitutive acts of meaning, so that constitutive acts of meaning are personal and interpersonal. “Insofar as it is constitutive, [an act of meaning] constitutes part of the reality of the one that means: his horizon, his assimilative powers, his knowledge, his values, his character.”⁴²⁴ When I see myself as a certain kind of person and act on that self-conception, that is a constitutive act of meaning—I am making myself who I mean myself to be. And by means of outward expression through instrumental acts of meaning, constitutive acts can make *us* who *we* want to be.

These two iterations of the active act of meaning are quite frequently found together, as the crown demonstrates, and an effective act cannot exist without the context of meanings as objects shaped and sustained by prior and concurrent constitutive acts. To be a crown with all the denotations of that word, a lump of metal must not only be shaped into a proper physical form (through an effective act of meaning), it must act as a symbol (instrumental act of meaning) within a certain kind of pre-existing institutional context, a context that is entirely interpersonal (constitutive act of meaning). So the full meaning of

⁴²² Bernard Lonergan, “The World Mediated by Meaning”, in *Philosophical and Theological Papers 1965-1980*, ed. Robert Croken and Robert Doran (Toronto: University of Toronto Press, 2004), 108; hereafter cited as Lonergan, “The World Mediated by Meaning”.

⁴²³ Lonergan, *Method in Theology*, 328

⁴²⁴ Lonergan, *Method in Theology*, 328

the crown depends on effective, constitutive, and instrumental acts of meaning. The same can be said of livery, badges, street signs, speed bumps, and notes passed between students in class.

Instrumental acts of meaning are expressions, and they have a communicative function. The first three acts of meaning all occur within the subject. The fourth can too, to at least some extent—Robinson Crusoe’s active acts of meaning were not shared with others before Friday came along, and he created a life for himself and created himself as a survivalist. Expression is integral to every act of meaning, for Lonergan,⁴²⁵ insofar as every act of meaning is embodied, but it is much more substantially the focus of instrumental acts of meaning. “What one man means is communicated to another intersubjectively, artistically, symbolically, linguistically, incarnately. So individual meaning becomes common meaning.”⁴²⁶ Instrumental acts of meaning attempt to translate the meaning, the intention, of one person to another person using words, objects, symbols, etc., imbued with existing meaning in an attempt to communicate that meaning, sometimes successfully, sometimes not. It is a basically communicative act, and is adequate or faulty insofar as it is or is not sufficient to communicate its meaning to its intended audience. An instrumental act of meaning is always interpersonal because it always relies on a pre-existing world mediated by meaning to convey a new meaning between people. It expresses and communicates meanings of the previous three kinds for others to see or hear and understand. An instrumental act of meaning is possible when alone, but it always

⁴²⁵ See Lonergan, *Method in Theology*, 72, fn. 30

⁴²⁶ Lonergan, *Method in Theology*, 76

presupposes a collaboratively-constructed world mediated by meaning and another person (even if only a future self, as in the case of my to-do list).

Together, effective, constitutive, and instrumental acts of meaning build the world mediated by meaning. But they aren't static. Time does not stand frozen but moves on. Our 'now' moves with it, and so also our acts of meaning move and change with time.⁴²⁷ "Meaning has its invariant structures and elements, but the contents in the structures are subject to cumulative development and cumulative decline."⁴²⁸ People think and feel differently and they think and feel different things. The invariant structure of acts of meaning is distinct from the contents of individual acts or complexes of those acts, so the acts and objects of meaning are subject to change, even if the categories of carriers and elements of meaning are not. And as they change, they build history, the narrative of progress and decline that binds all these individual moments of meaning into a coherent whole. "Our actions build upon the circumstances that gave rise to the experiences to which our insights and choices respond."⁴²⁹ This history that we together make forms the backdrop against which all our subsequent actions are taken. And this bears emphasis: our history is constituted by others before we are born and our actions in turn constitute history for others. Man "is a historical being...[who] shapes his own life but does so only in interaction with the traditions of the communities in which he happens to have been born, and, in turn, these traditions themselves are but the deposit left him by the lives of his predecessors."⁴³⁰

⁴²⁷ Lonergan, "Time and Meaning", 106-108. A full exposition of this section would be interesting but is ancillary to our point here.

⁴²⁸ Lonergan, *Method in Theology*, 78

⁴²⁹ Byrne, *Ethics of Discernment*, 419

⁴³⁰ Lonergan, *Method in Theology*, 78

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In summary, then, meaning as act is an intention that intends a meant object, its term. The potential act of meaning conveys meaning as object inchoately and indistinctly, the formal act of meaning says *what* its term is, the full act says *whether* that term is, the effective or constitutive act says *what's to be done* about it, and the instrumental act *communicates* that to others or oneself. We will say more about this in Chapters 5 and 6, but constitutive and instrumental acts of meaning in conjunction are what bind together communities and create and sustain institutions. And it is within the context of history created by effective, constitutive, and instrumental acts of meaning that we encounter concrete problems as communities, build institutions to address them, and make and implement law (among other things) as our form of address to those problems.

2.2 Descriptive Approach

Up to now, we have been speaking abstractly for the most part, but meaning is nothing if not concrete. To make this point, to help us understand just how meaning operates in our lives, we will need to take a descriptive approach.

It will be an enumeration of the realities that result from meaning, that are constituted by meaning. ... The theme will be that, while there are many very interesting and very true things that can be said about man without mentioning meaning...still, all of man's waking life, all his imaginings, all his feeling, knowing, speaking, doing would undergo an essential change if meaning were omitted.⁴³¹

The descriptive approach, then, will focus on varieties and carriers of meaning. But Lonergan's listing of these carriers changes a bit with each recital and rarely is the order the same twice, suggesting a different emphasis for different audiences and also a

⁴³¹ Lonergan, "Analogy of Meaning", 184

developing direction of Lonergan's own thought. We will begin by giving a brief statement of the ways he handles this descriptive approach and the major changes as his thought develops. But since the purpose of the descriptive approach is to elucidate all the ways meaning constitutes who each of us is and mediates the world in which we live, we will forego the kind of genealogical analysis of his listings we engaged in above in favor of telling a story that showcases most or all of meaning's primary embodied forms.

The different ways meaning can be embodied make frequent appearances in Lonergan's work after 1962, and those works can be broken into three sets. The first describes varieties of meaning (e.g. human knowledge), almost to the exclusion of its carrier. The focus is on the meaning as act itself and the way it interacts with the meaning subject as actor, object, or both. This is very much the character of his discussion in "Time and Meaning". The second focuses on the realities constituted by meaning, as he does in "The Analogy of Meaning". The third discusses carriers of meaning, as the embodiment or vessel of meaning, and this is how Lonergan usually approaches the question in his later work. Where the first set focuses on meaning as act and the meaning subject, this third set focuses more on meaning as object and how those meanings as objects can be transmitted to other meaning subjects. The second set includes more distinct realities or classes of reality than the first or third, but all three share a common general set of categories. As a rule, the varieties and carriers of meaning are intersubjective, linguistic, artistic, symbolic, and incarnate. To appreciate what is intended by each of these terms, how each of these carriers operate, and most of the constituted realities Lonergan lists, we will consider the curious case of John Drewe, a con man, and John Myatt, a struggling painter, who together

perpetrated a remarkable fraud that rocked the art world in the late 1990s and early 2000s.⁴³²

To verify the authenticity of works of art, the art world relies on provenances, demonstrating ideally a clear chain of custody from the artist to the present owner. As a guard against fraudulent insertions of new works into the oeuvres of dead masters, particularly from more recent eras, foundations dedicated to the works of each artist compile a meticulous catalogue raisonné of his or her work with photos and detailed descriptions of each piece. In many cases, the artist is intimately involved in the compilation of these catalogues. On top of this, prominent institutions keep well-guarded archives of memorabilia from significant artists, including booklets from exhibitions, letters to and from artists (particularly those that mention certain works), invoices, receipts, gallery logbooks, and similar items to help verify what the artist created when and how it moved through the art world.

Drewe and Myatt are remarkable not for the art they successfully forged but for how Drewe coopted the system to make the fraud a success. Drewe's true history is rather an enigma; very little of what he says about his past can be taken at face value. His life is a story of constant invention and re-invention. He's a genius (documented IQ of 165) and an excellent con, a dangerous pairing. Drewe demonstrated an interest in physics as a teenager and at various points in his life claimed doctorates in the discipline. On the strength of these claims, he was accepted as a professional in the field, working briefly for the British Atomic Energy Authority in the 1960s and supporting himself as a physics

⁴³² I rely here on the account given by Laney Salisbury and Aly Sujo in *Provenance: How a Con Man and a Forger Rewrote the History of Modern Art* (New York: The Penguin Press, 2009).

teacher thereafter. Evidently he could do the work; he was dismissed repeatedly for lying, not for incompetence. For Drewe, the item of paramount importance was being seen as connected and involved with great doings. But this image of himself that he projected seems to be one he eventually bought into himself—when caught in his lies, he doesn't own up to them; he instead creates elaborate and increasingly fanciful fictions to paint himself as the victim, each of which advance the narrative of Drewe as someone important, significant, and well-connected to those in power (in the last resort, as their target). To this day, he insists that he was the target of a frame job by shadowy actors in the government.

In 1986, Drewe met John Myatt, an out-of-work teacher, erstwhile songwriter, and artist who painted copies of the 19th and 20th century European masters or new works in their styles and sold them as “Genuine Fakes”. Drewe recognized Myatt's talent for imitating the masters, commissioned a painting, and, unbeknownst to Myatt, took it to Christie's, a well-regarded London auction house, who accepted it as genuine and paid £25,000 for it. More commissions followed and the two became friends. Myatt didn't realize what was going on until several works disappeared from Drewe's house with very flimsy explanations. The two then began a working relationship that lasted until they were arrested in 1995 and resulted in the sale of several hundred forgeries, making Myatt one of the more successful and prolific known art forgers in history.

Because Myatt was creating new works rather than copying existing ones, Drewe avoided an initial round of awkward questions about provenance—no institution had a vested stake in demonstrating Myatt's work as forgeries because there was no authentic work to own and so no institutional reputation to protect, and because his asking price was 5 figures instead of 7, a close examination for either the painting or the documentation

would not be a matter of course. It is also not unheard-of for authentic but previously unknown works to emerge long after an artist has died. Often, these are private commissions by individuals who don't have a reason to stay in touch with the artist, and some artists are known to be remarkably lax about documenting their work, so when their catalogues are put together, some works are unintentionally omitted. The disruption of the art world caused by the Nazis' wholesale looting of Europe's cultural heritage has also created significant holes in records so that 20th century catalogues for 19th century artists are often incomplete as well. Drewe would figure out which 19th and 20th century artists' catalogues were vulnerable in this way, Myatt would create a new work in the style of such a painter on commission from Drewe, and Drewe would get it accepted as genuine.

To accomplish this, Drewe used donations of money and art to obtain regular access to the archives of the Tate Gallery, the Victoria and Albert Museum, and the Institute of Contemporary Arts (ICA) in London. Posing as an interested amateur researcher, he accessed records relevant to the artists Myatt was mimicking and began to insert material into their records, material Drewe had forged. This included adding pages to ring-bound booklets and other photographic records, which required a fair amount of artistry on Drewe's part as well so as to ensure they blended well with the genuine archival material. When Drewe was eventually apprehended in 1995, among his tools, police discovered typewriters from several eras so he could produce period-correct typescript, an array of documents pilfered from the ICA's archives (then a disorganized mess) for period-correct raw materials, an extensive photography setup, and a copy of the stamp the Tate used to mark material on admission to its archives. He also created extensive forged provenances with fake invoices, letters of testament, and personal letters mentioning the works, and

contacted the families of deceased artists to fool them into authenticating the paintings. Often, Drewe used his acquaintances to ensure there was a (different) real person holding the pen in case anyone thought to compare signatures; where none could be bribed, he invented people from whole cloth. When researchers seeking to establish the provenance of these fakes went to those archives to check their records, they found Drewe's forgeries and relied on them at least in part in authenticating Myatt's forgeries. All the institutions impacted have done what they can to remove Drewe's taint from their archives, but his forgeries were so good, so thorough, and Drewe himself so untrustworthy that it's impossible to be certain they've got all his forgeries out.

When the trial concluded in 1999, the art world (and the British legal system) regarded Myatt as the lesser party to the crime in part because, of the £135 million or so Drewe's scheme generated, Myatt only ever saw £100,000 and in part because Myatt admitted his guilt and worked with police to remove his forgeries from circulation while Drewe maintains his innocence to this day. Myatt was sentenced to only one year in prison and released for good behavior after four months. He still sells these paintings, indelibly marked as Genuine Fakes, and apparently does quite well for himself, partly because of the notoriety this case gained him in the art world.

In this one story, we have examples of all the carriers of meaning (intersubjective, linguistic, artistic, symbolic, and incarnate) and most of the other constituted realities Lonergan lists. Drewe, as a con man, is a master of manipulating intersubjective meaning. 'Con man' is short for 'confidence man', and confidence is precisely what one needs to project to carry off a scheme like this one. If you act as though you belong somewhere, people are far less likely to question whether you actually do. If you can fake sincerity,

you can convince nearly anyone of nearly anything, at least in the near term. All of this relies on body language, the smile, the gesture, which carries meaning within a given cultural context and conveys that to observers. Most of us project intersubjective meaning unwittingly because the meaning is usually elemental, and we respond to it just as unwittingly—when we see someone smile, we tend smile back without thinking about it; when someone trips, we reach out to catch them, even if, on reflection, there’s no way we could. This kind of spontaneous call and response makes a deception like Drewe’s very difficult to pull off, and in the more benign manifestation of Hollywood, we pay significant sums to those who can do it well.

When Drewe employed language in addition, the deceit got easier. “The most conspicuous, the most refined, the most far-reaching, the most versatile carrier of meaning is language.”⁴³³ Language is our regular medium of communication, purpose-built for carrying meanings from the very simple to the exceptionally complex. When Drewe told people he was an Oxford professor with two doctorates in physics, he communicated something very specific to them. When he told people that paintings from Myatt were genuine pieces from the hands of contemporary masters, that too carried meaning. The words he used were used to a purpose: not unlike Myatt’s brush, they painted a picture of who he was, of the painting he was selling, of any number of things. They evoked images in the heads of those Drewe was conning and carried his meaning to them. “To reflect on the world mediated by meaning is to come to appreciate the importance of language, to discern that it fulfills cognitive and effective and constitutive functions as well as the

⁴³³ Lonergan, “The World Mediated by Meaning”, 110

obvious function of communicating...”⁴³⁴ Language carries meaning throughout our story, for Drewe, for Myatt, for everyone their actions touched, so we will not belabor this point.

Art, as a carrier of meaning, is one of the most interesting facets of this story. For Lonergan, art is “the objectification of a purely experiential pattern”.⁴³⁵ That pattern is the meaning as object that “lies within the consciousness of the artist but, at first, it is only implicit, folded up, veiled, unrevealed, unobjectified. Aware of it, the artist...is impelled to behold, inspect, dissect, enjoy, repeat it; and this means objectifying, unfolding, making explicit, unveiling, revealing.”⁴³⁶ The question of what constitutes good art is not one we will try to tackle here, but we should draw the reader’s attention to the way the meaning of Myatt’s work changed through the course of this story. First, as an out-of-work teacher, the art he produced was his own: generally unremarked, despite his clear talents. As we said above, in the process of “objectifying, unfolding, making explicit, unveiling, revealing”, and expressing the meaning inside his consciousness, an artist creates in his art an invitation to participate in a new or transformed world of meaning. Myatt’s was an invitation few cared to take.

Even so, Myatt demonstrated a unique ability to take other artists’ invitations and, in participating, in embracing their meanings, re-express them and pass those invitations on. In this way, the elemental meaning expressed in each piece was what Myatt imagined the artist he was mimicking would have wanted it to be. Myatt was creating new invitations to new worlds of meaning as seen through others’ eyes. That he did this well enough that

⁴³⁴ Lonergan, “The World Mediated by Meaning”, 118

⁴³⁵ Lonergan, *Method in Theology*, 59

⁴³⁶ Lonergan, *Method in Theology*, 62

those intimately familiar with the oeuvre of each artist quite often saw the transformed world of that artist and not Myatt's own is quite remarkable.

The only difference between Myatt's fraudulent and legitimate work is that, with Myatt known as the artist, the transformed world has an additional, rather subversive meaning to it. What makes a work of art valuable, what makes it a compelling invitation to this transformed world, is not the name on the canvas. It's the world evoked for each observer.

In this way, each work of art functions also as a symbol, "an image of a real or imaginary object that evokes a feeling or is evoked by a feeling."⁴³⁷ Many, many things can be symbols, not just art, but the most important symbol in this story *is* the art. Myatt was successful because he was able to evoke the right set of feelings in the right way through his paintings. Another very important symbol, somewhat more concretely, was the forged Tate archival stamp Drewe used to mark his forged archival material. It evoked specific feelings of confidence in the forged material because it implied that they had been vetted by the archive's curators. Without that stamp, Drewe would have had a difficult time inserting much of anything into the records, and even so, he couldn't alter every record.

These symbols, paintings and stamp both, are also how they got caught. Though Drewe and Myatt weren't arrested until 1995, those in the art world were aware of Myatt's forgeries circulating as early as 1992. These began coming to their attention after Sotheby's, another prestigious London auction house, offered a 'Giacometti' that Drewe had titled *Standing Nude, 1954*. They sent the catalogue with the listing to the head of the

⁴³⁷ Lonergan, *Method in Theology*, 62

Giacometti Association in Paris, Mary Lisa Palmer, as a matter of course, and it caught her eye because the feel of it was all wrong for Giacometti.

As symbols, Giacometti's works have a unique affective signature. The Swiss artist is best known for his cast bronze sculptures, but he also did a number of portraits. His style is stark, rather wan, running strongly to blues and greys as a rule, often very nearly monochromatic, and given to heavy lines, as though the artist was using the brush to draw rather than paint. Giacometti doesn't so much portray the subject as vaguely evoke him or her. The works tend to convey a sense of frustration, anxiety, and despair only beginning to turn to resignation, but while the stark style conveys melancholy, the freneticism of the lines also conveys life. This comes through, if anything, more clearly in the pencil studies. The portraits also have a very strong focus on their subjects. Furniture is only depicted when the subject is sitting, or occasionally in background glimpses of Giacometti's studio, but deemphasized to the point that seeing a chair missing legs is not unusual, and furniture is never in the foreground, obscuring the subject.

Yet in *Standing Nude, 1954*, Myatt, unable to get the feet right, had simply painted a table over them. Nor is the rest of the painting right—the feel is entirely off, the figure lifeless rather than evocative. As a symbol, art “has connected with it all sorts of meanings, all sorts of feelings and suggestions, that are fundamentally affective..., and the meaning of the symbol is the meaning of the affect...”⁴³⁸ Myatt is a gifted mimic, but even the best artists have a bad day. This attempt was one of his, and this work is a symbol of little more than that. *Standing Nude, 1954* simply does not evoke the right feelings to be genuine. Sotheby's stood by the painting, though, on the strength of Drewe's forged provenance. It

⁴³⁸ Lonergan, “Time and Meaning”, 100

took Palmer a trip to the Tate's archives, a meeting with Jennifer Booth, then recently appointed as the Tate's head archivist, and calls to several other art critics and scholars familiar with Giacometti's work to get Sotheby's to suspend the auction.

Things came to a head in 1994 when Drewe's romantic partner of 15 years, an Israeli woman named Bathseva Goudsmid, found and turned over to police documents Drewe left behind at their home when the two parted ways. These documents were essentially a forger's to-do list, reminders of what documents needed to be forged, what the forgeries should reference, where errors needed to be corrected, etc., but they were fragments that only made sense in a certain context not initially available to police, so they weren't initially recognized for what they were. The documents also included a number of photos and forgeries bearing the Tate's archival stamp, and police initially thought he'd been pilfering the archives. Police didn't put two and two together until they consulted with Booth. Then, the meaning of that stamp as a symbol changed to evoke feelings of deep concern.

In this way, meaning constituted the knowledge of Booth, Palmer, and the police. "Knowing consists in answering questions. Meaningless questions and meaningless answers are neither questions nor answers."⁴³⁹ The questions Palmer had about the authenticity of *Standing Nude, 1954* were not without meaning—they were quite focused on the failure of that work to evoke the same transformed world as genuine works by Giacometti. The experience of it was wrong, and Palmer raised and answered in quick

⁴³⁹ Lonergan, "Analogy of Meaning", 198-99. Lonergan did not explicitly include questions in his list of acts of meaning, but he perhaps should have. I will venture here without further comment that if they are not a separate category, then questions are a kind of potential act of meaning. They are acts of meaning insofar as they intend something, and they set the terms for what their intended objects could be, for what will count as an answer. But the meaning and the meant are not yet distinct in questions and can't be until their answers come in insights to be formulated in formal acts of meaning.

succession a series of additional questions about the style and composition of the piece before arriving at the judgment that the painting was a fake, and not a very good one at that.

This raised another meaning-laden question: how had the provenance of that painting come to include materials in the Tate's archives? Once those archival documents were questioned, once there was known to be reason to question them, their meaning changed, and so also did the knowledge of the archivists: their archives had been contaminated, and they didn't know how. When the police phoned about Drewe's 'pilfered' archival material, suddenly the last piece of evidence they needed, the last piece of meaning, clicked into place, and Booth arrived at a judgment that Drewe wasn't taking things out but putting them in—he was responsible for the contamination. Without the meaning constituting both questions and answers in both series, neither judgment of fact, neither piece of knowledge, would have been available.

In Drewe and Myatt, we also have two deeply contrasting visions of another carrier of meaning: incarnate meaning. This combines meaning as intersubjective, linguistic, artistic, and symbolic. "Incarnate meaning...is the meaning of a person, of his way of life, of his words or of his deeds. It may be his meaning for just one other person, or for a small group, or for a whole national, or social, or cultural, or religious tradition."⁴⁴⁰ This is the "meaning [that] resides *in* the person, in everything he has done leading up to this moment" and "the meaning inherent in noble, heroic, or traitorous and repulsive deeds".⁴⁴¹ This is

⁴⁴⁰ Lonergan, *Method in Theology*, 70

⁴⁴¹ Lonergan, "Time and Meaning", 101, emphasis original; "The World Mediated by Meaning", 112

the meaning known in a life well lived and the troubling lack of meaning in a life utterly wasted.

Because the life story of John Drewe is so shrouded in mystery, it can be rather difficult to discern what his incarnate meaning might be. In fact, we may do better to say what it is not. His life is not meaning*less*, but it is not meaning*ful* in the same way another's might be. There is a stronger than usual admixture of “the meaningless, the vacant, the empty, the vapid, the insipid, the dull”, the specious in Drewe's life story.⁴⁴² The constant changes to his personal identity, the consistent and facile lies, eat holes through his life and its meaning in the way rust will eat through a piece of iron over time. The meaning he incarnates, then, is that of a brilliant but pathologically narcissistic and broken man working to put his life together in the most pleasing way possible and either unaware or willfully ignorant of the pieces missing from his puzzle. The gaps those missing pieces leave draw other people in and break them too.

Myatt, by contrast, sought and found redemption in at least some fashion. His journey was by no means smooth, but he's taken steps to put himself back together after his association with Drewe, and he seems to have had some success. When Drewe met him, Myatt was no less broken than Drewe, just in different ways. He'd had half a dozen failed careers, a failed marriage, income problems, and children to provide for. Much of the meaning that had stabilized his existence had been ripped away in the 18 months prior with his divorce. Drewe's scheme did not help that situation—Myatt wasn't sure who he was or wanted to be at that time in his life, and Drewe was able to take advantage of that by showing Myatt an image of himself as a successful (if unknown) painter.

⁴⁴² Lonergan, *Method in Theology*, 71

To hear Myatt tell it, at least, he was uncomfortable with what was going on long before they were caught, but didn't feel he could get out both because of the prison time and because of the cash flow issues he would otherwise face. But he did decide relatively early after his arrest that he didn't want to be who Drewe had made him, and part of why he received such a comparatively light sentence was his full cooperation with police and his uncompelled testimony against Drewe in open court. When he was released from prison, Myatt swore off painting forever, but got back into the business at the urging of the lead detective and prosecutor on the case, who gave Myatt his first two post-conviction commissions. For most, his work is a curiosity, and sought-after for that. Every painting leaves his studio indelibly marked as a "Genuine Fake", and he refuses to leave off that indelible mark just in case a buyer wants to play Drewe's game again. In Lonergan's terms, Myatt has understood the unauthenticity of his previous life and has tried very hard to withdraw from it.

One final reality constituted by meaning bears mentioning here: community. We will discuss this at greater length in Chapter 5, but for Lonergan, common meaning as found in a "common sense, a common religion, a common philosophy, a common specialty create a community in knowledge."⁴⁴³ The art world is just such a community. It has its own culture, born of the "common capacity to understand things in the same way", and that culture has its pitfalls and problems.⁴⁴⁴ It is also a community of commitment, not absolute, but relative to the value of art, ideally its artistic value but quite often for its monetary value.

⁴⁴³ Lonergan, "Analogy of Meaning", 201-02

⁴⁴⁴ Lonergan, "Analogy of Meaning", 202

This is a significant piece of why Myatt was accepted back into that world while Drewe never will be. What Myatt did in fooling them into accepting new works from long-dead artists made them laugh at themselves, once they got past their irritation and chagrin. What Drewe did in contaminating the archives struck at the heart of both sides of the community by striking at the system that protects against counterfeits and frauds. Those in it for artistic value are offended because part of the meaning and value of each work of art is the incarnate meaning of the person who painted it. Those in it for the monetary value are outraged that he jeopardized their investments.

As our story demonstrates, it is difficult if not impossible to find a corner of our lives meaning has not touched and does not continue to touch. Having given an account of what meaning means for Lonergan, we turn our attention now to values. We have explained how the world is mediated by meaning, but why is it motivated by values?

3 Values

One might generally acknowledge that values are what make things good or worthwhile, and Lonergan certainly proceeds on this basis: “Is it worth while? Is it truly worth while, or is it merely apparently good? The transcendental notion of value is the capacity to ask that question...”⁴⁴⁵ But this tells us how values *function* and the beginnings of how values are *known*, not what values *are*. In the interests of being precise, we will first consider the nature of value as Lonergan describes it, though what we can properly

⁴⁴⁵ Bernard Lonergan, “What Are Judgments of Value?”, in *Philosophical and Theological Papers 1965-1980*, ed. Robert Croken and Robert Doran (Toronto: University of Toronto Press, 2004), 142; hereafter cited as Lonergan, “Judgments of Value”.

conclude here will be sharply limited. We will then be in a better position to consider how value can be used.

3.1 *The Nature of Value*

There is an enduring problem in trying to state what values *are*. While it is true that Lonergan's *use* of value and thoughts on many subjects *related* to value changed drastically between *Insight* and *Method in Theology*, his thought on *value itself* and its function remained consistent. Consider the following from *Insight*:

This brings us to the third aspect of the good, which is value. For the good of order is linked, not only with the manifold manifestations of spontaneous desires and aversions which it orders, but also with a third type of good, which emerges on the level of reflection and judgment, of deliberation and choice. ... For human intelligence is not only speculative but also practical. ...it is constantly on the watch to discern the possibilities that reveal things as they might be. But such possibilities are manifold. In large part they are mutually exclusive. The inventiveness of practical intelligence can issue in practical results only if [one can select] some possibilities from the manifold and by that decision and choice initiating and grounding the transition from the intellectual conception of a possible order to its concrete realization.⁴⁴⁶

Notice here that values are known cognitively as the objects of rational choice and determiners of practical intelligence. And contrast it with this, from *Method in Theology*:

Now insofar as [one] regularly opts, not for the merely apparent good, but for the true good, the self thereby is achieving moral self-transcendence; he is existing authentically; he is constituting himself as an originating value, and he is bringing about terminal values, namely, a good of order that is truly good and instances of the particular good that are truly good. On the other hand, insofar as one's decisions have their principle motives, not in the values at stake, but in a calculus of the pleasures and pains involved, one is failing in self-transcendence, in authentic human existence, in the origination of value in oneself and one's society.⁴⁴⁷

One can see in these contrasting quotes the shift that took place in Lonergan's thought in the intervening 15 years: in *Method in Theology*, his understanding of value is

⁴⁴⁶ Lonergan, *Insight*, 621. We will consider the nature of goods of order as part of our discussion of institutions in Chapter 6.

⁴⁴⁷ Lonergan, *Method in Theology*, 49-50

both more refined and far more intimately connected to the self and our decision-making process. What has changed most is how we access them. In *Insight*, values are objects of rational choice and known cognitively; in *Method in Theology*, they are known first affectively and then subjected to cognitive processing, resulting in a judgment of value.⁴⁴⁸ Where in judgments of fact, one affirms or denies that X exists, in judgments of value, one affirms or denies X has value V or that Y would be a worthwhile state of affairs to bring about.

Further, Lonergan's reflections on value in his later work are more embodied than they were in his earlier discussion. This is perhaps nowhere more evident than in his consideration of originating values. In *Insight*, values are always "terminal inasmuch as they are objects for possible choices, but they are originating inasmuch as" choosing them "modifies our habitual willingness, our effective orientation to the universe, and so our contribution to the dialectical process of progress or decline."⁴⁴⁹ In *Method in Theology*, by contrast,

Terminal values are the values that are chosen; true instances of the particular good, a true good of order, a true scale of preferences regarding values and satisfaction. Correlative to terminal values are the originating values that do the choosing: they are authentic persons achieving self-transcendence by their good choices. Since man can know and choose authenticity and self-transcendence, originating and terminal values can coincide. **...the originating values that choose and the terminal values that are chosen [can] overlap and interlace.**⁴⁵⁰

In *Insight*, our choice of values changes us; in *Method in Theology*, we are values (or disvalues) developing according to our decisions.

⁴⁴⁸ See Lonergan *Insight*, 624; *Method in Theology*, 31-33

⁴⁴⁹ Lonergan, *Insight*, 625

⁴⁵⁰ Lonergan, *Method in Theology*, 50

But three things have not changed. First, in *Insight*, most values are already embodied. This shift above towards a more complete embodiment concerns only persons. In *Insight*, “the good of order with its concrete contents is a possible object of rational choice and so a value.”⁴⁵¹ In *Method in Theology*, Lonergan explicitly identifies terminal values with “a good of order that is truly good and instances of the particular good that are truly good.”⁴⁵² This is evident also in the appositive relationship between “the values that are chosen” and the rest of the first bolded sentence above. So values are concrete insofar as they are predicated of intelligibilities.⁴⁵³ They describe what is good, and “by the good is never meant some abstraction. Only the concrete is good.”⁴⁵⁴

Second, value is the criterion of proper decision-making, and without it, one is left without a way to proceed. As Lonergan noted in *Insight*, practical intelligence can supply

⁴⁵¹ Lonergan, *Insight*, 624

⁴⁵² Lonergan, *Method in Theology*, 49

⁴⁵³ One is tempted to ask whether values inhere in or adhere to intelligibilities for Lonergan. Neither is the case—values are not metaphysical entities, so metaphysical categories cannot be properly applied in their analysis. The most we can say is that, for Lonergan, actual values are the values of actual persons, places, things, and states of affairs. I have elected to discuss values as predicated of intelligibilities as a way of preserving this ambiguity, as it suggests neither that the value is part of the intelligibility nor that the value is attached to it.

There is a further ambiguity concerning whether the values exist independent of our feelings, independent of us as subjects. Certainly, values do not exist *for us* independent of our feelings or of ourselves as subjects, but that is not the same as saying that they do not exist *at all* without us. In his later work, as we’ve noted, Lonergan consistently identifies concrete goods as terminal or originating values either implicitly through apposition or explicitly. Since there is a wide intelligible universe that no human being has ever experienced and never will, it seems apparent that particular intelligibilities can exist independently of our cognitive processes, and it seems probable that they too have value.

Lonergan deals with this possible issue concerning intelligibility in *Insight* 19 by conceiving God analogically as an unrestricted act of understanding – it doesn’t matter if human knowing will never reach a given intelligibility, it is already comprehended in the mind of God who understands everything about everything. Though Lonergan does not extend this analogy in his later work, Byrne extends it persuasively to an unrestricted act of understanding, value, choosing, and loving (*Ethics of Discernment*, 372-77). In such a way, value could exist independently of our feelings and of ourselves as subjects, insofar as God is the ultimate valuator.

⁴⁵⁴ Lonergan, *Method in Theology*, 36

us with a myriad of possible actions, but it cannot fully determine the question of what we ought to do. Value is what we choose to realize in our decisions and actions, and what makes those decisions and actions worthwhile (or not) in their context.

Third, values can be both potential and actual. In *Insight*, our practical intelligence must choose between things that might be. “But such possibilities are manifold” and the value of each is the criterion by which we select “some possibilities from the manifold and by that decision and choice [begin] the transition from the intellectual conception of a possible order to its concrete realization.”⁴⁵⁵

While meanings are intelligible, values are at least something analogous to intelligible, and because they are accessed through feelings *and not* cognition, this analogy to intelligibility is the closest we can come to intellectual knowledge of values. As we’ll discuss in the next chapter, just as intelligibilities are known through the intellect, values are accessed through the affects, so we’ll call them affectible to emphasize the parallel with intelligible.⁴⁵⁶ This extends (limitedly) to our processes as well: Just as our cognitive processes take place against a background of previous and current speculations, judgments, decisions, and actions—a horizon of knowing⁴⁵⁷—so also do our affective processes take place against a background of previous and current desires/aversions, affects, and moods, our horizon of feelings. And just as our cognitive processes are subject to biases that distort

⁴⁵⁵ Lonergan, *Insight*, 621

⁴⁵⁶ My thanks to Brian Himes for insisting on this distinction in conversation.

⁴⁵⁷ This is how Lonergan describes the metaphorical use of the word ‘horizon’ in his 1968 lecture of the same title: “In this sense, what lies beyond one’s horizon is simply outside the range of one’s interests and knowledge... And what lies within one’s horizon is in some measure, great or small, an object of interest and of knowledge.” Bernard Lonergan, “Horizons”, in *Philosophical and Theological Papers 1965-1980*, ed. Robert Croken and Robert Doran (Toronto: University of Toronto Press, 2004), 11; hereafter cited as Lonergan, “Horizons”.

our horizon of knowing and so our pursuit of questions, so also our affective processes are subject to biases that distort our horizon of feeling.⁴⁵⁸

These affectabilities are nonetheless predicated of intelligibilities. Meaning as the object of our intention is intelligible, and given that we live in the world mediated by meaning, meaning-as-object is consistently what we present as a phantasm to our feelings for evaluation, even if the meanings-as-objects remain imprecise. When we do so, our feelings as an intentional response to that phantasmal meaning-as-object issue forth and disclose to us their proper object, a possible affectibility, a (dis)value. Because affectibilities are predicated of intelligibilities, the affectibility is restricted by the nature of the intelligibility of which it is predicated—an actual value cannot be predicated of a possible intelligibility. Likewise, the degree to which an affective valuation of a meaning-as-object can be dispositive is limited by the specificity of that meaning. If the formal act of meaning has not supplied sufficient clarity in constructing its object, the valuation of that object will be far less reliable than the valuation of a meant object that has been thoroughly and recursively detailed in the formal act of meaning. This is the difference between the felt value of a work of art on first impression and the felt value of a work of art after careful study of its form, content, and history—the same material object is at stake in both, but in a significant way, two different paintings as meant objects are being presented for evaluation.

Once we have apprehended the affectability as the proper object of our intentional response to a meaning-as-object, we can approve or disapprove a value in a judgment of

⁴⁵⁸ One might even argue that distortions of the horizon of feelings and consequent errors in value judgments lie at the root of the cognitive biases Lonergan describes in *Insight*, ch. 6-7. We will take up this argument in the next chapter.

value, which says whether the formal meaning-as-object in question is truly or only apparently good. Judgments of value are structured identically to judgments of fact as full acts of meaning: they affirm or deny value by articulating the conditions under which that value is actual and seeing if those conditions have been satisfied. But judgments of fact and value “differ in content, for one can approve of what does not exist and disapprove of what does exist” in judgments of value.⁴⁵⁹ In judging the value of what does not exist, we say whether or not it *should* exist.

This is not the case for judgments of fact: “something does not have to exist to be right and good, but it does have to exist to be affirmed as existing.”⁴⁶⁰ When we judge that *X is*, we’re affirming that X exists in a certain way, that a given state of affairs X obtains. When we judge that something *was*, we’re affirming that at time T, state of affairs X obtained, and it may still obtain (and if it does, we should also judge that *X still is*). But when we judge that *X will be*, the intelligibility that grounds my judgment is not the intelligibility of X—after all, the intelligible is the real, and X is *not yet* real. Instead, my judgment is grounded in prior judgments affirming the existence of states of affairs A, B, and C that condition the possibility and determine the probability of X as its necessary and sufficient conditions, such that if A, B, and C, then X. When we judge that *Y could be*, something similar happens: we affirm the existing states of affairs D, E, and F, which are necessary but not sufficient conditions for Y.

But this will not do for judgments of value concerning a potential intelligibility because we’re not judging existing conditions but potential values—we’re saying that a

⁴⁵⁹ Lonergan, *Method in Theology*, 37

⁴⁶⁰ Lonergan, “Judgments of Value”, 144

potential X or Y would have (dis)value V and so would be *worthwhile* (or not) to bring about, and I cannot say this on the grounds of *what is now* alone. “The link [between conditions and conditioned] for a judgment of value is... ‘Intelligibility *I* can be responsibly affirmed (or denied) to have value *V* under conditions *C*’...”⁴⁶¹ Present circumstances do condition both the states of affairs that can succeed them and the advisability of realizing each distinct state of affairs, but one cannot derive ‘ought’ from ‘is’, and the ‘is’ alone leaves the question underdetermined in any case.

Instead, what we’re approving or disapproving is the value of the proposed state of affairs, which is not dependent on existing states of affairs or on their values in the right way to be determined by either (though they certainly do bear on the question—context is king). Since what is intelligible is what is real, the proposed state of affairs is not yet properly intelligible, but is rather notional, and so also will be any affectibilities predicated of it. But what does it mean for intelligibilities and affectibilities to be notional? For Lonergan, a notion is a conscious orientation to “an intelligibility that we want to know but do not know”.⁴⁶²

⁴⁶¹ Byrne, *Ethics of Discernment*, 107

⁴⁶² Bernard Lonergan, “The Human Good”, in *Philosophical and Theological Papers 1965-1980*, ed. Robert Croken and Robert Doran (Toronto: University of Toronto Press, 2004), 337; hereafter cited as Lonergan, “The Human Good”.

This is actually only one of four ways Lonergan uses the word ‘notion’. I give in the text the first of his technical uses, and where relevant, we will qualify the others with appropriate adjectives. The second kind are transcendental notions of being and value, anticipating the whole of being and goodness (see *Insight* 12; *Method in Theology* 2.3). These transcendental notions are unrestricted, and in having them, I am oriented to the transcendent not just in the sense of transcending my individual context but in the sense of transcending proportionate being – they intend the infinite. Transcendental notions will bear further discussion in the next chapter. Notions that are not transcendental are rather more restricted and intend particular things.

Third are the heuristic notions. “A heuristic notion, then, is the notion of an unknown content, and it is determined by anticipating the type of act through which the unknown would become known.” (*Insight* 417) When we ask a question, not as formulated but just as adventing the tension of inquiry, we intend the content that will resolve this tension. That intended but as-yet indeterminate object of our question is a heuristic

Still, how can an orientation or a desire be named a notion? ... Hunger is orientated towards food and eating; it is a desire; it lies within empirical consciousness; but a notion arises only insofar as the orientation of hunger is understood. Purposive human action is orientated towards some end or product; cognitional elements provide the rule and guide of such action; but the cognitional elements are prior to the action; they are constituted, not by the action itself, but by the planning that precedes it.⁴⁶³

In hunger, we experience a set of bodily cues requiring attention and interpretation. I can feel the classic rumbling tummy, or a more subtle set of clues: malaise, a slower mind, a faint tremor in the fingers. The rumbling tummy is easy to notice and interpret—it tends to focus attention on itself in a rather direct fashion, and it rarely occurs unless I’m actually hungry. But the other constellation of signs is a different kind of hunger, associated more with low blood sugar than with an actually empty stomach, and while they are still oriented towards satiation in food, I don’t have a notion (in this case, of food) until I’ve paid them enough attention, gotten a clue about what’s going on, and understood the nature of my discomfort. Once I do have a notion, my orientation becomes intentional: I intend the food that will raise my blood sugar, and if I pay attention to precisely what I feel when I think about certain food types, I will probably be able to figure out just what I should eat.⁴⁶⁴

In just such a way, our actions are oriented towards an end or product, a value, and that orientation is provided by our feelings as intentional responses, the situation, and our proposed course of action. But until those feelings have been attended to and the values

notion. This is close to what we’ve described in the main text, but I differentiate it because what is heuristically notional seems to concern what exists and is as yet unknown to us, and so is notional only for me, whereas what we’re after does not yet exist, and so is notional for everyone.

Lastly, the attentive reader of Lonergan will note that the word ‘notion’ crops up all over his corpus, and often not in ways that readily conform to the above three technical uses. As Lonergan observes, “I use the word ‘notion’ not uniformly, but at times, in a special sense.” (“The Human Good” 337) All those other times, his meaning seems to be colloquial.

⁴⁶³ Lonergan, *Insight*, 378-79

⁴⁶⁴ Lonergan, *Insight*, 379. His example is not blood sugar, but this is the substance of the paragraph following the last quote.

they reveal recognized as their proper objects, the orientation of our actions remains *sotto voce*. Once they are brought to light, we have notions of particular values on the grounds of which we make our judgments that X is worthwhile (or not).

We can, then, characterize values as the objects of intention as at least analogous to meaning as object. This is true both of our valuation of existing persons, things, and states of affairs and our valuation of future possibilities. With future possibilities, our apprehension of values is notional, and we also intend past and present values through feelings as intentional responses to specific intelligible objects. “Actual values are the values of actual intelligible occurrences, processes, or things”, but insofar as we do not embody these values ourselves, we must intend them, and even when we do embody them, we must intend them to bring them to consciousness.⁴⁶⁵

But the cognitional processes that we discussed above governing acts and objects of meaning are not the same as the affective processes governing our apprehension of value. This is perhaps most directly illustrated in communicative acts of meaning, by which we prompt another to take our meaning as object. My potential and formal meanings as objects are not independent of me, so to be adequately communicated, I must help the other intend the same meant objects through any of the various carriers of meaning we discussed above. The closest parallel in the affective process would be to prompt another to examine their feelings to discern a value that we have apprehended. The best way to do so is to present them with a symbol, “an image of a real or imaginary object that evokes a feeling or is evoked by a feeling.”⁴⁶⁶ But what feelings they have are not really under our

⁴⁶⁵ Byrne, *Ethics of Discernment*, 393

⁴⁶⁶ Lonergan, *Method in Theology*, 62

control, and even with a good symbol supplemented by language guiding the other to direct their attention to a particular part of the feelings evoked, words are quite often inadequate to describe the values we intend (partly because values are apprehended affectively instead of cognitively). The most we can do is impart a particularized notion of the value in question to help direct their examination of their own feelings.

I say this not to suggest an answer but to point to a potential difficulty which we lack the time to examine fully here. We will discuss further *how* we apprehend values in the next chapter as part of our discussion of Lonergan's structure of ethical intentionality. For now, we will say that values are known by an affective process rather than a cognitive one, and that this process, while analogous, does not result in meanings as objects, but minimally results in an analogous value as object.

We should note one further feature here: values are historical and contextual. Our felt responses to a given object will change with time and shifts in situation, and with that response, the value it discloses will also shift. Firing a rifle for sport at a gun range, for instance, has a very different value from firing a rifle in combat with the intention of killing an enemy combatant. Likewise, showing someone out the back door to avoid the paparazzi has a different felt value from showing them out the back door out of embarrassment, to reduce the chance that their visit will have been noticed at all. The same type of material action is taking place, the same set of sensorimotor skills are being employed, but because the situation changed, so also has the value we feel regarding that action.

Likewise, values can shift over time. The value of Rome's republic as a good of order shifted between the third and second centuries BC, as we saw in Chapter 1, as it became unable to administrate its expansive overseas territories. The good of order that

was appropriate to a territorially compact state that could be traversed on horseback in a week did not have the same value when that state could take six months to cross. So also the value of Machiavelli's advice has shifted over time: his advice was good for the situation in which he found himself in 16th century Italy, but it's of only debatable applicability today. In large measure, these shifts are situationally dependent, and the shift in values over time occurs because time brings change to every state of affairs.

None of this, of course, actually states what values *are*, beyond saying that they are (1) the proper objects of feelings as intentional responses; (2) embodied; (3) the objects of choice and criteria of judgments of value; (4) actual or potential; (5) historical and contextual. And that is about all we *can* say about them. Each instance of value is unique, we know them affectively rather than cognitively, and we have a transcendental *notion* of value as a whole. What precisely values *are* remains underdetermined.

3.2 Value's Functions

We have already indicated in some ways how value functions for Lonergan. To be somewhat more formal, values have three principle functions for Lonergan: (1) information, (2) assessment, and (3) motivation. We have above adverted to (2) and (3), but we should say something about (1) before going further into those.

Values as informative are a part of the background context in which we find ourselves. I take this to be part of Lonergan's meaning in saying, "Strangers are strange to us because their meanings are not the same as ours, because their ways of seeing and doing

things are not the same as ours, because their values are not the same as ours.”⁴⁶⁷ In deciding an appropriate course of action, we must evaluate available courses of action, which is to say, we must assess the value of each available course of action. But those values, as we pointed out above, are contextualized, and the basic context in which we make our valuations of courses of action itself always involves values that cannot be ignored in the valuative process.⁴⁶⁸ The values that are part of this basic context are values as informative, as we find emphasized in the concept of a stranger in a strange land.

Because different communities embrace or emphasize different values, the right thing to do in one community may well be the wrong thing to do in another. The right thing to do in an American context may be quite the wrong thing in a Japanese context (and vice versa) not because either context is necessarily better or worse than the other but because those involved will interpret that action differently and so present different meanings as objects to their feelings for a valuative response. This will extend beyond the national context into relatively small communities as well. The right thing to do in one coffee shop may be quite the wrong thing in the next coffee shop down the street because the proprietors, staff, and regular customer base form a community of their own and have their own habitual valuations around their interactions. But the larger the scale on which our actions will be made, especially when we reach a national context, the more complex this basic context will be and the more carefully we will need to attend to the values already operative therein if we're to appropriately evaluate available courses of action. For our

⁴⁶⁷ Lonergan, “Analogy of Meaning”, 201. This seems also to be the premise on which Christ prayed for his disciples in John 17, that they would be in the world but not of the world and needed guarding because the world had a very different set of commonsense judgments and valuations than they did by that point.

⁴⁶⁸ The basic context here Lonergan calls a heuristic notion, evidently of both fact and value. See Bernard Lonergan, *Early Works on Theological Method I*, ed. Robert Doran & Robert Croken (Toronto: University of Toronto Press, 2010), 181.

current project, this means that the most complex and demanding valuations are those made in the making of law—the context the lawmaker must understand is remarkably more complicated than the context the customer must grasp.

Assessment tells us what the value of a thing is. For Lonergan, we have a notion of value as a whole, the transcendental notion of value, in this case driving us to “the embrace of everything good about every good thing.”⁴⁶⁹ “Judgments of value are simple or comparative. They affirm or deny that some *x* is truly or only apparently good. Or they compare distinct instances of the truly good to affirm or deny that one is better or more important or more urgent than the other.”⁴⁷⁰ The simple judgment of value is value used to assess whether or not a given *X* is truly good. We present a meaning as object to our feelings for intentional response, and the affectibility that emerges with the felt response is the value of that meaning as object.

We will say considerably more about the ethical structure in the next chapter, but we should note here that the simple emergence of values with feelings in consciousness is not a guarantee that we have correctly apprehended the value of the state of affairs. We could have gone wrong in one or both of two ways. First, we may not have properly understood the state of affairs we’re trying to evaluate. Our affects are infallible relative to the objects to which they respond, which is to say that the value we feel in a given meaning as object will always disclose to us the value of the phantasmal meaning-as-object, but if we have misconstrued the state of affairs, then our affects are responding to

⁴⁶⁹ Byrne, *Ethics of Discernment*, 212

⁴⁷⁰ Lonergan, *Method in Theology*, 37

a mistaken object.⁴⁷¹ Second, where the feeling horizon is distorted, the affects and the values that emerge in response to even a correct understanding of the state of affairs run the risk of being in error.

In addition to simple judgments, our judgments of value can also be comparative, and this brings into sharp focus some of the ways the feeling horizon can be distorted. Comparative judgments of value (or disvalue) ask whether one thing is better or worse than another, or more important, or more urgent. Each must be assessed separately in simple judgments of value; the value of each meaning as object will emerge as positioned on the scale of value preference operative in our horizon of feelings. “*Whenever* we apprehend a value through an act of intentional feeling, we always also feel that value as positioned, as ranked in a hierarchical scale of values. ... Value preferring is equiprimordial with value intending.”⁴⁷² The exercise of comparative value judgments, then, is a question of attention to the relative position of two values within our operative scale. And ideally, the hierarchical scale of value preference operating in our horizons of feeling will be the objective scale.

Loneragan delineates five levels to the objective scale of value preference: vital, social, cultural, personal, and religious.⁴⁷³ Vital values include “health and strength, grace and vigor”, and in service of these values, we pursue particular goods like food and shelter.⁴⁷⁴ Social values condition the recurrence of particular goods that promote vital

⁴⁷¹ Byrne, *Ethics of Discernment*, 150. Byrne has engaged in a lengthy and persuasive discussion of the limited infallibility of insights and affects in Lonergan’s work in Chapter 6 of *Ethics of Discernment*, esp. §5, and we refer the reader thence for further information on this point.

⁴⁷² Byrne, *Ethics of Discernment*, 271-72

⁴⁷³ Lonergan, *Method in Theology*, 32-33

⁴⁷⁴ Lonergan, *Method in Theology*, 33

values for the community—the more efficient system that sustains the whole community appropriately is generally to be preferred. Cultural values likewise condition social values by considering what kinds of systems will be allowable. When there is no way to sustain the entire community in the way we all might prefer given available resources, cultural values dictate how limited resources will be divided for the good of the rest of the community or who will bear the burden of a change in social structures and systems. “Personal value is the person in his self-transcendence, as loving and being loved, as originator of values in himself and in his milieu, as an inspiration and invitation to others to do likewise”, and this orders cultural value by emphasizing that the choices of system should aid the development of each individual in this direction.⁴⁷⁵ Religious values are the heart of the matter and might be thought of as the personal value of God.

When this scale of value preference is operative in our horizons of feelings, we will judge the values of persons superior to the values of social orders, for instance, such that a more efficient system will be disallowed if it damages persons or substantially inhibits their development, particularly if a viable alternative is available. If such an alternative isn’t immediately to hand, this comparative judgment of value will push us to try to find one.

But often, this scale is not fully/integrally operative in our horizon of feelings because of distortions in that horizon. These distortions can be relatively minor or entirely all-encompassing (as in Nietzschean *ressentiment*). We will discuss why this is and how it can be corrected in the next chapter, but for the moment, it will be enough to say that when our horizon of feelings is distorted by a bias of some sort, we can arrive at

⁴⁷⁵ Lonergan, *Method in Theology*, 33

comparative judgments of value that are wrong, and sometimes disastrously so. And it's not difficult to evince an instance from history.

Consider, for instance, Luther's insistence on reforms to the Catholic Church around the sale of indulgences, as we discussed it in the previous chapter. Leaving Luther's objections to the theological soundness of indulgences themselves to one side, Luther rightly pointed out that religious values were not correctly implicated in the *sale* of indulgences. What was implicated were the personal values of the parishioners to whom these sales were made, the religious and cultural values of forgiveness, the social value of the institution of the Church as manifest in various bishoprics, and the vital values those same parishioners were being asked to forego in pursuit of forgiveness. Luther's outrage was rooted in the Church's misappropriation of divine grace and corruption of related doctrines, damaging the religious and cultural values at play, which manifested a preference for the institution over both the personal value of the parishioners and their ability to secure appropriate vital values for themselves. The way these sales were conducted made clear that the Church as an institution and the bishops as individuals valued their edifices and lifestyles over their parishioners, and it was clear that this was wrong—it was a fundamental misordering of the scale of values.

These judgments can be so devastatingly wrong because values function as the motivating factor in our decision-making. Up to this point, we have been discussing the uses of value with respect to values that are, but each is just as relevant when deciding what values to create in the world, which true goods to build. When we ask whether something would be worthwhile to do, or would be more worthwhile than something else, we are asking first and foremost after the value(s) of that course of action or that set of possible

actions. When we ask which would be a better course of action to take, we are asking for a judgment of value comparing the value of each available course of action.

This is what it means to live in a world motivated by value: we seek the good. The unrestricted notion of value drives us to not only embrace all the good that is but to create all the good we can.

4 Meanings & Values in Relation

From the foregoing, the reader should already have a reasonably clear picture of the relationship between meanings and values, so we will be somewhat brief here. The meanings we construct have values to them, one way or the other. We present meanings as both act and object to our feelings for evaluation, and the feelings that respond intentionally bring with them values felt concerning these meant constructs.

These meanings can cover a remarkably wide array of persons, places, things, situations, and actions—as we discussed in §2, we live in a *world* mediated by meaning, after all. The human world is constituted by and continually constructed of meaning, and the meaning that we present for valuation can be anything in it. It can also be any possible future undertaking, the values of future states of persons, places, things, and situations that would be brought about by future undertakings, and actions that others would be prompted to take because of or in response to that undertaking. In this way, values motivate effective acts of meaning.

Values can be motivating, moreover, not only in the sense of driving specific courses of action but in the sense of inspiring commitment to their realization. In this way, values motivate constitutive acts of meaning. This can happen for individuals, in the way a parent seeks the value of his or her child as happy, independent, and successful. In this

way, the parent's meaning constitutes the parent as a certain kind of originating value. This commitment can also constitute a community and drive its operation. As we will see in Chapter 6, this is the core and foundation of an institution—it is a community of commitment to a set of values and their realization.

One further thing we should say, which may not have been clear from the above. Being and the good are convertible for Lonergan.⁴⁷⁶ They are accessed differently, through cognitional and valuative reflections and judgments, and because of that, meanings and values are not quite the same thing. Both, though, are critical for how we know the world—both *concern* the same thing. What is, is good, and so while meanings are considering what is and values are considering what is good, meanings and values are really two sides of the same coin. We differentiate the two and deal first with meaning largely because we are limited creatures and consciously approach our experience of the world cognitively first and then affectively.

5 Authentic Meanings & Values

Having discussed what meanings and values are for Lonergan and how they relate to one another, we now have one final question to consider in this chapter: what makes meanings and values *authentic*? The short answer to that question is that they are the product of authentic processes being performed by authentic individuals, communities, and institutions. But that explanation makes sense only within the hermeneutic cycle, so we should attempt a different kind of explanation as an entry point.

⁴⁷⁶ Lonergan, *Insight*, 628-30. See also Byrne, *Ethics of Discernment*, ch. 13.

We should make clear, though, that this discussion is only preliminary. We are not yet in a position to firmly delineate authentic and unauthentic meanings and values, but we have offered a number of useful distinctions among meanings and values to this point, and we can at least say which of the categories so distinguished can never have authentic meanings and values and which might. So our focus in this section is to discuss the implications of those distinctions for the authenticity or unauthenticity of the meanings and values in each category.

First, formal meanings as objects are neither authentic nor unauthentic. We will say more about this in subsequent chapters, but only meaning as objects that are potential, full, active, or instrumental, *or that are treated as such*, are authentic or unauthentic. Meanings as objects that are formal and acknowledged as such are neither authentic nor inauthentic because until they are determined in a full or active act of meaning, they are fundamentally underdetermined: “One is meaning precisely what one is thinking about, but one has yet to determine whether the object of one’s thought is merely an object of thought or something more than that.”⁴⁷⁷ Because “the exact status of the term remains indeterminate” in a formal act of meaning, it can be neither representational nor false nor specious, and certainly not creative.⁴⁷⁸ Only in the full or active act of meaning is the status of the formal object of meaning finally determined, and the formally meant object’s authenticity or unauthenticity is dependent on that determination.

The values we feel concerning formal objects of meaning, though, can be authentic or unauthentic. We said above that our affects are infallible with respect to the phantasmal

⁴⁷⁷ Lonergan, *Method in Theology*, 72

⁴⁷⁸ Lonergan, *Method in Theology*, 73

meaning-as-object with which they are presented, but that this carries two limits. The first is that of the accuracy of the formal object of meaning, but as that is not yet determined, the values felt can be neither authentic nor unauthentic on that basis. The second concerns the horizon of feelings from which come the affects that disclose values. This will condition the authenticity of values of whatever object presented for affective valuation, including the values of formal objects of meaning. If the horizon is distorted, there is a strong probability that the values will be unauthentic. One who takes delight in the thought of torturing puppies (or torturing prisoners), for instance, has made an unauthentic valuation of that situation, and the values his affects disclose relative to those acts of meaning are thereby unauthentic despite the fact that no puppies were harmed in accessing those values.

It may seem to the reader rather odd to not group potential objects of meaning with formal acts of meaning and say that they, too, are neither authentic nor unauthentic. We have not done so because of the nature of those objects. A formal object of meaning has been distinguished from its act, and that process of distinction, the act of meaning, may itself be authentic or unauthentic, even if a full or active act of meaning is needed to determine the authenticity of the formal object of meaning. But a potential object of meaning has not yet been distinguished from its act, and the potential act of meaning can be authentic or unauthentic no less than the formal act of meaning. If the act of meaning can be authentic or not and is undistinguished from its object, it seems difficult to say that the object of meaning can be neither authentic nor unauthentic. We will therefore not try to do so.

For potential, full, active, and instrumental objects of meaning, authentic meanings and values are of two kinds: present and prospective. The reader will remember that we said that the core of meaning has four possible relations to being: (1) false, (2) specious, (3) representational, and (4) creative. Authentic present potential, elemental acts and objects of meaning are representational, as in the smile or the uncritiqued work of art. The smile as an act and object of meaning is authentic insofar as it represents a true emotional state and unauthentic insofar as it does not. In both cases, the guileless and the mendacious, the meaning of the smile is at least initially elemental to both the one smiling and the one who sees the smile. This is, of course, not to say that the emotional state it communicates always arises for the reasons we think, of course, but figuring out what the reason behind the smile and the immediate emotion prompting it might be would require a formal act of meaning. In the uncritiqued work of art, the artist has intended a meaning and invited you into the world he puts forth, and this is an authentic meaning as act and object insofar as its felt value shows it as truly good, insofar as it inspires progress.⁴⁷⁹

Authentic present full acts of meaning (and their associated value) are representational, picking up on the thread of Lonergan's thought in *Insight*. What is meant in a full act of representational meaning is a true reflection of what is. When that present reality is the agent object of feelings as intentional responses within a fully converted horizon, the proper object of those feelings is a present value. Authentic present instrumental acts of meaning likewise adequately express those full acts of meaning and associated values. Authentic present active acts of meaning, as constitutive, are somewhat

⁴⁷⁹ 'Progress' is a technical term for Lonergan that we will deal with more in the Conclusion. In short, it is the product of authentic individuals, communities, and institutions operating authentically together. See "Dialectic of Authority", 6-7.

different; they have the creative relation to being. Their more obvious orientation is prospective, but so long as they are continually chosen, active acts of meaning also sustain existing individuals, communities, and institutions.

Most unauthentic present meanings bear the false relation to being. These are the false judgments we referenced above—the intentional act of meaning has sought the state of affairs that is, but has failed to properly grasp it. When this is mistaken for truth or used knowingly as a basis for decision-making, it is unauthentic. Instrumental meanings are as well, insofar as they are expressions of another meaning. When the meaning expressed is itself unauthentic, as in the case of false judgment communicated to others, or when the expression is flawed in some way, as in failures to communicate (e.g. things lost in translation) or an incomplete communication, whether innocently or mendaciously, the instrumental acts of meaning are unauthentic.

Present constitutive meanings can be unauthentic when they are specious. This is easiest to see with institutions, which we will treat more extensively in Chapter 6. For Lonergan, an institution is a community constituted by common meanings dedicating that community to a goal, the realization of a value and the states of affairs necessary thereunto. When that goal is specious, the institution itself, and so the constitutive acts of meaning of which it consists, take on the specious character of their goal. People for the Ethical Treatment of Animals, for instance, is not a specious institution insofar as their goal, the value they seek to realize, freeing animals from suffering caused by humans, is not specious. People for the Ethical Treatment of Unicorns, on the other hand, would be a specious institution because there are no unicorns for humans to treat well or poorly—it is dedicated to a specious goal, and so takes on the specious character of that goal. Likewise,

an institution can *become* specious when its goal has been accomplished, when the value to which it was committed has been realized as fully as possible and cannot be realized further, and no new goal has been specified. The federal office responsible for Y2K preparedness, for instance, had as its goal maintaining the value instantiated in the social order by ensuring that systems dependent on software coded using 2 digits instead of 4 for the year were not significantly disrupted when the year changed from 1999 to 2000. It accomplished that goal and continued operating to help address any hiccups that happened despite preparedness efforts. But then it became specious because no new goal was specified, despite its continued operation until 2017.

Prospective meanings and values, when authentic, are creative. The intentional act of meaning moves towards a state of affairs that *could be* and grasps as its proper object the intelligibility not just of that state of affairs but of the road that must be walked to actualize it. Those intelligibilities become collectively the agent object of relevant feelings as intentional responses, which feel the value of those intelligibilities. These intelligibilities and associated values are not yet real—they are not yet part of the world mediated by meaning. But they are possible, and in knowing and judging them in authentic ways, we choose to actualize those possible meanings and values that will advance the world. The goal of actualizing authentic meanings and values is progress, and authentic meanings and values are always those that represent the next step on a normative trajectory for human history. One is put in mind of Marx's final thesis on Feuerbach: "The philosophers have only *interpreted* the world in various ways; the point is to *change* it."⁴⁸⁰

⁴⁸⁰ Karl Marx, "Theses on Feuerbach", in *Karl Marx: Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett Publishing Company, Inc., 1994), 101

That is precisely what acts of meaning with a creative orientation to being do, and the authentic ones change it for the better.

These prospective meanings and values occur within a tradition, within a historical context, and they can be authentic in one or both of two ways. “There is the minor authenticity or unauthenticity of the subject with respect to the tradition that nourishes him. There is the major authenticity that justifies or condemns the tradition itself.”⁴⁸¹ Faithfully carrying forward the tradition, for better or for worse, is only minorly authentic. The tradition itself has a felt value, and this should not be ignored or neglected, but unless it is considered critically, creating new meanings and values in adherence to it will be authentic only relative to that tradition. Most traditions began with an authentic core, though, and they require development to remain so. Full authenticity in prospective meanings and values for the meaning subject means realizing new meanings and values that are both attendant to the tradition’s existing value and push the tradition in the direction of development so that the tradition itself remains authentic.

Prospective meanings and values, whether authentic or unauthentic, always have this creative relation to being. We do not consider possible future scenarios without asking whether we should work to realize them. We do not consider courses of action without asking whether we should take them. Even in the case of idle speculation, that is always part of the conversation, even if a part disposed of quickly. And even when we seek merely to preserve the status quo, this too is creative insofar as time brings change, and we seek to create a future in which that change does not take place or does not impact us. Complexes of meaning and value with a creative relation to being always also therefore include at least

⁴⁸¹ Lonergan, *Method in Theology*, 77

consideration of constitutive or effective acts of meaning. These will be necessary to achieve any object of a prospective meaning, and often the state of affairs aimed at *is* the realization of a constitutive or effective act of meaning (or set thereof). But constitutive or effective acts of meaning occur only insofar as a course of action is chosen and actually undertaken.

But this also means that prospective meanings and values always also have another orientation to being because they rely on a successful evaluation of the world as it is to know what changes are actually possible rather than specious and which should or should not be made or even attempted. Authentic prospective meanings and values therefore have at their base a set of present representational meanings and associated values. Unauthentic prospective meanings and values have at their base a set of present false or specious meanings and associated values (and sometimes both). In the case of false meanings, this usually means that the prospective meanings and values are grounded in false judgments of fact and value about the best ways to proceed, especially when those are in turn grounded in false judgments of fact and value about the way things are. Likewise, in the case of specious meanings, the prospective meanings and values are ordered to a specious goal—a known lack of intelligibility and affectibility. This means that the goal not only does not exist yet but cannot exist to the best of our current knowledge. A project setting out to prove the existence of the phlogiston might have been authentic in the early 17th century but would be unauthentic today, despite being creative, precisely because phlogistons have never existed and never will, something that was not known in the early 17th century but is known now. But given recent advances in genetic manipulation, a project setting out to create unicorns might not be so specious.

As we said at the beginning of this chapter, the short answer to what makes meanings and values authentic is that they are the product of authentic processes being performed by authentic individuals, communities, and institutions. The next three chapters will expand on that substantially by discussing the nature of the individual, the community, and the institution, and considering what authentic processes might look like for each. In the course of that discussion, it should become clear how authentic and unauthentic meanings and values can be discerned. But for now, we hope the reader has some sense of what differentiates authentic and unauthentic meanings and values.

Chapter 4: Individual Authenticity

Chapter 3 began with a brief precis on what authenticity means for Lonergan. We said there that it is achieved through dedication to the processes by which we naturally operate and driven by our immanent desires to know everything about everything and to value every good thing about everything good. Authenticity is borne co-equally in three carriers: (1) meanings and values, (2) the processes by which those are realized, and (3) the entities responsible for operating those processes. As the entities are of three kinds (individual, community, and institution) and the processes will differ according to the entity responsible for performing them, the tie that binds all three together is meanings and values. We discussed what Lonergan intends by ‘meanings’ and ‘values’ and the relationship between the two, ending with a preliminary discussion of how authentic meanings and values are distinguished, but we deferred further discussion of the entities and processes. We now come to that discussion.

In this and the following two chapters, therefore, our procedure will be thus: First, we will discuss the entity that may or may not be operating authentically. Here, that is the

individual; in Chapter 5, it will be the community; in Chapter 6, it will be the institution. Second, we will consider what authentic process looks like for each entity. Third, we will consider the ways this can go wrong, what Lonergan calls biases. Lastly, we will consider the answers to these biases, what Lonergan calls conversions. Because communities are composed of individuals and institutions are operated by individuals, what we have to say in this chapter in particular will be of strong importance in the next two chapters.

For the individual, authentic operation means operating according to certain methods or patterns of knowing, deciding, and acting—cognitional and ethical structure—performed not naïvely but with critical reflection resulting first in affirmation that this is how we humans work and then in self-appropriation through conversion. There are at least four biases operative for the individual: dramatic, egoistic, picture thinking, and the general bias of common sense, and these are met (in no particular order) by intellectual, moral, affective, and psychic conversion.

We should emphasize at the outset that authenticity is predicated of both individuals subject to authority and individuals in authority, and self-affirmation and conversion are at least as important for the individual in authority as for the individual subject to it, if not moreso. While it is true that individuals in authority exercise that authority within an institutional framework, and that framework is itself quite critical, it is also true that individuals in authority are the ones responsible for shaping and operating that institutional framework. In doing so, they will be authentic in appropriating these human ways of knowing and doing no less than individuals subject to authority—and, indeed, most of us are both in authority and subject to authority in different contexts.

1 The Subject

By ‘the individual’, we mean ‘the subject’ as individuated and distinct from other subjects. Lonergan, in his 1968 lecture on “The Subject”, makes clear that there is a problem of discussing the subject as separate from the operations of the subject: “The study of the subject is...the study of oneself inasmuch as one is conscious. ... It attends to operations and to their center and source, which is the self. ... It examines the different operations on the several levels [of consciousness] and their relations to one another.”⁴⁸² The danger is that we draw a false distinction between ontology and function, and this lies at the heart of his criticism of other understandings of the subject as neglected, truncated, immanent, and alien in that lecture. So we will say that the subject is alive, conscious, individuated, and self-constituting.

In *Insight*, “To be alive, then, is to be a more or less autonomous center of activity. It is to deal with a succession of changing situations; it is to do so promptly, efficaciously, economically; it is to attend continuously to the present, to learn perpetually from the past, to anticipate constantly the future.”⁴⁸³ To be alive, then, is to be engaged in operations that connect one with the world around oneself. This autonomous center of activity is the self. These activities, we should be clear, are not always conscious. Beyond the activities of our autonomic nervous system (breathing, heart beating, sweating or contracting the capillaries, etc.), we nonetheless do respond to stimuli even when asleep, and we do so without waking up. When a position becomes uncomfortable, i.e. when our muscles and

⁴⁸² Bernard Lonergan, “The Subject”, in *A Second Collection*, 2nd ed., ed. Robert Doran & John Dadosky (Toronto: University of Toronto Press, 2016), 63; hereafter cited as Lonergan, “The Subject”.

⁴⁸³ Lonergan, *Insight*, 96. “Autonomous” in this instance refers not to freedom of will but relative independence from the surrounding environment.

tendons begin sending pain signals to the brain, we shift. When we are overly warm or cold, we shed covers or appropriate more of them, respectively.⁴⁸⁴ These are all activities over which we would have conscious control, were we conscious. We are not subjects in such a state, but “merely potentially subjects.”⁴⁸⁵

But this is not yet the subject: “The study of the subject is...the study of oneself inasmuch as one is conscious.”⁴⁸⁶ The subject, then, is the living creature who is conscious: “The subject is a substance that is present to itself, that is conscious.”⁴⁸⁷ It is not that one is “thinking about oneself. One is conscious no matter what one is thinking about. Consciousness means that one is *doing* the thinking.”⁴⁸⁸ Consciousness, then, means that one is aware both of the situation in which one finds oneself and of oneself as being in that situation: “consciousness is of the acting subject *qua* acting”.⁴⁸⁹

Consciousness has several different principle operations, which we will elaborate on below. As attentive, consciousness is awareness of the world and oneself without concern (*Sorge*): I hear a crash but am not yet interested by it.⁴⁹⁰ As intelligent,

⁴⁸⁴ We say this with the caveat that Lonergan says also that the potential subject may be comatose. The Glasgow Coma Scale describes the degree to which the patient is unconscious by assigning numerical values to the presence and quality of their responses to stimuli. A patient in a sufficiently deep coma (Glasgow score of 3-4) does none of these things, though, and is still accounted as alive.

⁴⁸⁵ Lonergan, “The Subject”, 69

⁴⁸⁶ Lonergan, “The Subject”, 63

⁴⁸⁷ Bernard Lonergan, *Topics in Education*, ed. Robert Doran & Frederick Crowe (Toronto: University of Toronto Press, 1993), 83; hereafter cited as Lonergan, *Topics*.

⁴⁸⁸ Lonergan, *Topics*, 81, emphasis original

⁴⁸⁹ Lonergan, “Cognitive Structure”, 209

⁴⁹⁰ This stands in contrast to the transcendental precept to be attentive. We will discuss that in more detail in §2, below, but this rather passive attentiveness is not itself transcendent. I am actively attentive to things within my realms of *Sorge*, but I do not transcend myself in that. Transcendence of myself, and thus normativity, begins in paying active attention to things beyond my specific realms of concern (*Sorge*). Doing this (or rather, no longer being blocked from doing this) is part of the work of psychic conversion, which we will discuss below in §4.

consciousness becomes curious about the items in one's awareness: I wonder what that crash might portend, and options range from a dish clattering in the sink to someone banging their elbow. As reasonable, consciousness reprocesses the information to which it has attended to begin excluding possibilities about what is going on, eventually either settling on one of the available options or concluding that there is insufficient information as yet: the nature of the crash is higher and sharper than I would expect from my wife hitting the floor and didn't reverberate through the building, so it was most likely a dish falling. As responsible, consciousness assesses available courses of action and concludes what one ought to do in the situation: I recall my wife is taking a nap and so is unlikely to have caused the racket with the dish, and no one else should be in the house, so I should go investigate—it may be my cat knocking things about the counter, or it may be someone else breaking a window to get into the house, and I do not have enough information where I sit to know which was actually the cause and therefore what other actions I could or should take beyond investigating.

What enters consciousness in any given situation, though, is structured by a narrative we tell ourselves about ourselves and the world around us. We lack the bandwidth to be aware of everything going on at once, so we employ a psychic censor preconsciously that determines what enters our awareness and what does not, and it does so according to that narrative.⁴⁹¹ We will discuss below in §3 how this works and how it can go awry. But that narrative structures our interests and objectives to determine what we will attend to, and we perceive only what rises through that filter into consciousness. No two of us tell ourselves quite the same story about ourselves, and so no two of us have quite the same

⁴⁹¹ Lonergan, *Insight*, 214. Lonergan explicitly identifies this with Freud's psychic censor.

“pattern of interests and objectives, desires and fears, that emphasize elements and aspects of sensible presentations, enrich them with the individual’s associations and memories, and project them into future courses of possible fruitful activity”, which is “what differentiates the perceptual flow in one man from that of another”.⁴⁹² This is how we are individuated, how I am aware of myself as not being you. In that awareness, I am self-conscious, conscious of myself as myself, present to myself as a subject, not as an object.

Beyond being conscious, the subject is also self-constituting, and by this we mean two things. First, the subject is present to himself as the central character in the same narrative structuring his perceptions. What we think we can do in any situation will be restricted by the role we see ourselves as playing within that narrative. If I see myself as someone with martial prowess, I may elect to confront any putative home invaders with force. If not, I’ll probably do better to contact police and hide in the meantime, probably standing guard over my wife or waking her from her nap. Note that the narrative may not tell us true, may not accurately inform us about either the situation or ourselves—courage and bravado differ in that subjects with different actual capacities understand themselves, are present to themselves, as having the same capacities.

Second, the subject constitutes himself in the actions he eventually elects to take. In the previous chapter, we said that for Lonergan, we are originating values (or disvalues) that develop ourselves according to our decisions. This is how the subject constitutes the actuality of her- or himself. In choosing to study martial arts, I become someone who could reasonably confront home invaders. In choosing to defend my wife against them despite a lack of martial prowess, I make myself someone dedicated to her well-being, someone who

⁴⁹² Lonergan, *Insight*, 96

loves her despite its cost, possibly as high as my own life. Even in far less radical scenarios, I make myself into a certain kind of person, a certain kind of value, with every decision I make and every action I undertake. Nothing that is not a subject has this kind of agency to reshape themselves.⁴⁹³

In being alive, conscious, individuated, and self-constituting, I am a subject, an individual, as Lonergan has understood and employed those terms.

2 Authentic Process⁴⁹⁴

For the individual, authentic processes are certain ways of knowing and deciding; Lonergan calls these cognitional and ethical structure. All humans have an unrestricted desire to know everything about everything, so we come to know the world through questions. All humans have an unrestricted notion of value, so we desire to understand the

⁴⁹³ There is an argument to be made here about whether or not animals fit this description and so could be subjects. It is not an argument we will engage in here beyond saying that xenonoetics is not a field humans are ever likely to be able to answer questions in beyond a very shallow and cursory point, so the questions that would be necessary for us to judge whether any animal operates according to a narrative or is otherwise present to itself in the requisite way are beyond our ability to ask, except in their most broad and basic forms.

⁴⁹⁴ Despite Lonergan's abundant use of that metaphor, we will here endeavor to avoid mention of *levels* of consciousness, and we should take a moment to say why. The metaphor has recently been criticized by other Lonergan scholars as unhelpful in the current context. As Robert Doran put it, "The metaphor of levels is now an obstacle and the issue is one of focusing on sublating and sublated operations and states, which is what the metaphor was intended to elucidate in the first place. It has done its job, and it is time to discard it." (Robert Doran, "Two Ways of Being Conscious", *Method: Journal of Lonergan Studies*, n.s., 3, no. 1 (Spring 2012), fn. 18; hereafter cited as Doran, "Two Ways".) Mark Morelli, in a paper titled "Beyond the Metaphor of Levels of Consciousness", recently gave an account of why the metaphor has become an obstacle and why sublation is a better way of discussing the point. (Mark Morelli, "Beyond the Metaphor of Levels of Consciousness: Appropriation of Sublative Transformations", West Coast Method Institute 2019 presentation, manuscript on file with the author.)

I concur with both scholars that the metaphor of levels is no longer helpful and is probably an obstacle, and for this reason, I have tried to avoid the metaphor of levels in my discussions of consciousness here and elsewhere in this work. One begins to run into problems inasmuch as one begins talking about levels as higher and lower than one another. This leads to an improper privileging of one level (generally judgment) over others, a notion of which Lonergan was at pains to disabuse his readers. This is a danger that persists, if not as obviously, with the language of sublation favored by Doran and Morelli inasmuch as what sublates will tend to be preferred as more advanced or more complete than what is sublated. As a result, I have instead attempted to follow Lonergan's language in "Cognitional Structure" of a structure with parts.

values in all things. All humans can be unrestrictedly in love, which is to say, we can all feel the wholeness of value, which puts pressure on us to order our scale of value preference in a certain way. We are at our best when we work with what we are and the unrestricted notions normatively animating our drive to transcend our current horizons of knowing and feeling.

But we don't always operate in harmony with what we are. This was the basic problem animating our criticism of Habermas in Chapter 2: His political theory doesn't pay sufficient attention to either our constitutions as existential subjects or our persistent tendency to ignore the better angels of our natures. We insist on going our own way, usually because it's easier, or else we allow our judgment to be clouded by other considerations. Or because we don't feel we can take the time to discover what we are, we go about living our lives without ever asking this question, not because it's not a question for us, but because it's not one we believe we can answer.

As we noted in the first section of the previous chapter, though, we can occasionally come to the meanings and values that would otherwise be the product of an authentic process. The failure to thematize and appropriate our ways of knowing and doing, then, is not universally and necessarily fatal. Some people manage to live lives of relative authenticity without ever undertaking the lengthy and difficult work of self-appropriation, operating authentically in most situations without being explicitly aware of what that might mean and in some cases thematizing it in different categories. But at least as often as not, we fail to operate as authentic individuals because we have not recognized what authentic operation requires and so lack the awareness to know when we are operating unauthentically.

We must know, therefore, how it is we operate, but more than that, the authentic individual is committed to actually, purposively operating in that way. So we will discuss first those typically human ways of knowing and deciding, then consider what Lonergan called ‘conversions’, the decisions of commitment to operating in those ways and only in those ways. Because communities are composed of individuals and institutions are operated by individuals, what we say here will have significant resonance and consequences for the next two chapters.

As we noted in the previous chapter, authenticity in Lonergan has generally been discussed at the level of the individual (including by Lonergan himself), which means that we could say a great deal more than we have space for here. For an excellent and markedly more sustained consideration of authenticity in the individual, I refer the reader to Patrick Byrne’s *The Ethics of Discernment*, to which I am heavily indebted throughout this chapter.

2.1 Cognitive Structure

For Lonergan, our human knowing begins in our unrestricted desire to know everything about everything. We have a notion of being, an orientation of our consciousness towards what *is*, and we know being by its intelligibility. Our unrestricted desire to know will be satisfied only when met by an unrestricted act of understanding, only when we understand everything about everything, including the nature of understanding everything about everything. But, since that unrestricted act of understanding is infinite and we are finite creatures, we cannot have that unrestricted act of understanding in this life. We therefore remain forever driven to investigate what *is* by our unrestricted desire to know everything about everything.

This notion of being is transcendental inasmuch as it draws us beyond our current state, beyond ourselves, beyond our present knowledge. The same is true of the transcendental notion of value, which draws us beyond the value, the good, that we already are to ever-greater goodness. They drive us, in other words, to transcend ourselves, not just once but repeatedly and on an ongoing basis. This drive issues forth methodologically in four transcendental precepts that “bid us be attentive, intelligent, reasonable, responsible.”⁴⁹⁵ In being attentive, intelligent, and reasonable, we know the world, and in being responsible, we respond to it properly. Insofar as we are being attentive, intelligent, reasonable, and responsible, we are operating authentically.⁴⁹⁶

We should begin by saying a few words about just what it is that Lonergan thinks we are trying to know—the propriety of any method will, after all, be relative to its objective, and the method of knowing no less. “Being, then, is the objective of the pure desire to know. By the desire to know is meant the dynamic orientation manifested in questions for intelligence and for reflection.”⁴⁹⁷ This desire is unrestricted because its objective is unrestricted: it seeks to know being, and being “is all-inclusive. Apart from being there is nothing. Again, being is completely concrete and completely universal.”⁴⁹⁸

Being is, in principle, knowable for Lonergan. “Being, then, is (1) all that is known, and (2) all that remains to be known. ...since a complete increment of knowing occurs only in judgment, being is what is to be known in the totality of true judgments.”⁴⁹⁹

⁴⁹⁵ Lonergan, *Method in Theology*, 21

⁴⁹⁶ Lonergan, “Dialectic of Authority”, 5

⁴⁹⁷ Lonergan, *Insight*, 372

⁴⁹⁸ Lonergan, *Insight*, 374

⁴⁹⁹ Lonergan, *Insight*, 374

Everything that is can be known. All being is intelligible, a point for which Lonergan argued extensively in *Insight*⁵⁰⁰ and which, for the sake of space, we will not argue here. This is not to say that one person can know all things, or even that all things can be known by humans. But it is to say that everything that is can be known, and the unrestricted act of understanding which would meet our unrestricted desire to know everything about everything will take in everything that is (itself included).

So we come to the question of the structure of human knowing: We know by grasping the intelligible, but how do we do that? For Lonergan, the answer is structural: human knowing is a dynamic structure. In calling it a structure, he means that human knowing is a highly organized whole, the natures and relations of the parts of which are determined by the exigencies of each upon the others such that the removal of one would collapse the whole. Some structures may be composed of objects, but others are composed of activities (his examples are song, dance, chorus, symphony, and drama),⁵⁰¹ and human knowing is a structure of this second kind. In calling it a *dynamic* structure, he means that it is “self-assembling, self-constituting”, so that “one part summon[s] forth the next, till the whole is reached.”⁵⁰²

In a 1964 article titled “Cognitive Structure”, he gives the list of activities as “seeing, hearing, smelling, touching, tasting, inquiring, imagining, understanding,

⁵⁰⁰ See especially *Insight* ch. 12, 19.

⁵⁰¹ Lonergan, “Cognitive Structure”, 206

⁵⁰² Lonergan, “Cognitive Structure”, 207

conceiving, reflecting, weighing the evidence, judging.”⁵⁰³ These compose themselves into a cognitional structure in the following way:

Experience stimulates inquiry, and inquiry is intelligence bringing itself to act; it leads from experience through imagination to insight, and from insight to the concepts that combine in single objects both what has been grasped by insight and what in experience or imagination is relevant to the insight. In turn, concepts stimulate reflection, and reflection is the conscious exigence of rationality; it marshals the evidence and weighs it either to judge or else to doubt and so renew inquiry.⁵⁰⁴

By experience, Lonergan means the data given in consciousness, including what comes through the activities of seeing, hearing, smelling, touching, and tasting. As we noted above and will revisit below, not all data that our senses *could* provide actually enters through our senses. Experience is composed of what actually *does* penetrate to consciousness. Each of us operates mostly and by default according to a narrative that structures what does and doesn’t make it to our awareness. This makes it possible for two people to have very different experiences of the same situation. Experience, what Lonergan sometimes calls empirical consciousness,⁵⁰⁵ is consciousness as attentive.

In the measure that we are following the transcendental precept here, in the measure that we are being attentive, we are not content to accept just what the narrative gives us. The data of sense that is given in consciousness as experience forms phantasms, multi-modal images (as opposed to just visual images) of objects, composed into situations by the imagination in accordance with the narrative. We have little control over this, though “little” is not “none”, inasmuch as the psychic censor operates at the threshold of consciousness to structure our experience and is not under our conscious control, but we

⁵⁰³ Lonergan, “Cognitional Structure”, 206

⁵⁰⁴ Lonergan, “Cognitional Structure”, 207

⁵⁰⁵ See, for instance, Lonergan, *Method in Theology*, 13.

can also make an effort to see things through different lenses, to take up different viewpoints, to understand our role from others' perspectives and to understand their roles from their own perspectives. Doing so is a matter of recognizing the narrative according to which the psychic censor structures our experiences and taking control of that narrative, at least to some extent.⁵⁰⁶ This is the basic foundation of being charitable to one's fellow human beings, not only as other individuals but as individuals in authority over us and individuals subject to our authority. In so doing, we will notice things that will have escaped our notice otherwise.

Moreover, we must also ask questions and make judgments about how and when to engage in this form of charity—we obviously cannot engage in it in all situations whatsoever, but it is often warranted. In any situation where we would say “I don't understand how they could do that”, for instance, we should probably engage in this kind of perspective shift. “I don't understand how the government could pass that law” is a good indication that we need to understand more about the context in which the law was passed, including the perspectives of those making the law. “I don't understand why *X* is paid more than *Y*” is a good indication that we need to understand more about how the pay was determined and the roles and perspectives of each individual involved. In all cases, the questions about whether to attend differently to a situation arise from attending to where we lack understanding of a situation and our common sense assessments and judgments are unlikely to adequately stand in for understanding. This does not mean that a shift in perspective will make what we don't understand suddenly intelligible to us in all cases, but

⁵⁰⁶ Bringing our narrative back under our control completely, or at least to the extent possible, is the work of psychic conversion, which we will discuss below in §4.4.

it does mean that there are cases where that's precisely what will happen. And when things have gone wrong, we will be in a better position to criticize them if we have first understood why they happened the way they did.

We need then to attend both to the data of our experience and to the (un)likelihood that I need to attend to the situation differently in order to get the right multi-modal composite image to have the insight I need. Experience prompts questions, first and foremost of the kind, "What is it?" To have the multi-modal composite image given by imagination in consciousness is not yet to know the object of our consideration, be it a person, thing, or situation. It is not yet even to be aware of what it might be. The multi-modal image is real insofar as it is an image, and it may be representative of something else real, but its role in cognitional structure is not primarily as a representation. The image's role is primarily heuristic: we have multi-modal images given in experience, and these prompt questions, first for intelligence and later for judgment ("Is it so?"). That is the reason for the question: we don't know what it is, so we ask. Assuming that the image is primarily there as a representation of what actually is stands as the root of the picture-thinking bias, which we will discuss below.

To be clear, when we ask in this way, we don't formulate the question (usually). But we do have the pre-linguistic tension of inquiry springing directly from the pure desire to know, which is prior to the formulation of a question, and we usually experience this tension as a dissatisfaction or discomfort with the existing answers, explanations, or situation well before we have the words to communicate the nature of this tension

accurately.⁵⁰⁷ We know there is something about the situation we don't know, something we want to know, perhaps even something we *should* know, and to alleviate this tension, we seek knowledge. The tension sets its own conditions for what will count as an answer to it, for what might resolve it, for what would constitute knowledge as relevant to it. This is not to say that the question as formulated is unimportant or insignificant but to say that the question as formulated is not the pure question. The formulated question will figure significantly in our discussions in Chapters 5-7 since the ability to jointly and cooperatively pursue answers to questions requires that they be communicated, generally in language, and that requires proper formulation. But for our purposes in this chapter, when we use the word 'question', we will generally be referring to the pre-linguistic tension of inquiry, not to a question as formulated in language.

These questions prompt us to have new insights into the role we play in this narrative, the way others interact with that role, what we might do, and (more basically) just what is going on at the moment in the drama. The insight says that the multi-modal composite image is X, or maybe Y or Z, depending—because of habit, enculturated common sense, and the results of past cognition, the initial insight is usually singular, but it does sometimes give us options, and the more complex the situation (especially at the levels of communities and institutions), the better we do to ensure we have gathered all the possible insights about the situation before proceeding. We cannot do this if we have been insufficiently attentive, note. What the insight grasps, as we said above, is an intelligibility, but it is at this point only a potential intelligibility. It requires further scrutiny. We thus

⁵⁰⁷ Lonergan, *Insight*, 375-76. The danger lies in formulation in language, actually; that's the only way Lonergan thinks you can have a mistaken question.

conceive of the situation in one or several ways, and each concept of the situation packages together an insight, an answer to “What is it?”, with the experiences, the composite data of sense, relevant to it. This is consciousness as intelligent.

Insofar as we are following the transcendental precept here, insofar as we are being intelligent, we will continue to gather all available insights until we have the inverse insight that there are no more to gather.⁵⁰⁸ One of the best-known quotes from Sir Arthur Conan Doyle’s Sherlock Holmes is that “when you have eliminated the impossible, whatever remains, however improbable, must be the truth.”⁵⁰⁹ This relies on the implicit assumption that one has recognized all the possibilities before ruling them out. Insofar as we are being intelligent, we are pursuing all possible intelligibilities, between which we will later discriminate.

Moreover, we must recognize when the pursuit is no longer worthwhile. We are almost never blessed with an overabundance of time in which to conduct our investigations thoroughly and completely at our leisure. On top of that, none of these activities occurs singly and in isolation; rather, we are consistently evaluating existing possibilities and pursuing new ones concurrently. As a compliment to Holmes, we must recognize that sometimes we have the right answer before we have fully accumulated all possibilities. If we are able to make that judgment, then the inverse insight about the viability of other possibilities should follow quite immediately.

⁵⁰⁸ An inverse insight does not grasp an intelligibility but grasps instead that there is no intelligibility (or in this case, no further possible intelligibility) to be grasped in insight. For a more complete explanation, see Lonergan, *Insight*, ch. 1, esp. 43-50.

⁵⁰⁹ Arthur Conan Doyle, “The Sign of the Four”, in *Sherlock Holmes: Selected Stories*, ed. Barry McCrea (New York: Oxford University Press, 2014), 35. Emphasis removed.

This insight-laden concept grasps a potential intelligibility, not yet knowledge but supposition. The tension of inquiry remains until we have judged the insight correct. As the question for intelligence was “What is it?”, the question for judgment is now “Is it so?” With the concept in hand as the product of intelligent consciousness, we have said that the intelligibility X grasped in insight is the reality intended by the multi-modal composite image of experience, and we have a conditioned judgment that X is so. Our goal is a virtually unconditioned judgment that X is so, as we described in the previous chapter. The judgment goes from conditioned to virtually unconditioned when the conditions are satisfied.

But the conditioned judgment has three parts. It is always of the form “X is so *if* A, B, and C”. The parts, then, are (1) “the prospective judgment that a given...insight is correct”,⁵¹⁰ the conditioned, “X is so”; (2) the conditions, “A, B, and C”; (3) the link between the conditions and the conditioned. This link “is not a formulated set of concepts such as a definition. It is simply a way of doing things, a procedure within the cognitional field” that says “that an insight is correct if it is invulnerable and it is invulnerable if there are no further pertinent questions”.⁵¹¹ The conditioned is the result of intelligent consciousness, as we have said, but the amalgam of insight and experience in concepts prompts reflection, “the conscious exigence of rationality.”⁵¹² In reflecting, we establish the conditions on the judgment, many of which will have presented themselves in the relevant concept among the data of experiential consciousness.

⁵¹⁰ Lonergan, *Insight*, 312

⁵¹¹ Lonergan, *Insight*, 307, 312

⁵¹² Lonergan, “Cognitional Structure”, 24

But there may be other conditions, and we may not be able to give a full account of the conditions instantaneously or even after long consideration. The establishment of conditions evokes a new question for intelligence, one which usually expects multiple correct answers in the form of multiple applicable conditions, and until we have the appropriate multi-modal composite images presented in consciousness, we will be unable to have the insights necessary to know what the conditions are. We cannot do this well unless we are both attentive and intelligent in our approach to this question and its multiplicitous subsidiary pertinent questions, a substantial challenge for the individual which is only magnified in a communal or institutional context.

Furthermore, reflection establishes why a given condition applies to a given conditioned. This is another source of further pertinent questions—we have to ask not only what the conditions on our judgment are but also why they apply to that judgment. If we cannot give the connection, then it will be difficult to say that the condition in question applies to the judgment in question. It seems quite reasonable to assert, for instance, that a condition on a piece of cloth counting as an American flag is that it be composed of smaller pieces of fabric of red, white, and blue. The connection is clear: the object will be of the kind ‘American flag’ if it meets the specifications of an American flag concerning the color, proportion, and arrangements of its constituent parts, and these specifications have been issued by the body empowered to determine them, so they aren’t just arbitrary. In this case, the specifications state that “The flag of the United States shall have thirteen horizontal stripes, alternate red and white, and a union consisting of white stars on a field

of blue.”⁵¹³ It seems quite unreasonable, given those specifications, to assert that a condition on such a piece of cloth counting as an American flag be that it have a green stripe. No connection is possible since the visual specifications nowhere include green.

Once the conditions and their connection to the conditioned have been established, one must marshal and weigh the available evidence—“Are the conditions met?” As we said, this evidence may come from the data of experience, but it may also come from previous judgments. The judgment that the police officer was within his authority to give me a ticket for going 15 mph over the speed limit is conditioned by the prior judgment that the tool he used to measure my speed was properly calibrated and functioning correctly when he took that measurement. The contrasting judgment that he was in error is likewise conditioned, this time by the prior judgments that my speedometer was properly calibrated and functioning correctly *and* that I looked at it at the relevant moment, at which time it did not show that I was speeding. If we lower the overage to 3 mph, additional judgments about prevailing social rules and customs around how much wiggle room the police usually allow on the speed limit in a given kind of zone come into play as conditions on the judgment of the rectitude of the officer’s actions. It may have been appropriate, if slightly petty, to ticket me for going 3 mph over if I was in a school zone during the day while school is in session, but it was probably inappropriate at 2 AM on a holiday or if the school in question was closed two years ago. Weighing the evidence in even such an individual

⁵¹³ Executive Order no. 10,834, Code of Federal Regulations, title 3, 1959-1963 Comp., p. 367. The formal rules about what does and doesn’t count as an American flag are actually somewhat complicated in their provenance. Actual statutes about the flag are quite limited and are to be found in 4 U.S.C. §§1-10. The President is empowered to change or repeal any part of the flag code or to make additional rules about the flag by proclamation “whenever he deems it to be appropriate or desirable”. (§10) The last such adjustment, adding a star when Hawaii entered the Union, was made in EO 10843, signed by President Eisenhower on 21 Aug 1959.

scenario can be a complex affair, as the judicial systems of the world regularly demonstrate. The more conditions there are, the more evidence there is, the more complicated that gets, and the more carefully it must be handled. We've discussed the traffic stop from the perspective of the individual subject to authority, but as much care as they should exercise, much more should the individual *in* authority exercise care here.

After the evidence is weighed, we are left with a judgment to make. If the legitimate conditions have all been met and we experience no further pertinent tension of inquiry indicating the presence of further conditions, then we have a virtually unconditioned judgment of fact and should affirm its contents—that judgment affirms an intelligibility and a true piece of knowledge. If the legitimate conditions cannot be met, the judgment is false and we should deny it. If the legitimate conditions have not been met but might be with further information or on further reflection, we should answer, “I don't know”.⁵¹⁴ Sometimes, that is the only objectively true answer available.

Insofar as we are following the transcendental precept here, insofar as we are being reasonable, we will withhold judgment until all the further pertinent questions have been exhausted. These further pertinent questions will concern the nature and number of the conditions on the judgment, the connection of those conditions to the judgment, and what evidence might satisfy those conditions. We must be persistent about finding the possible conditions on each judgment and ensuring that each condition properly applies to a given judgment. We must also remain attentive to evidence that would fulfill identified

⁵¹⁴ This leaves to one side the question of faith, “the assurance of things hoped for, the conviction of things not seen.” (Hebrews 11:1). That question, while interesting, is well outside our scope here.

The question of belief, by contrast, is within our scope and will be addressed at length in the next chapter. Belief comes into play when we are unable to answer the questions ourselves and must instead choose on whom we will rely to supply us with evidence (or other formal meanings-as-objects).

conditions and continue to consider reflectively whether each insight prompted by our experience (or other judgments) signals the fulfillment of a condition—intelligence can present us with insights, but reflection must connect that insight (or judgments subsequent to it) to the condition on a judgment. We emphasize this in particular here because while individuals often recognize an insight as evidence fulfilling conditions more or less instantly, when the acquisition of insight becomes diffuse in communal and institutional settings, being purposive about this step becomes much more important.

This may mean that even individual judgments are quite some time in coming. The scope of things about which we make such judgments is remarkably broad—from whether this outfit is flattering to whether the house is on fire to whether a theoretical model of a given star system (e.g. the sextuple system of Castor) is accurate to whether a given person was murdered and, if so, by whom—these are all judgments. Many, if not most, will require subsidiary judgments as evidence, and in many cases, we will need to rely on others to arrive at judgments that we are not competent to make ourselves. Most of us, for instance, would not be competent to independently evaluate start-to-finish whether a vaccine is effective or whether a periodic dimming in a star's luminosity indicates an exoplanet or binary eclipse. These are all judgments relying on subsidiary judgments of fact. Once we enter into community, judgments of fact become only more complicated, and institutions are set up by the community to ensure those judgments of fact are made by those competent to make them.

Moreover, we should pay attention to when our further questions become moot. That a question begins as pertinent does not guarantee that it will remain so right through the process. If a new piece of evidence makes it impossible for a critical condition to be

met, then the judgment is false, and all other questions relating to it cease to be pertinent to it. They may be pertinent to other judgments, but they should no longer be pursued for the sake of this (now false) judgment. Likewise, if a given condition turns out not to be properly connected to a given judgment, then pursuing questions about that condition ceases to be proper. And in some cases, a new piece of evidence establishes and fulfills a new and previously unknown condition that makes the judgment inescapable, such that other unfulfilled conditions themselves become moot. This is not necessarily a common occurrence, but we should acknowledge it even so.

We should moreover distinguish between necessary and sufficient conditions on judgment. A necessary condition must, as the term suggests, be fulfilled if the attendant tension of inquiry is to be fully resolved and the judgment is to be rightly accounted as virtually unconditioned and affirmed. A sufficient condition will be enough to affirm the judgment, assuming the necessary conditions have been fulfilled, even if other sufficient conditions remain unfulfilled (or cannot be fulfilled). A single condition might be sufficient, but more often, a set of conditions will be collectively sufficient. A conditioned judgment becomes virtually unconditioned when there are no further pertinent questions, including when an answer renders further previously pertinent questions moot, meaning that a conditioned judgment can become virtually unconditioned even if some possible conditions are left unfulfilled or even unrecognized as conditions. This happens in many instances for the individual, but it becomes a much more common scenario as the complexity of the judgment and the number of possible legitimate conditions increases, as happens when the judgment concerns whole communities and institutions.

Because sets of conditions are assembled piecemeal as new conditions are recognized and because we are paying attention to the possibility of new conditions within a horizon of knowing structured by the existing conditions, the new conditions that emerge, particularly new sufficient conditions, will tend to be influenced by the existing conditions. Such new conditions may not line up precisely (or at all) with the existing conditions, so the legitimacy of a new condition is not dependent on the nature of existing conditions (except insofar as contradictory conditions cannot belong to the same set of sufficient conditions nor both be necessary conditions). Rather, the existing conditions influence the direction of our attention so that we are more likely to notice some before others, *ceteris paribus*.

For Lonergan, “[g]enuine objectivity is the fruit of authentic subjectivity”, and if we are following the transcendental precepts to be attentive, intelligent, and reasonable in operating our cognitional structure, we are being authentically subjective and we arrive at objective truth in the form of virtually unconditioned judgments of fact.⁵¹⁵ We have presented this structure as an orderly procession, but in fact, multiple parts of the structure are usually operating simultaneously, especially on questions of any particular complexity. The initial insight will prompt the initial conditioned judgment, but even while we investigate the conditions on that judgment, even as we find them properly connected, even as we find them fulfilled, additional insights from new multi-modal composite images given during our search for evidence may suggest new conditioned judgments mutually exclusive with the first one. Other insights may suggest refinements to the judgment,

⁵¹⁵ Lonergan, *Method in Theology*, 273. Fully addressing the question of objectivity would be a substantial digression. I refer the reader instead to Lonergan’s remarks in *Insight*, ch. 13, and Byrne’s in *Ethics of Discernment*, ch. 2, esp. 55-68.

leading us to re-evaluate the connections between conditions and conditioned even while we marshal and weigh evidence concerning those conditions. Each part of the structure can fall forth the others as an exigence, and their relationships are structured by these exigences. The operation of this structure can thus become *quite* complicated.

In *The Ethics of Discernment*, Byrne presents a helpful example from his time as a juror, empaneled in this instance to decide a double homicide case in which two men were accused of killing a man and a woman, leaving a third man as a survivor of the attack.⁵¹⁶ The jury was presented with a wealth of evidence about the crime, establishing that two murders had indeed been committed, and attempting to demonstrate that the accused had committed them. As he sifted through that evidence, Byrne says he “formed several hypotheses”, conditioned judgments about possible intelligibilities explaining what had happened, and “had to refine, revise, or reject most of” those conditioned judgments.⁵¹⁷ He “gradually...came to realize that much of what was presented...was not relevant to the conditions that needed to be fulfilled to reach one or another of the mutually exclusive alternative judgments.”⁵¹⁸ Byrne was, then, concurrently having new insights into possible scenarios, reflecting on the conditions of those he’d already recognized, and marshalling and weighing the evidence for each as he knew their conditions.

Along the way, Byrne identified a long string of legitimate conditions on the judgment of the guilt of one defendant, and recognized those conditions as fulfilled. But he continued to have further pertinent questions about the second defendant until he heard recording of that defendant’s interrogation one more time. The defense that defendant

⁵¹⁶ Byrne, *Ethics of Discernment*, 187-91

⁵¹⁷ Byrne, *Ethics of Discernment*, 189

⁵¹⁸ Byrne, *Ethics of Discernment*, 189

presented was that he wasn't present at the time. No physical evidence put him there, and he knew the survivor couldn't identify him. But he made a small error in the interrogation, something that signaled knowledge he could have only if he was present when the murders took place. When Byrne noticed this, he says, he "had an insight, and realized [he] had no further pertinent questions."⁵¹⁹

Notice that Byrne knew that a virtually unconditioned judgment that the second defendant was present for the murder was a necessary condition on the judgment of that defendant's guilt of the specific charge, but he didn't know all the conditions on the judgment that the defendant was present. Though he doesn't go into this, we can reasonably infer that necessary conditions probably included that no other evidence, physical or testimonial, credibly established that the defendant was elsewhere during the murder. Several things might have counted as a sufficient condition on the judgment, assuming that the necessary conditions were fulfilled, including the revelation of physical evidence placing the defendant on the scene for the murder, credible third-party testimony doing the same, and an incriminating statement of some sort from the defendant. Byrne didn't know which of these would be fulfilled, if any, but once one had been fulfilled (the self-incriminating statement, in this case), questions on the point about physical evidence and third-party testimony that had been pertinent became moot and there were no further pertinent questions about the judgment that the defendant had been present, the lack of physical evidence notwithstanding. This was the last condition remaining to be fulfilled

⁵¹⁹ Byrne, *Ethics of Discernment*, 190. There were actually two incriminating things about the statement, one that Byrne noticed and one that a fellow juror noticed, which between them convinced the jury of the defendant's guilt.

on the judgment that the defendant was guilty of the murders, and he cast his vote accordingly.

This example is helpful (1) for the complexity of the situation, showing that once the necessary conditions are satisfied, there may be multiple sufficient conditions not all of which must be satisfied, (2) for the complexity of his own thought as he proceeded through the trial with his fellow jurors, and (3) for demonstrating how this works in an individual in authority. Byrne emphasizes how seriously he and his fellow jurors, from all walks of life, took their responsibilities in the matter; they did so because they recognized implicitly that they were in positions of authority in a way they did not usually encounter in their lives. Institutions are important and function differently from individuals, but remember that Lonergan said that authenticity is carried both by individuals *subject to* authority and individuals *in* authority. Both are still individuals, and both will need to operate in much the same way. But the individual in authority will need to operate in an institutional context, often dissociated from those impacted by his or her actions, so the charitable attentiveness, understanding, and caution in judgment will be of heightened importance—this is the only defense against the kinds of unauthenticities created by stereotyping and most one-size-fits-all rules.

2.2 Ethical Structure

Once we know what the situation is, we are left with the question of what one ought to do in that situation. Knowledge of the situation itself is not enough; we must be able to say what we *could* do in the situation and moreover what we *should* do. Knowing what's going on and what we could do will, by itself, leave the question underdetermined. "The inventiveness of practical intelligence can issue in practical results only if [one can select]

some possibilities from the manifold and by that decision and choice initiating and grounding the transition from the intellectual conception of a possible order to its concrete realization.”⁵²⁰ Lonergan recognized that knowledge of “a world mediated by meaning is only a prelude to man’s dealing with nature, to his interpersonal living and working with others, to his existential becoming what he is to make of himself by his own choices and deeds. So there emerge questions for deliberation”, for ethical consideration.⁵²¹

Lonergan never gave a thoroughgoing account of ethical structure, but he left enough scattered through his corpus for his students to assemble one on his behalf. In summing up the answer to the question “What am I doing when I’m being ethical?”, Byrne gives this compact statement in summary:

Being ethical is [1] experiencing, inquiring, understanding, reflecting, grasping the virtually unconditioned and judging what is going on, [2] followed by inquiring about what could and should be done, further experiencing as re-patterned by such inquiries, getting insights into possible courses of action, [3] reflecting, grasping values as virtually unconditioned, deliberating, deciding and acting, all within a converted horizon of feelings for values that is in conformity with the notion of value, being-in-love, and the normative scale of values.⁵²²

The first part of this, “experiencing, inquiring, understanding, reflecting, grasping the virtually unconditioned and judging what is going on,” is what we did above as part of cognitional structure. The second part is a reduplication of cognitional structure in light of the first part to determine what the possibilities for our actions are, including not just what we might do but the state of affairs that might result from each action. The third part is where we pick up the story.

⁵²⁰ Lonergan, *Insight*, 621

⁵²¹ Bernard Lonergan, “Natural Right and Historical Mindedness”, in *A Third Collection*, ed. Robert Doran and John Dadosky, 2nd ed. (Toronto: University of Toronto Press, 2017), 167; hereafter cited as Lonergan, “Natural Right”.

⁵²² Byrne, *Ethics of Discernment*, 285-86, emphasis omitted

As we noted in the previous chapter, parallel to the intelligible is the affectible, possible values given in feelings as intentional responses to the meaning-as-object produced through cognitional structure. Those values are the reasons on the grounds of which we should make decisions and act, even if we don't always do so. We noted also that the feelings respond to a meaning-as-object, and that they are in some sense limited by the nature of that meaning-as-object. The feeling that comes as an intentional response to an initial insight will not be the same as the feeling that comes as the intentional response to a virtually unconditioned judgment of fact, nor will be the values disclosed by such feelings, even if they're similar. In many cases, the difference will depend on the degree of refinement and adjustment the initial insight or concept has received. We must therefore be extremely careful to properly assess both the facts of the situation and the facts of what we could do in it.

Once we have made that proper assessment and come to a virtually unconditioned judgment of fact concerning both the situation and what can be done, we present both meanings-as-objects to our feeling horizon for response and evaluation. This is the beginning of the process of ethical reflection. The goal of that process is the grasp of the virtually unconditioned judgment of value, which takes the form "Intelligibility *I* has value *V*." As we said in the previous chapter, as judgments of fact, so also judgments of value arise initially as conditioned, and the conditions are set by the value *V*. The link between conditioned and conditions "for a judgment of value is... 'Intelligibility *I* can be responsibly affirmed (or denied) to have value *V* under conditions *C*'".⁵²³

⁵²³ Byrne, *Ethics of Discernment*, 107

Therefore, in coming to that virtually unconditioned judgment of value, just as with the conditioned judgment of fact, we must pay attention to what the value demands as its conditions. Some of these will be known cognitively, but more will be themselves affective. Assuming a virtually unconditioned judgment of fact, attention must be paid to other things in the experiential flow and previous other judgments of both fact and value. We noted previously, for instance, that value can play an informative role as part of being aware of the situation, and we need to be sure we have paid sufficient attention to that. There may be other situations, both present and future, that form the context of the current situation and alter its felt value. Again, all actions are likewise performed in a context, so not just the state of affairs to be brought about but also the context into which that state of affairs will emerge must be understood and valued.

As each condition is considered and fulfilled, the felt value of the initial intelligibility presented for affectation will shift and become refined. As with judgments of fact, the recursive process of attending to the conditions and whether or not they have been fulfilled will bring to light aspects that we had not previously considered and with them new complexities added to the situation and the value in question. This is not to say that what we took to be a virtually unconditioned judgment of fact is actually wrong or in some sense incomplete. What it is to say is that virtually unconditioned judgments of fact about particular situations are limited to the particular situation and do not generally consider the wider context in which they are themselves situated.

We can see this in the phenomenon of jury nullification. This is rare but happens, usually following an appeal by the defense attorney in a criminal case, when the jury decides the defendant is guilty but finds him or her not guilty for other reasons. Technical

violations of the law should not always be prosecuted, and when they are, juries that think the prosecution should not have taken place have it in their power to take that into account in determining their verdict. Juries in civil cases, which sometimes also have the power to set damages, may set those damages in such a way that the defendant pays little or nothing even if technically liable for a given injury. Northern juries engaged in jury nullification relatively frequently when the defendant was accused of nothing more than harboring escaped slaves on the Underground Railroad. Juries in the Prohibition era were known to acquit defendants guilty of violating alcohol control laws. Southern juries, which tended to be composed of all white men, engaged in jury nullification in the Civil Rights era to such an extent that even conscientious prosecutors would often not bring cases against white defendants accused of killing black victims because they knew the jury would never convict.

The reasons juries nullify have to do with the prevailing social situation, the reasonability (in Sibley's sense from Chapter 2) of the law in question, and/or the reasonability of prosecution under the circumstances. This is to say that the (relatively) simple judgment of fact that the defendant is guilty of the charges is not by itself enough to say that the defendant should be held accountable for that. There are two further judgments of value to make: (1) Was what the defendant did wrong under the circumstances? (2) Is convicting and punishing this defendant the right way to handle the situation? The answer to (1) is usually 'yes' if the law is well written and well maintained, but it can occasionally be 'no'. The answer to (2) is more complicated and requires consideration of the social situation, the defendant's character, the nature of the crime, and

a host of other factors. Even so, our common sense is sufficiently well developed that prosecutors rarely bring cases where the answer to (2) will be ‘no’.

But this assessment of the wider context of the situation must come to an end at some point, and most of the situations in which we find ourselves and most of our actions do not require an extensive consideration of the context. If I am driving, for instance, and I come to an intersection where I can go left or right, I must decide which I should do in that moment. I determine that I in fact can do either by checking for other cars, and I rely on the immediately previous experience of driving the car to judge that the car is capable of making either turn. This by itself is not enough, though; I need a reason to turn one way or the other. Turning left will take me home; turning right will take me to a doctor’s appointment. The felt value of each option will shift with the context in which it is placed. If I have a family crisis, the value of going home may outweigh the value of keeping my doctor’s appointment. If all’s quite on the home front but I have a suspicious lump I’d like the doctor to investigate, the value of keeping the appointment probably outweighs the value of going home by a fair margin.

Notice, though, that I don’t need to consider the wider context of the state of modern medicine, the strengths and weaknesses of the medical system I’m working with, or the state of the modern family in general to make this decision. I also don’t need to consider how soon I’ll need gas (unless I don’t have enough to make it to the appropriate destination) or whether my tires are properly inflated (unless I have prior reason to suspect a leak or expect a flat). The judgment of value in this case requires consideration of the wider context of facts and the affective assessment of those facts, but to go wider than the decision in question very rarely means going wide enough to consider the butterfly effect.

Once I've affectively assessed the value of getting the lump checked versus going home for a quiet afternoon, I'm left to deliberate about what I should do. This is the weighing process and results in a conditioned judgment of comparative value. Within each of our horizon of feelings, there is operative a scale of value preference, and we will feel the value of each meaning-as-object presented for valuation as positioned on that scale. The conditions on the judgment of comparative value are generally limited to an accurate affectation of the felt value of each meaning-as-object in question and its position on that operative scale of values, plus the condition that the operative scale of values is in fact *normative*.

We noted in the previous chapter that Lonergan delineates five levels to the objective scale of value preference: vital, social, cultural, personal, and religious.⁵²⁴ Vital values include “health and strength, grace and vigor”, and in service of these values, we pursue particular goods like food and shelter.⁵²⁵ Social values condition the recurrence of particular goods that promote vital values for the community—the more efficient system that sustains the whole community appropriately is generally to be preferred. Cultural values likewise condition social values by considering what kinds of systems will be allowable. When there is no way to sustain the entire community in the way we all might prefer given available resources, cultural values dictate how limited resources will be divided for the good of the rest of the community or who will bear the burden of a change in social structures and systems. “Personal value is the person in his self-transcendence, as loving and being loved, as originator of values in himself and in his milieu, as an

⁵²⁴ Lonergan, *Method in Theology*, 32-33

⁵²⁵ Lonergan, *Method in Theology*, 33

inspiration and invitation to others to do likewise”, and this orders cultural value by emphasizing that the choices of system should aid the development of each individual in this direction.⁵²⁶ Religious values are the heart of the matter and might be thought of as the personal value of God.

When this objective, normative scale of value preference is operative in our horizons of feelings, we will judge the values of persons superior to the values of social orders, for instance, such that the value of me as a person who is alive and well is likely to be preferred to the value of contending with even a small ruckus in the social order of my family when the concern is cancer and the small ruckus is unlikely to do lasting damage to the emotional or physical well-being of any of my family members. Under such a circumstance, if the objective scale of values is operative, I will feel the value of turning right and keeping my appointment with the doctor as superior to the value of turning left and going home. If the crisis at home is an immanently suicidal child, though, the value of going home and helping prevent the suicide attempt will be felt as superior to the value of keeping the doctor’s appointment, which can likely be rescheduled with few if any negative consequences.

Once we have deliberated, we are free to decide and act. Values “dispose us to commitment. But they do not bring commitment about.”⁵²⁷ We are free to decide and act contrary to our judgment of comparative value if we so choose, but to do so is unintelligible and engenders a surd. Insofar as we are following the transcendental precept here, insofar as we are being responsible, having arrived at a virtually unconditioned judgment of

⁵²⁶ Lonergan, *Method in Theology*, 33

⁵²⁷ Lonergan, “Natural Right”, 168

comparative value whose satisfied conditions include virtually unconditioned judgments of value about the situation and the available courses of action, one should proceed with that course of action that will create or sustain the highest (most preferred) value available.

But as we said in the previous chapter, the feelings that come as intentional responses are limitedly infallible, and the limits are of two kinds: (1) defect in the meaning-as-object and (2) defect in the horizon of feelings. Both are of some concern to us here as either could prevent us reaching a virtually unconditioned judgment of value. A defect in the formal, phantasmal meaning-as-object to which our feelings intentionally respond will prevent us from reaching virtually unconditioned judgments of value about the situation and our options in it. We may reach a virtually unconditioned judgment about a situation other than that in which we presently find ourselves, but we will not be able to affectively assess the situation unless we know that situation. And that presents us with a bit of a problem: we are often pressed for time. In deciding whether to turn right or left, I've probably been contemplating that well before being presented with the moment of action when I reach that intersection, and I generally have enough information to know the situation in a virtually unconditioned judgment of fact. This is particularly true if I turn right and go to the doctor's appointment: I have a virtually unconditioned judgment of fact that I am unable to fulfill a set of critical conditions on a judgment of fact about whether or not I have cancer without the doctor's aid. Even if the lump turns out to be nothing, that is not a virtually unconditioned I could not arrive at on my own.

But we do face decisions, usually the most important ones, where we cannot establish the situation in a virtually unconditioned. We may not even be aware of all the conditions, and knowing that we must decide anyway. The more people involved in the

context and impacted by the decision, the more complicated the situation becomes, so that by the time one reaches a national level, the situation is *quite* complicated. In an election, for instance, any judgment on the situation comes with reams of conditions concerning each candidate, their records, policy proposals, and platforms, the political and economic situation domestically and internationally, and the probable interactions of each candidate with those likely to win other races, and all my information on each point comes second or third hand at best, meaning I must arrive at virtually unconditioned judgments of fact about the credibility and biases of each source I consider. I must nonetheless eventually cast my vote (or decide not to), and the date on which that decision must be made is fixed by law and not especially mobile. It is virtually impossible to get enough information to arrive at a virtually unconditioned judgment of fact concerning each candidate and the outcome of voting for one over the other. That will make it impossible to come to a virtually unconditioned judgment of comparative value, yet I must either choose a candidate or choose not to vote, and one would be hard-pressed to argue that consistently refusing to vote is the responsible course of action.

This does not describe all the situations we face, but in many, we will be unable to come to a virtually unconditioned judgment of comparative value for the simple lack of time to complete all the other judgments that condition on that judgment of comparative value. In those instances, insofar as we are being responsible, we will act on the best information we have at the point where a decision must be made, and we will seek to correct the situation if we are wrong even so.

Past this, we still face the challenge that none of us operates with a completely objective scale of values. The conditions each value supplies on its judgment will often

bring to light tensions and contradictions within the operative scale that we need to work to address. Insofar as we are being responsible, we are diligently pursuing the resolution of those tensions and conflicts within our operative scales of values. But we considered in the previous chapter some of the ways this can go wrong, some of the things that can happen if the scale of value is distorted and those distortions are not recognized. That distortion is a source of what Lonergan will call bias.

A second kind of distortion can also impact the horizon of feelings, and may contribute to distortions in the scale of values. This second kind distorts the feelings that respond to even an unflawed phantasmal meaning-as-object in the first place, and “these distorted affects cannot be relied upon to intend true values, even if a person’s judgments of fact are impeccable.”⁵²⁸ This may lead one person to feel the value of heinous acts as something very different from the rest of us, or it may lead to a severe truncation of the values a person can feel at all. This, too, is a source of bias. When we operate with a flawed horizon of feelings like this, our operation is unauthentic, and the values given in felt responses from this warped horizon of feelings will most likely be unauthentic as well.

We have outlined in this section what authentic operation looks like for the individual, and we have begun to point to some of the ways it can go wrong. We turn now to consider the nature of bias in the next section, and following that, we will consider how Lonergan proposes to correct bias.

⁵²⁸ Byrne, *Ethics of Discernment*, 150.

3 Bias

“Just as insight can be desired, so too it can be unwanted. Besides the love of light, there can be a love of darkness.”⁵²⁹ These structures of knowing, valuing, and doing are dependent on our ability to ask questions, have insights into ourselves and the world around us, apprehend values in feelings, and decide and act in accordance with our value judgments. But this can go wrong, and when it does, there is often a systematic problem at work preventing us from being properly attentive, intelligent, reasonable, or responsible in one way or another. This most often manifests in our passive unwillingness to receive insights or pay attention to tensions that would prompt new questions or show our horizon of feelings as distorting the values we apprehend. “To exclude an insight is also to exclude the further questions that would arise from it, and the complementary insights that would carry it towards a rounded and balanced viewpoint.”⁵³⁰ This blocks or disrupts the self-correcting cycle of questions and insight. The result is a cumulative and cascading failure of the normativity of our immanent structures of knowing and doing—the introduction of a creeping unauthenticity.

Lonergan discusses this passive unwillingness as a bias, and in *Insight*, he discusses four of them: dramatic bias, individual (egoistic) bias, group bias, and the general bias of common sense. This list was not, I think, intended to be exhaustive, nor could it have been exhaustive, for three reasons. First, Lonergan frames the four biases as “[f]our distinct aspects [that] call for attention” in “the basic question of a bias *in common sense*”.⁵³¹ His concern here is the realization of the social order, where common sense is considered as

⁵²⁹ Lonergan, *Insight*, 214

⁵³⁰ Lonergan, *Insight*, 214

⁵³¹ Lonergan, *Insight*, 243, emphasis mine

one of the two opposed principles in the dialectic of community, the tension between the realization of social and personal values, which we will discuss in the next chapter. The principle opposed to common sense in this dialectic is human intersubjectivity, which we discussed in the previous chapter and will discuss further in the next, and Lonergan's framing of the biases leaves to one side the possibility of biases on the intersubjectivity side of that dialectic.

Second, it's also unclear that Lonergan stopped discussing new biases; he simply stopped using the word 'bias' to describe them. There are at least two instances we will discuss in Chapter 6 where, in his later work, Lonergan seems to have described additional biases in all but name. The first concerns the uncritical acceptance of an unauthentic tradition (the "minor authenticity");⁵³² the second concerns institutional inertia.⁵³³

Third, in *Insight*, Lonergan had not yet had the insights about meaning, value, and the role of feelings in our ethical structure that resulted in the shifts evident in *Method in Theology*. The biases as described in *Insight* are certainly problematic, but his description is generally limited to their effect on cognitional structure, and it is not immediately clear that there are not additional biases affecting ethical structure as well. At a bare minimum, each cognitive bias has an affective counterpart that constructs a feedback loop with the cognitive bias, and we will want to spend some time thinking about the nature of that feedback loop in each case.

⁵³² Lonergan, *Method in Theology*, 77

⁵³³ Bernard Lonergan, "Prolegomena to the Study of the Emerging Religious Consciousness of Our Time", in *A Third Collection*, ed. Robert Doran and John Damosky, 2nd ed. (Toronto: University of Toronto Press, 2017), 58-59; hereafter cited as Lonergan, "Emerging Religious Consciousness".

Furthermore, not all cognitive biases have only one affective counterpart—group bias has at least three and possibly four, two of which may be simultaneously active in any given group bias, as we will discuss in the next chapter—and not all affective biases are associated with only one cognitive bias. There is not a one-to-one correspondence. Each bias operates idiosyncratically, whether cognitive or affective, and we will use these idiosyncrasies as the distinguishing marks between different biases. Our goal is not to proliferate new biases but to fill out the list as appropriate. Therefore, we will take as our criterion for a novel articulation of bias of either kind that it be a distinct, coherent pattern of distortion with recognizable characteristics and idiosyncrasies that persists and, in concert with its counterpart, will sustain itself within the horizon of knowing or feeling of the subject impacted, absent outside intervention. If we can describe such a pattern and it does not fit within one of the biases already described, we will say that this is an additional possible bias.

Our procedure in the sections on bias here and in the following two chapters will therefore be to consider the biases Lonergan described which are relevant to each entity (individual, community, institution), then consider whether there might be others operative in each entity and give reasons differentiating them from those Lonergan described in *Insight* (though for various reasons, these two strains will often be interleaved). Especially for those considered first in *Insight*, we will consider affective biases that operate in tandem with each cognitive bias. In the next section, on the conversions, we will also give some consideration to how each can be corrected, and our thesis there will be that in each case, one or more of the conversions can account for the correction of each bias.

In *Insight*, Lonergan gave accounts of the dramatic bias of the neural demand function, “the individual bias of egoism, the group bias with its class conflicts, and a general bias that tends to set common sense against science and philosophy.”⁵³⁴ We will discuss the dramatic and individual biases in this chapter, along with the general bias of common sense as it pertains to the individual; because it is operative only in community, we will defer discussion of the group bias to the following chapter, and because the general bias is so tied up with community (and reaches its nadir in conjunction with group bias), we will defer the bulk of that discussion to the next chapter as well. We will also consider one further bias, inchoate in *Insight*, that shares an affective counterpart with the general bias of common sense but operates instead on the development of theory, what we’ll call the picture thinking bias.

3.1 Dramatic Bias

*All the world’s a stage, and all the men and women merely players. They have their exits and their entrances, and one man in his time plays many parts...*⁵³⁵

The first of the four biases Lonergan addresses in *Insight* is the dramatic bias, the bias afflicting the dramatic subject, the subject experiencing the world through the narrative of her or his life. “The first condition of drama is the possibility of acting it out, of the subordination of neural process to psychic determinations.”⁵³⁶ Unlike the animals, we humans are not “locked from birth in natural routines of biological stimulus and response”, which is to say, our activities cannot be fully explained by an appeal to neurology.⁵³⁷

⁵³⁴ Lonergan, *Insight*, 244

⁵³⁵ William Shakespeare, *As You Like It*, II.7.139-42

⁵³⁶ Lonergan, *Insight*, 212

⁵³⁷ Lonergan, *Insight*, 213

Rather, we have a psyche as well, and to a significant degree, this directs our neural processes. But it must still accommodate “the demands of neural patterns and processes for psychic representation and conscious integration.”⁵³⁸ Physical sensations give rise to perceptions as patterns of change in our nervous system are interpreted by the psyche.

Not all sensations, though, will rise to the level of consciousness; perception is a matter “also of interest, anticipation, and activity.”⁵³⁹ We are, in other words, far more likely to find what we are actively seeking than to notice something we weren’t anticipating. This interest and anticipation patterns our conscious experience so that each element that enters consciousness enters within that pattern, so “there must be exercised some preconscious selection and arrangement” of the elements, some function determining which elements will enter consciousness and the way each element entering consciousness is presented within the pattern.⁵⁴⁰ The same preconscious function that selects some elements to enter consciousness also excludes others; Lonergan explicitly identifies this neural demand function as Freud’s psychic censor which, as we said above, operates at the threshold of consciousness as a gatekeeper.⁵⁴¹ This censor brings elements of sensation into conscious perception as demanded by the part we play in any given moment and patterns them accordingly.

When this censor goes awry, the result is dramatic bias, a bias in the drama of our pattern of experience. Remember that we get insights by intelligently considering the phantasm presented in consciousness. A biased psychic censor will refuse some

⁵³⁸ Lonergan, *Insight*, 213

⁵³⁹ Lonergan, *Insight*, 213

⁵⁴⁰ Lonergan, *Insight*, 213. See also *Topics*, 212

⁵⁴¹ Lonergan, *Insight*, 214

phantasmal images entrance into our conscious experience, thus blocking the insights we might have from them. When insights are blocked for whatever reason, we change our narrative and so skew our perspective. As Lonergan lays it out in *Insight*, this warps our horizon of knowing, and we begin to experience the world differently from others (and certainly not normatively). Where before, we performed on a stage before all the world, open to the contributions of others, dramatic bias “generates a differentiation of the persona that appears before others and the more intimate ego that in the daydream is at once the main actor and the sole spectator.”⁵⁴² In doing so, we find our capacities diminished because we have to divide our attention between two different performances, two different patterns of living.

All the world’s a stage, and we each play several parts, but we do so within a narrative—on the one hand, the story we tell ourselves about ourselves, and on the other, the story we tell others about ourselves. This narrative structures our self-understanding both as individuals and as communities—“The characters in this drama of living are molded by the drama itself.”⁵⁴³ Each narrative is itself composed of several sub-narratives, which is why we play several parts. These narratives pattern our experience by shaping the parts we play, and we tend to accept insights that affirm our current narratives while rejecting those that challenge it. To the extent that this narrative shapes our communal self-understanding, it is part of our common sense and can underwrite group biases, as we’ll consider in the next chapter. We might say that group bias happens when an entire intersubjective community reads uncritically and unreflectively from the same distorted

⁵⁴² Lonergan, *Insight*, 215. The persona is a stage mask.

⁵⁴³ Lonergan, *Insight*, 211

script. Insofar as it shapes our individual self-understanding, though, it underwrites a dramatic bias. And it is to this narrative that the psychic censor responds.

When the narrative is distorted, the psychic censor begins repressing things we need to be conscious of and bringing things into consciousness superfluously. This bias of the censor is unconscious. Lonergan calls “such an aberration of understanding a scotosis, and...the resultant blind spot a scotoma.”⁵⁴⁴ Where there is one scotosis and scotoma, there are usually others—the censor’s bias is rarely isolated to a single domain.⁵⁴⁵ In *Insight*,

⁵⁴⁴ Lonergan, *Insight*, 215

⁵⁴⁵ Precisely how the censor carries out this repression will vary per person, and a full analysis of all the different ways this can manifest is well outside our scope. But the approach taken by parts therapy can offer a useful illustration of the principle. Parts therapy posits that the unconscious can be treated as having many parts to it, each of which plays a different role in our psychic life. There are several common constructs about which roles are available to be played, but all versions assert that when they are not well balanced, the result is psychiatric difficulty of some description, even if it’s not clinical.

As an example, consider patients having difficulties from traumatic experiences. In the aftermath of the trauma, there are at least five roles to be played: Victim, Protector, Imp, Judge, and Advocate. The Victim is the traumatized self, not immediately able to address that trauma and not especially able to function in daily life. It finds itself unable to focus on much besides the trauma but incapable of facing it directly, preferring instead to flee from the trauma and anything that reminds it of the trauma. The Protector and the Imp have complementary roles assisting in this endeavor: the Protector represses things that would advert the subject to the trauma while the Imp adverts to things that distract the subject from what the Protector is repressing. The Imp’s distractions can be benign or can spawn a whole other set of issues (e.g. distracting from trauma with drugs and alcohol). The Judge notices that the Victim is unable to function in daily life and forces the subject to see itself through that lens – as basically non-functional – and emphasizes the subject’s ongoing deficiencies as compared with ‘normal’ people. It’s engaged in a power struggle with the Advocate, which instead affirms the subject’s victimhood and insists that the Victim is doing everything it can to cope with being in a terribly difficult situation. When the Judge has the upper hand, the subject is locked in a cycle of self-criticism, unable to recognize its strengths as such. When the Advocate is ascendant, the subject is instead blind to his or her failings, often using the trauma as a shield in interpersonal interactions to prevent or deflect criticism.

Parts theory posits (plausibly) that healing cannot come until the subject can silence the Protector, Imp, Judge, and Advocate and allow the Victim to process the trauma and accept the changes it’s wrought, until the associated affects can attach to their proper images and be resolved. No matter the theoretical construct employed, getting the subject to be genuinely vulnerable and access the traumatic experiences for reprocessing is the goal of PTSD treatment, and the symptoms of PTSD stem largely from resisting doing just that.

For our purposes, though, notice that each of the five roles introduces a different set of scotoses and scotomata, a different set of distortions into the horizons of feeling and knowing. The Victim flees things that would force it to re-endure its trauma. The Protector stops things from entering the consciousness that would focus the Victim on the trauma while the Imp draws more attention to other things in the experiential flow than is strictly speaking warranted. The Judge and Advocate each, like the Imp, emphasize other things

Lonergan notes that these scotoses have an affective impact as well. In the terms we used above, feelings respond to images, but these images are precisely what the biased psychic censor is blocking. As a result, the relevant feelings attach to other images and make their way into consciousness by a different route, and not generally a better one. This contributes to the potentially crippling effect of this bias.

Because it operates at the threshold of consciousness and is so concerned with protecting this narrative, it may be better to think about the dramatic bias as affective rather than cognitive. In *Insight*, Lonergan describes the cognitive sequelae of the dramatic bias, but he didn't yet have the language to talk about the affective side of it. It manifests in many different ways because the specific insight being refused at its beginning can vary rather widely. What ties all these manifestations together is both dedication to the narrative and fear of its loss, and both concern their felt value *to us* as part of our self-understanding. In dramatic bias, insights "are unwanted, not because they confirm our current viewpoints and behavior, but because they lead to their correction and revision."⁵⁴⁶

The narrative has many parts to it, but we are each most concerned with the part we ourselves are playing and the ways in which that narrative thereby constitutes who we are or understand ourselves to be. When we are playing two different parts, unless and until dramatic bias is recognized, the narrative that we tell ourselves about the value we've made ourselves to be doesn't match with the reality of the value we've made ourselves to be, and

in the experiential flow, though in contradictory ways, and in doing so, all three of these disregard other data and concomitant feelings that should be attended to.

PTSD is an extreme case, and we do not all have such powerful distortions of our censors, but this serves to illustrate the point that scotoses and their sequelae do not come singly. This is a point Lonergan affirms (*Insight*, 215), but if anything, he drastically understates it.

⁵⁴⁶ Lonergan, *Insight*, 217

we tend to minimize the disvalue of whatever difficulties it may cause us. “In dramatic bias, fear prevents the emergence into consciousness of images or memories that would result in unwanted insights or lead to disturbing judgments of fact and value.”⁵⁴⁷ This is not a conscious decision, though the felt valuation of the existing narrative and of challenges to it is recognized by the psychic censor, which goes into action to make sure that the images challenging that felt valuation do not enter consciousness. The cognitive sequelae are so wide-ranging and vary so drastically from person to person because each of us has constructed a different self-image and each false self-image would be best challenged by a different insight.

Unless someone or something comes along to show us just how much our self-image differs from reality, broadly or narrowly, the censor will continue to respond to this unspoken and often unrecognized fear of being worse than we think we are. Something, some image, has to force its way past the psychic censor and into consciousness to make us have those insights. This is epitomized in addiction and recovery, which makes for a wonderful case study in the operation of dramatic bias. The addict has a powerful censor responding to an equally powerful narrative: I’m not a bad person, I’m not really causing harm to others (and if I am, they deserve it), my habit is not negatively impacting my life or relationships (and if my relationships are deteriorating, it’s because other people are being unreasonable and judgmental), and I can stop whenever I want. What is so incomprehensible to those looking at addiction from the outside is that the addict can’t recognize the damage they’re doing to themselves, to their relationships, and especially to

⁵⁴⁷ Byrne, *Ethics of Discernment*, 275

others.⁵⁴⁸ The purpose of interventions is to force the addict to see what's gone wrong and just how badly. Sometimes that works, sometimes being arrested works, sometimes something else does, and sometimes nothing ever does, but until *something* forces its way past the psychic censor and the addict recognizes just how badly things have gone wrong and what a lie that narrative is, recovery is impossible and no amount of treatment will correct that.

⁵⁴⁸ The power of this narrative should not be underestimated. I offer as evidence, albeit anecdotal, three addictions as described to me by the addicts.

First, a heroin addiction. This young person told himself everything I've recounted above. He tried treatment at his parents' insistence multiple times, but didn't really get a handle on things until he was able to leave the area. For him, multiple arrests could not penetrate his psychic censor. What finally did was the recognition that his friends, themselves addicts, were failing to advance, living very shallow lives and in some cases dying, and locking themselves in a cycle of poverty and criminality. Having them around was also harming his family as his friends stole from multiple members of his family and his parents had their house searched by police more than once. This forced him to consider that he was doing all the same things his friends were and was himself in the same cycle. He was forced to juxtapose this against the success his siblings were having both professionally and relationally and he finally understood that the life he was living was not the one he thought it was.

Second, a groping addiction. This man began as a teenager groping the girls in his class and escalated from there. In his narrative, he told himself that the young women liked the 'attention', so it wasn't harming anyone. When his own son was born, he did admit this proclivity to his wife and ask for help in controlling it, not because he recognized that what he was doing was itself wrong but because he recognized that he was now risking not just his own future but his child's. This worked for a time, but he eventually began groping women again. What finally made it past his censor was being turned in by a (female) librarian who had seen a cell phone picture one woman took after he groped her and being arrested at his office. He was a local anti-celebrity for a while and was forced to very publicly bear the shame of his actions. As a result, he was then finally able to recognize the harm he was causing to random women on the street and change his behavior, albeit with difficulty.

Third, a child pornography addiction. This man had recognized that he was sexually attracted to children as a teenager but did not act on it until his late 30s in what he described to me as a moment of weakness. He convinced himself that the children who had been victimized to make the images had enjoyed it, or at least weren't harmed by it. For him, the police turning up with a search warrant for his computer was enough to finally snap him out of that narrative and back to reality. Even so, he lived in two worlds in a very real way. In a previous footnote, we referenced parts therapy; for this man, there were at least two operative parts even before his arrest – the addict and the one disgusted by the addict. It took his arrest to give that second persona the upper hand.

3.2 *General Bias of Common Sense*

The reader may recall the general bias of common sense from our discussion of Habermas at the close of Chapter 2. In the interests of not belaboring the point overmuch, we will let that discussion stand for a general introduction to common sense and its bias, and focus instead on something that did not come up in our previous discussions but is nonetheless relevant to us here: common sense on the level of the individual. Even so, we will be able to give only a truncated discussion here. Common sense is, as the name implies, common “to the members of a community successfully in communication with one another”, and the general bias of common sense operates most forcefully and problematically at the level of the community, where it interacts with the group bias to produce a cycle of decline.⁵⁴⁹

As we said in Chapter 2, common sense is a communal fund of shared insights and underdetermined judgments concerning concrete situations and values—and not looking beyond that if at all possible. Put another way, it’s the common meaning shared by a community.⁵⁵⁰ It exists first the jargon and inherited wisdom that allows one to pursue a discipline and second as a shibboleth that marks one as a practitioner of that discipline. “Common sense...is a specialization of intelligence in the particular and the concrete. It is common without being general, for it consists in a set of insights that remains incomplete until there is added at least one further insight into the situation at hand.”⁵⁵¹ It “has no theoretical inclinations” and it accretes only “by the discovery of solutions that will

⁵⁴⁹ Lonergan, *Method in Theology*, 146

⁵⁵⁰ Lonergan, “Analogy of Meaning”, 201-02

⁵⁵¹ Lonergan, *Insight*, 199

work.”⁵⁵² Its focus is always on the practical, always on the concrete, even if sometimes one is operating within a discipline geared towards the theoretical.

Individuals are drawn into the community of common sense as part of their training, education, and upbringing as they are prompted to have new insights and add complexity to old ones. We learn through our questions, and we “are born into a community that possesses a common fund of tested answers, and from that fund each may draw his variable share, measured by his capacity, his interests, and his energy.”⁵⁵³ Teachers and trainers formally and intentionally prompt us with new questions to answer, but our family and the surrounding community are no less involved in this process of formation. Our teachers help us find new questions and figure out how to answer them; our peers model behavior for us and mold our actions and reactions.

Despite its communal origins, common sense is wielded by the individual. “For the practical common sense operative in a community does not exist entire in the mind of any one man. It is parceled out among many, to provide each with an under-standing of his role and task”.⁵⁵⁴ It informs the actions of each individual independently of others. No two individuals have quite the same common sense, for one thing, because each is part of more than one community (political, scientific, civic, professional, hobbyist, etc.), but no two individuals belong to identical sets of communities. Each individual is also confronted with a unique set of concrete circumstances year by year, and each individual is shaped as much by those circumstances as by their common training and enculturation. This is part of how common sense grows, actually: new concrete situations can give rise to new insights

⁵⁵² Lonergan, *Insight*, 201

⁵⁵³ Lonergan, *Insight*, 198

⁵⁵⁴ Lonergan, *Insight*, 236-37

that challenge existing common sense as either incorrect or inadequate, and as individuals test and formulate those insights, they communicate those insights to others for parallel testing and implementation. The insights are refined and distributed further, and eventually reach critical mass as part of the culture's common sense.

But the focus on the practical remains as much a problem for the individual as it was for the lawgiver. When we can appoint committees to study problems, the division of labor can allow sufficient collective bandwidth for some to study theory while others study the concrete problem in detail and come together to solve the problem from both sides (even if this doesn't usually happen). Individuals don't have that luxury. We can't each understand the theory of everything we do—we have to take some parts of it on faith. We don't have the time or intellectual resources to critically evaluate every single part of the received common sense, even if we should and would in an ideal world.

So we have to uncritically accept great swaths of insights, judgments, and precepts from the common sense of our culture, challenging them only when concrete circumstances demonstrate their deficiencies and then pushing those challenges only as far as we have to. Our criterion here is “good enough”, and it doesn't have to be precisely correct to be “good enough”. If we have properly understood what common sense is and how it operates, we know that “this public fund may suffer from blindspots, oversights, errors,” and we accept it knowing that we're only *probably* right.⁵⁵⁵ We accept this hazard—we have no choice—and pay the price when we're wrong. But this uncritical acceptance thereby leads to a developing surd, a developing complex of judgments and actions that issue from a set of unintelligible acts to which we consistently contribute—places where we should have acted

⁵⁵⁵ Lonergan, *Method in Theology*, 44

in one way and instead acted in another. We will discuss this social surd in greater detail in the next chapter. This surd nonetheless informs and structures our future actions as the context in which we find ourselves and in which we must act, warping our experiential field and shifting our available options for action in each situation.

Affectively, the counterpart of the general bias is the need to survive and satisfy my desires with particular goods, which focuses attention on vital and social values—common sense, after all, asks after what will work, not necessarily what is right—on the reasonable supposition that we have to survive to deal with more speculative, theoretical questions. And that’s not entirely wrong. But it becomes fixed in a sense of being overwhelmed by the responsibility we have to act on virtually unconditioned judgments of fact and value, a responsibility that we recognize we do not have the resources to properly face. The general bias, then, manifests on the individual level as a preference for vital and social values because the others are just too much work, and this reinforces the affective counterpart in that we keep surviving. Common sense has no way of recognizing cultural values and deals with personal values only insofar as it recognizes the individual as a personal value and that concrete situations illustrate that social institutions that damage others could as easily damage me. In the Western cultural context, this manifests in two proverbs, one positive (‘Do unto others as you would have them do unto you’) and one negative (‘There but for the grace of God go I’). Similar proverbs can be found in other cultural contexts.⁵⁵⁶

Because we cannot deal with the problematic development of common sense individually, we must deal with it communally, and we will discuss what that looks like in

⁵⁵⁶ See, for instance, *Analects* 15.23 for a Confucian statement, or the *Udanavarga* 5.18 for a Buddhist statement. We could elaborate at some length, but suffice it to say that the Golden Rule has a wealth of statements spanning a wealth of cultures and their unique common senses.

the next chapter. But because common sense is communal, it is held by each of us *as individuals* as the building blocks of that community. And insofar as we are individually responsible for the common sense of our community, we can push on the sections of it where we *do* have the bandwidth to be familiar with the theory, and so collaboratively correct our common sense. Both moral and affective conversion are required to shift our thinking into this new mode, the first to break us out of the survival-grounded insistence on satisfaction of desires as the criterion of action and the second to complete the work of the first by properly ordering our existential scales of value, and we will discuss what that means below.

3.3 Picture Thinking Bias

The affective counterpart of the general bias of common sense pairs also with a further cognitive bias, this time on what it means to us to know something. This is the “exceedingly stubborn and misleading myth...that knowing is like looking, that objectivity is seeing what is there to be seen and not seeing what is not there, and that the real is what is out there now to be looked at.”⁵⁵⁷ That Lonergan did not lay this bias out *as* a bias in *Insight* is somewhat surprising—this is the bias that the entire book is built to contest.

As with the general bias, the picture thinking bias is underwritten by an affective impetus to value what I can see and touch and taste over what I can cognize. I exercise my power in the world and over the world physically, directed by knowledge often gleaned first through sight and then through the other senses, and many or most of my physical skills are dependent on that sight. And these are the skills I need to employ if I’m to stay

⁵⁵⁷ Lonergan, *Method in Theology*, 223

alive. In a more rustic society, I have to be able to hunt and farm to feed myself. So what matters is what I can see, touch, taste, etc., not what I can cognize. I treat astute guesses based on sense perception, primarily visual perception, as knowledge because I often don't have the time or resources to arrive at something more, and my experience is that I rarely have cause to doubt the report of my eyes. There is, here, a basic existential insecurity—existential in the sense that I feel my existence to be threatened—and the picture thinking bias is our response to that.

This is an outgrowth of the biological pattern of experience of which “extroversion is a basic characteristic” because “elementary experience is concerned, not with the immanent aspects of living, but with its external conditions and opportunities.”⁵⁵⁸ As Byrne points out,

What counts as possibly real for animal survival must be at least already-out-there-now, whatever other qualities the organism would further recognize as real for its survival. This is a healthy, evolved biological sense of objectivity. [But it] nevertheless competes forcefully with, undermines, and becomes a recurring source of prejudice against the distinctively human notion of reality.⁵⁵⁹

What is immediately at hand is far more urgent to my survival than what is not, even if what is far from me is perhaps more important. Because I keep waking up day after day, the affective bias that focuses attention on what's going on here and now, on vital and social values, is continually reinforced. And so it continues to underwrite the picture thinking bias, the habits of which continually emphasize, if quietly, the importance of my survival and satisfaction over all else.

⁵⁵⁸ Lonergan, *Insight*, 207

⁵⁵⁹ Byrne, *Ethics of Discernment*, 67

The cognitive side of this bias is what Lonergan described: knowing is taking a look. If I can't see it, it isn't there. We come to this cognitive bias quite early in our development as newborns who struggle with object permanence. This is, in fact, the premise for the entire game of 'peekaboo' on the baby's part: what is real is only what I'm seeing right now. As we grow and acquire language, this metaphor of seeing as knowing permeates that language and our common sense: "I'll believe it when I see it." "We'll see what happens." "Let me see what I can do." "The blind leading the blind." "In the land of the blind, the one-eyed man is king." All of these rely on a visual metaphor for knowledge and objectivity, as do two popular synonyms for perspective, viewpoint and worldview. The word 'perspective' itself comes from the Latin *perspicere*, to see through or to see clearly. Our general linguistic reliance on this metaphor reinforces, if subliminally, the thought that what I see is what's real, and that's all that's real.

This bias leads us to ignore the reality of the world mediated by meaning in significant ways. As photojournalists have long demonstrated, pictures make things more real to us. Seeing a war in progress is much different than just cognitively understanding what's going on precisely because it isn't real to us until we see those pictures. For those too young to have seen the '70s sitcom *All in the Family*, the actress Sally Struthers is best known as a face of the Christian Children's Fund (now ChildFund) in their series of commercials and infomercials soliciting donations to help starving children in Africa. Poverty in the developing world, because the affluent West doesn't see it, wasn't real to American television audiences before those commercials and infomercials, and the rate of charitable giving to Christian Children's Fund in the wake of their broadcast reflects that reality.

The result of this bias is, as the examples suggest, that we do not feel as strongly the values or disvalues of things not immediately present to our senses. Because the meaning is not generated in our own assessment of our own experiences of events and situations but rather mediated to us second and third hand, it lacks the detail and refinement it has for those experiencing it directly. When this phantasmal meaning-as-object, distorted in being mediated through several removes in what amounts to a giant game of “telephone”, is presented to the feelings for valuation, the result is muddled and muted: as we pointed out in the previous chapter, when the formal meaning-as-object has not been thoroughly and recursively detailed, when the formal act of meaning has not supplied sufficient clarity in constructing its object, the feelings that come as an intentional response to that object will not convey values with the same specificity, clarity, or force as if we had experienced directly events that instead happened half a world away from us. This is why a picture is worth a thousand words, but the picture by itself does not convey an accurate or adequate understanding of the situation.

3.4 *Egoistic Bias*

Lonergan titles this bias as ‘individual bias’,⁵⁶⁰ but we have elected to retitle it to avoid confusion with all the other uses of the word ‘individual’ in this chapter. The basic problem here is that “[t]o each man his own desires, precisely because they are his own, possess an insistence that the desires of others can never have for him. To each man his own labors, because they are his own, have a dimension of reality that is lacking in his

⁵⁶⁰ Lonergan, *Insight*, 244

apprehension of the labors of others.”⁵⁶¹ For most of us, this is overcome by the reality of our intersubjective situation: we are not “Leibnizian monad[s]”⁵⁶², as Lonergan observes, but are born into a community, the community of the family, which like all communities has as its “primordial basis...not the discovery of an idea but a spontaneous intersubjectivity.”⁵⁶³ Because we are in community, “the bonds of intersubjectivity make the experience of each resonate to the experience of others” and so impose on us a spontaneous concern for the lives and feelings of others by analogy with our own experiences.⁵⁶⁴ This is why we smile when others are smiling, feel mournful when others are crying, and will reach out our arms to save someone who’s tripped from falling even if we cannot possibly catch them.

These intersubjective bonds are strong and not easily or readily overcome. Yet in the egoistic bias, that is precisely what has happened. The individual ceases to regard as important questions that don’t directly concern him. “With remarkable acumen one solves one’s own problems. With startling modesty one does not venture to raise the relevant further questions” about the generalizability or applicability of one’s solutions to other similar problems within the social order.⁵⁶⁵ The egoist is ruled by a biased and truncated practical intelligence that inhibits his self-correcting cycle of question and insight, and “however much the egoist may appreciate the efforts of philosophers to assure him that

⁵⁶¹ Lonergan, *Insight*, 240

⁵⁶² Lonergan, *Insight*, 237

⁵⁶³ Lonergan, *Insight*, 237. We observed in the previous chapter that each community is defined by common meanings, which would seem to be somewhat at odds with this claim. Lonergan gives two distinct accounts of what community is, and we will attempt to reconcile them in Chapter 5, on communal authenticity.

⁵⁶⁴ Lonergan, *Insight*, 240

⁵⁶⁵ Lonergan, *Insight*, 245

intelligence is instrumental, he will be aware that, in his cool calculations, intelligence is boss and that, in his refusal to consider further questions, intelligence is not made into a servant but merely ruled out of court.”⁵⁶⁶

The egoist can be made to care about others, but only limitedly. This is the concept of enlightened self-interest. The focus of practical common sense at the level of the individual is the world as it relates *to me*.⁵⁶⁷ In that respect, the egoistic bias is individual common sense carried to its extreme, unleavened with the fellow-feeling of human intersubjectivity and truncated to dispose of questions about how our solutions might benefit others or how they might impact others generally. The pure egoist simply doesn't find questions about others, how they'll react to what he does or how they might benefit from his solutions, to be at all pertinent in his decision-making process. We've met the pure egoist before: this is Sibley's Mr. A, rational but not especially reasonable. This also means that the egoist can be interested in the welfare of others through practical common sense, but only insofar as the welfare of others will have a bearing on his own. Thus, one should not vent one's rage on the barista lest one find oneself with decaf nor on the waiter lest one should find something extra on one's plate.⁵⁶⁸ Likewise, one treats the officer respectfully at a traffic stop not because one wants to avoid a ticket but because one knows that arrogance and belligerence can trigger a far worse fate.

As with the dramatic bias, Lonergan only really discusses the cognitive aspects in *Insight*, but an egoistic bias comes with a substantial affective component, or perhaps

⁵⁶⁶ Lonergan, *Insight*, 247

⁵⁶⁷ Lonergan, *Method in Theology*, 79

⁵⁶⁸ Conversely, one of the best quick assessments of a person's character is to consider how they treat their social inferiors and those who can do nothing for them.

better, a significant affective void. The egoist is not without feelings as intentional responses; indeed, he feels what he believes to be his own value quite keenly. What he lacks are feelings as intentional responses to other persons or, if he has them, the values and value preferences disclosed in them are wildly distorted. In the extreme case, operative in the egoist's horizon of feelings is a distortion that recognizes the value of other people only on the level of social values. The pure egoist doesn't simply refuse to consider questions about others out of caprice; rather, he does so because he doesn't see why they should be of any importance. Others matter only insofar as they impact him.

Even in the extreme case, this is not to say that the egoist doesn't recognize others as persons—he does, generally. He's just not really sure why their personhood matters. The pure egoist will readily prey on others if it's to his benefit to do so, and he expects that others will prey on him, given the chance. In general, dehumanization of the other is a feature of group bias, and we'll discuss that in the next chapter. In days past, we would have called the pure egoist a sociopath; these days, the formal diagnosis is Antisocial Personality Disorder.⁵⁶⁹

Very few people actually suffer from this bias to such an extreme.⁵⁷⁰ We have given the extreme case to illustrate the nature of the bias, but we all act a bit egoistically

⁵⁶⁹ See *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) (Washington, DC: American Psychiatric Publishing, 2013)

⁵⁷⁰ Large-scale epidemiological studies and meta-analyses generally find that ASD impacts between 1% and 3% of the population, with higher findings in urban areas. Some studies show the prevalence as low as 0/6%. See Jeremy Coid et al., "Prevalence and Correlates of Personality Disorder in Great Britain", *British Journal of Psychiatry*, 188 (2006): 423-31, for an example, and especially 428-30 for a good discussion of the difficulties and limitations of making such assessments.

In addition to that discussion, these studies are generally limited in that they use indirect data, such as broad questionnaires on mental health status or substance abuse, instead of clinical interviews to make their assessments. Clinical interviews would be more reliable as a diagnostic tool but are generally prohibitively expensive and time-consuming to conduct and analyze for a sample size sufficiently large for the study to

on occasion (or rather more than that, if we're honest). We don't refuse access to questions about how others will be impacted by solutions to our personal problems, but those questions don't readily occur to us in many cases without outside prompting. If those questions are raised to us by others, we will generally stop to consider them—we recognize them as important, even if they did not arise directly in us, and we recognize that they should have and may take steps to ensure they do in future. There's a scotoma there, even if it's not the egoist's flat refusal to consider such questions as pertinent even if directly confronted with them.⁵⁷¹

Likewise, we don't usually have a complete affective void where others are concerned, as the pure egoist does, but we often do have an affective imbalance—we feel our own value more strongly than we feel the value of others. This is entirely understandable; as we pointed out above, we do not generally feel the values or disvalues of phantasmal meanings-as-objects as intensely or insistently when they're not present to us. As a rule, no one is as present to me as I am to myself, and that will naturally tend to skew my horizon of feelings to focus more on myself than on anyone else. Correcting this requires a fairly radical revision of our horizon of feelings, something accomplished only in affective conversion, which we'll discuss below.

warrant the moniker 'epidemiological', and interrater reliability becomes a major problem as you involve more clinical staff in performing the interviews. As a result, researchers tend to see what they're looking for, so to speak, and the results may be exaggeratedly high.

⁵⁷¹ Unless, of course, the person asking those questions of the egoist has the ability and will to make the egoist's life difficult if the questions remain unconsidered and unanswered.

4 Conversion

The answer to all these biases (not just the general bias of common sense) is conversion. As we said above, conversion is a decision committing oneself to operating in harmony with what we are and what tools we have at our disposal for knowing and deciding correctly. Conversion in Lonergan's sense is not just switching from Methodist to Presbyterian or changing political party registrations, though it can quite plausibly result in those. Conversion is more than changing a label. "As orientation is, so to speak, the direction of development, so conversion is a change of direction, and indeed, a change for the better."⁵⁷² "It is a decision to follow the lead of [the unrestricted desire to know,] the transcendental notion of value and being-in-love in an unrestricted fashion."⁵⁷³ Often, there are precursors to conversion (we discussed one precursor for moral conversion above), but until the conscious decision of commitment has been made, a conversion in Lonergan's sense cannot be said to have taken place.

As Elizabeth Murray emphasizes, inasmuch as each conversion is a self-transcendence, "there is, for the self-same self, the self that is transcended and the self that is transcending, ...a negative and a positive dimension" to each conversion. "The first aspect involves rejection and sacrifice; the second aspect involves acceptance and fulfillment."⁵⁷⁴ In each conversion, then, we'll consider what the subject converts away from as what he converts to.

⁵⁷² Lonergan, *Method in Theology*, 51

⁵⁷³ Byrne, *Ethics of Discernment*, 225

⁵⁷⁴ Elizabeth Murray, "Compunction and Passion: Two Moments of Moral Conversion", *Proceedings of the American Catholic Philosophical Association* 88 (2014): 217-18; hereafter cited as Murray, "Compunction and Passion".

In each case, conversion is an ongoing process. An apocryphal quote attributed to George Elliot reminds us that “It is never too late to be what you might have been.”⁵⁷⁵ That sword has two edges: it’s never too late to improve, and it’s never too late to backslide. “Even conversion itself is precarious; it is not an automatically permanent achievement.”⁵⁷⁶ Sustained authentic operation is difficult to achieve, in part because it’s so easy to backslide. Conversion is purposive, but like any New Year’s resolution, it requires some significant effort to keep going. It won’t sustain itself on autopilot.

There are four conversions: intellectual, moral, affective, and psychic.⁵⁷⁷ The first three could plausibly happen in any order; Lonergan says that “from a causal viewpoint, one would say that first there is” affective conversion, then moral, and then intellectual.⁵⁷⁸ But the final, psychic conversion, integrates the other three and so requires them to be already in place in order to be complete itself. We will consider them each in turn.

4.1 Intellectual Conversion

“Before the age of seven years we have pretty good ideas about what is really real. ... Intellectual conversion, fundamentally, is the shift from prerational criteria of childhood to ultimate reliance upon rational criteria.”⁵⁷⁹ “Intellectual conversion is a

⁵⁷⁵ The attribution of this quote is remarkably uncertain. The earliest known use is an 1881 edition of *Literary News: A Monthly Journal of Current Literature*, where it appeared in a list of quotes from Elliot under thirty words long. It is not extant in Elliot’s corpus.

⁵⁷⁶ Lonergan, *Method in Theology*, 393

⁵⁷⁷ On the reasons for speaking of “affective” rather than “religious” conversion, see §4.3.

⁵⁷⁸ Lonergan, *Method in Theology*, 228

⁵⁷⁹ Bernard Lonergan, “Operations, the Subject, Objects, Method”, in *Early Works on Theological Method I*, ed. Robert Doran and Robert Croken (Toronto: Toronto University Press, 2010), 14; hereafter cited as Lonergan, “Operations”.

radical clarification and, consequently, the elimination of an exceedingly stubborn and misleading myth...that knowing is like looking, that objectivity is seeing what is there to be seen...and that the real is what is out there now to be looked at.”⁵⁸⁰ It “begins with the self-affirmation of the knower, the judgment that cognitional structure is the correct account of how we really do know.”⁵⁸¹ This is a subject using his or her cognitional structure to examine cognitional structure and, in operating according to the transcendental precepts, first knowing her- or himself. This begins in paying attention to what I do when I know something or begin to examine a situation.

Here, the deficiency of knowing as taking a look, the picture-thinking bias, becomes evident, and this is what we reject in intellectual conversion. Each of us has an unrestricted desire to know everything about everything, and intellectual conversion begins when we run up against the limits of our childhood ways of knowing, and we run up against those limits most sharply when we try to understand ourselves. If knowing is taking a look, it becomes impossible to properly examine oneself as a subject to understand what one is doing as a subject—one cannot put one’s cognition under a microscope. One has to instead examine oneself as an object to be perceived, but we have no special access to ourselves as objects: in this sense, I am as opaque to myself as another person because I am considering myself as another person, the object of my consideration. The self engaged in self-examination can never be properly examined as an object except in the most cursory and surface ways. To examine what one is doing when one is knowing, the subject *in situ* must pay attention to what he or she is doing *as a subject* while doing it. Certainly this

⁵⁸⁰ Lonergan, *Method in Theology*, 223

⁵⁸¹ Byrne, *Ethics of Discernment*, 225

means one will be occupied with two trains of thought running parallel to one another, but this is rather easier than attempting to get outside one's own head.

Rather than trying to take a look at something already out there now, intellectual conversion “draws a sharp distinction between the world of immediacy and the world mediated by meaning, between criteria appropriate to operations in the former and, on the other hand, the criteria appropriate to operations in the latter.”⁵⁸² As we have repeatedly emphasized, for Lonergan, at least after infancy and certainly after the acquisition of language, the world in which we live is far broader than just the world of immediacy. The world we live in is always already mediated by meaning, as, for that matter, are we. Only in the process of making and interacting with meaning can we find what it is we're doing when we're knowing.

As we said above, “the evolved-biological sense of reality” of the picture thinking bias insists that the real is the world of immediacy.⁵⁸³ Intellectual conversion does not shift the nature of the world but rather shifts our awareness of it, and “Lonergan came to speak of ‘intellectual conversion’ in order to underscore the radicality of this overcoming of the biological sense of reality.”⁵⁸⁴ When we become existentially aware that the world is constituted by meaning, when that is integrated into our effective horizon of knowing, we begin the process of becoming existentially aware that our knowledge is constituted by meaning, that we are ourselves constituted by meaning, and that the operations by which we know the world are thus themselves acts of making and interpreting meaning.

⁵⁸² Lonergan, “Natural Right”, 173

⁵⁸³ Byrne, *Ethics of Discernment*, 67

⁵⁸⁴ Byrne, *Ethics of Discernment*, 67

This is, in part, what Lonergan means in saying, “Conversion involves a new understanding of oneself because, more fundamentally, it brings about a new self to be understood. It is putting off the old man and putting on the new. It is not just a development but the beginning of a new mode of developing.”⁵⁸⁵ In recognizing that I am not an object for study but a subject that I can only study by paying attention to my operations as I perform them, in recognizing that I am constituted by meaning, I become a new self, at least to myself. The self as subject is quite different from the self as object, and when presented to intelligent consciousness, it will yield a different set of insights.

What we assent to in self-affirmation as a first step to intellectual conversion, then, is the proposition that “[t]he reality known is not just looked at; it is given in experience, organized and extrapolated by understanding, posited by judgment and belief.”⁵⁸⁶ This is an affirmation not just of the knower but the known: it acknowledges that the world mediated by meaning is more real than the world of immediacy because in the world mediated by meaning, we access what is both intelligible and true. What is distinctive about human knowing is that we are able to know the world of meaning and create meaning ourselves. We can also mediate those meanings to others in a way not available to other animals. So, while we do have the same biological pattern of experience as our pets, we have a great deal more as well: we have a dramatic pattern of experience in which play out meanings as acts and objects which are not available in the biological pattern.

⁵⁸⁵ Bernard Lonergan, “Doctrinal Pluralism”, in *Philosophical and Theological Papers 1965-1980*, ed. Robert Croken and Robert Doran (Toronto: University of Toronto Press, 2004), 86; hereafter cited as Lonergan, “Doctrinal Pluralism”.

⁵⁸⁶ Lonergan, *Method in Theology*, 224

But this self-affirmation is not enough. Knowing that we know in a certain way is not the same as purposively accepting as real only what we know in that way. And purposively working under that stricture is difficult. Intellectual conversion is more than simply the awareness of the world as mediated by meaning and accessed through experiencing, understanding, and judging, which are the potential, formal, and full acts of meaning. It is the “decision about whether or not to let one’s thinking be guided by [the] implications” of that awareness.⁵⁸⁷ Intellectual conversion is an ongoing and continually renewed commitment to working with this distinctively human way of knowing ourselves and the world and accepting as real whatever is known in that way, whatever is known in a virtually unconditioned judgment of fact.

It is a commitment rather than an irrevocable transfiguration because we can choose against it. It is ongoing rather than one-time because in every case, we must choose anew to accept as real only whatever is known in virtually unconditioned judgments of fact if we are to remain intellectually converted. It is continually renewed because the siren song of the already-out-there-now doesn’t cease, nor do we become inherently more resistant to it—we still have the biological pattern of experience, and its promptings do not get less urgent, even if eventually a long-established habit makes it easier to ignore those promptings when appropriate. Intellectual conversion is a habit that we build or break down with every act of knowing, and in so doing, we do change ourselves as constitutive meaning and originating value, but not in a way that cannot be undone. As we continue to choose intellectual conversion, though, our horizon of knowing expands beyond the already-out-there-now and subsequent choices become easier as habits are built up. The

⁵⁸⁷ Byrne, *Ethics of Discernment*, 92

already-out-there-now doesn't become less alluring in itself, but "it is but a tiny fragment of the world mediated by meaning", and as our horizon of knowing expands into that world mediated by meaning, we recognize more and more readily, if only implicitly, that our expanded horizon can no longer be fit within the framework of the already-out-there-now.⁵⁸⁸

Correcting for the picture thinking bias, of course, also means correcting for its affective counterpart, the animal drive for survival. In intellectual conversion, we recognize cognitively that "One does not live by bread alone" and so must move beyond that animal drive.⁵⁸⁹ We do this in the recognition that there is a difference between subsisting and living well, and that for humans, living well means living in a world mediated by meaning. The biological pattern of experience does not vanish, but it ceases to dominate our horizon of knowing. Affectively, this happens relatively early in development (generally in adolescence and certainly by early adulthood) even if the subject lacks the language to describe his experience of this shift. What is left behind is a residual affective orientation to sustenance and survival which, for lack of a better account of knowing, continues to guide our thoughts about the real to the already-out-there-now. Intellectual conversion is the realization that such an orientation is already affectively outmoded and a commitment to making a similar shift cognitively as well.

Because the picture thinking bias and the general bias of common sense share an affective counterpart, the recognition that the affective counterpart is outmoded signals the beginning of the correction of the general bias as well. The distortion of common sense's

⁵⁸⁸ Lonergan, *Method in Theology*, 224

⁵⁸⁹ Matthew 4:4, NRSV

development is not attributable solely to this affective counterpart, though. The affective counterpart of the general bias orients common sense to what works, to the already-out-there-now, but when (as usually happens) that affective counterpart is resolved in the normal course of adolescent development, the orientation of cognition is not changed. Common sense carries on in its established patterns on inertia. Intellectual conversion by itself cannot overcome this inertia because it was established communally and affectively, not cognitively, so while intellectual conversion can say that the biased cognitive orientation of common sense is wrong, it cannot say what common sense should be oriented *towards*. Common sense is not itself a bias and has its proper place, but it must be properly oriented to ultimate concern, something possible only with affective conversion. Once that happens, intellectual conversion will manifest as a commitment to realizing the cognitive sequelae of that affective shift. Only when intellectual and affective conversion are working together can the general bias be corrected.

Intellectual conversion also begins to correct dramatic bias by raising questions about the psychic censor and whether the phantasms I'm getting are the ones I really need to get the right insights. When knowing is taking a look, the psychic censor is working according to the biological pattern of experience rather than a properly dramatic pattern, and the narrative is one primarily of survival. Intellectual conversion cannot correct all dramatic biases, nor even most, because most see the psychic censor operating according to a recognizably meaning-laden but false narrative, and intellectual conversion cannot correct those narratives. The work of intellectual conversion is to draw our focus away from the already-out-there-now and instead to the ways we operate as knowing subjects.

In doing that, problems of the psychic censor can come to light, but not all problems can be so exposed and not all exposed problems can be solved without further conversions.

4.2 Moral Conversion

“Moral conversion changes the criterion of one’s decisions and choices from satisfactions to values.”⁵⁹⁰ We said above that in each case, conversion involves turning away from something and towards something else, and in the case of moral conversion, what we’re turning away from is simple satisfaction of particular desire. Lonergan readily acknowledges that the good can be the object of desire, and that this is the most elementary meaning of the term,⁵⁹¹ but there are other levels of the good that cannot be accounted for as simple objects of desire (goods of order and values). When we restrict the criteria of our choices to the satisfactions of our particular desires, then, we live in a truncated moral horizon that ignores, among other things, how those satisfactions are provided to us. The satisfaction of particular desires is structured by goods of order, on which we will say more in Chapter 6, and these are themselves governed by values.

This shift is part of growing up, albeit inchoately. As children become young adults and learn to function in society, they become morally converted to at least some extent without giving explicit consideration to their scales of values. They’re forced into it, in a way, insofar as intersubjective communities operate with a scale of values to which individual members must respond, and very few will tolerate the kind of libertinism engendered by a genuine total lack of moral conversion. This is not to say that society pushes one towards a normative scale of values, and we’ll give this further consideration

⁵⁹⁰ Lonergan, *Method in Theology*, 225

⁵⁹¹ Lonergan, *Insight*, 619

in the next chapter. But in making their peace with society, every young adult is forced to confront why they do things and to be able to account for their actions in terms beyond simply “It felt good.”

The foundation of contractualist ethics is the claim that we have to be able to explain ourselves to each other, give reasons for our behavior, reasons that the rest of those in our intersubjective community will accept. This is the central thesis of T.M. Scanlon’s aptly-titled *What We Owe to Each Other*.⁵⁹² Scanlon, in effect, takes the later Rawls’ thought down to the personal level, where it can largely avoid the challenges we outlined in Chapter 2. Scanlon’s thought does provide a nicely operationalized decision-making process, but for our purposes, it is more important that he has captured something about the way communities operate: whether or not we in fact *owe* reasons to one another, we certainly do *demand* them from one another.

As it turns out, the reasons we will accept from one another are generally to do with values. We regard as petty, coarse, uncouth, or ill-mannered (if not worse) someone who cannot give a value-explanation for their actions. There are some areas where we have determined that satisfaction is quite sufficient to justify a decision between a set of equally valuable choices—the choice of one entrée over another, for instance. But where we need no explanation for the healthy person wanting desert, we don’t tend to regard an insulin-dependent diabetic as having a good reason for eating a large slice of cheesecake with their (otherwise healthy) meal unless a more important or urgent value than their health can be articulated to us. Folks tend to be a touch judgmental about that, actually, because the set of values to be realized by that person eating that cheesecake which would supersede the

⁵⁹² T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 2000).

health risks and impacts of their elevated blood sugar, the potential disvalues, is comparatively small.

We find ourselves, then, forced into being able to give reasons, and so to thinking in terms of the reasons we will give. While this is not yet the firm commitment to making values the criteria of our decision-making process realized in moral conversion, it is nonetheless a substantial precursor. And one of the functions of communities that we'll consider in the next chapter is the way the community pushes individuals to this point. How the community does so and to what point it pushes will be part of authentic process for the community.

As we said in the previous chapter, in addition to the unrestricted desire to know everything about everything, we have an unrestricted desire to embrace everything good about every good thing and create all the good we can. This is the unrestricted notion of value, and it drives moral conversion by inducing us to seek ultimate concern, the highest and greatest value. The process of moral conversion begins in earnest when we run up against the limitations of choosing just our particular satisfactions. These first manifest explicitly when we're pushed to give reasons beyond "It felt good", but there are at least two other inflection points.

The first, for most people, is when one's attention is drawn to the goods of order needed to provide the particular goods that satisfy one's particular desires. Such goods of order are generally artificial constructs organized by institutions and require a great deal more to run than simply the satisfaction of particular desires.⁵⁹³ We are also eventually

⁵⁹³ We will say more about this in Chapter 6, but after *Insight*, Lonergan consistently talks about institutions as distinct from and as conditions on goods of order. When discussing what an institution is, Lonergan consistently describes not the cooperation itself but the ways cooperation happens, the terms under which it

faced with the choice between different goods of order, and in a way we cannot avoid by refusing to choose. It is usually the case, in such a circumstance, that we cannot adequately project which will be more efficient at providing particular goods, nor which particular goods will become unavailable under each, nor even what the impact of each will be on those subject to it. We find that we have mislaid our crystal balls. The question is underdetermined.⁵⁹⁴ To make the choice, we turn to value, and once we have properly understood the choice and the options available for that choice, we present those options to our affects for valuation.

As we noted in the previous chapter, “Not only do feelings respond to values. They do so in accord with some scale of value preference.”⁵⁹⁵ Put differently, “Value preferring is equi-primordial with value intending.”⁵⁹⁶ The objective scale of value preference, Lonergan gives as “vital, social, cultural, personal, and religious values, in ascending order.”⁵⁹⁷ The value of each good of order is a value complex, and it will almost certainly have component values at the levels of at least vital, social, cultural, and personal values,

is achieved. He first draws this distinction in *Topics* (35-36), where the institutional framework is one of four common features of all goods of order. The distinction between the good of order and the institution structuring it only becomes more pronounced over time. Typical of his later work is the characterization in “Judgments of Value” (1972): “Now usually people are in groups and their operations are cooperations. For the cooperations, there is an already understood and accepted mode of cooperating, and an already understood and accepted way of cooperating is an institution...” (148) He gives a parallel discussion in *Method in Theology*, where institutional frameworks “constitute the commonly understood and already accepted basis and mode of cooperation. ... The concrete manner in which cooperation is actually working out is what is meant by the good of order.” (48) And later still, in “Dialectic of Authority” (1974), the institution “is the product of use and wont. It is the sum of the ways of cooperating that are commonly understood and accepted.” (5) So while a given economy, polity, family, etc., may be a good of order, the framework of each is not. That framework, the mode of cooperation, is the institution.

⁵⁹⁴ Lonergan, *Insight*, 620-21

⁵⁹⁵ Lonergan, *Method in Theology*, 32

⁵⁹⁶ Byrne, *Ethics of Discernment*, 271-72

⁵⁹⁷ Lonergan, *Method in Theology*, 32

nor would it be especially unusual to see a religious value component as well. But at this point, the scale of values operative in our horizons of feelings is quite likely to be distorted, and correcting that is the job of affective conversion, which we'll discuss in the next section. Insofar as these distortions persist, we will likely not have properly grasped the values of our options. But we are not blessed with an overabundance of time, and we must make that choice anyway.⁵⁹⁸ And we do so, not on the basis of satisfaction of particular desires, but on the basis of values, even if that value is just the value of having more of my own desires satisfied.

The second inflection point is the realization that the choices we make say something about us, make us who we are and will be, and that *matters* in a way satisfaction of desires cannot account for. Every action we take “affects, modifies, changes the world of objects. But even more it affects the subject himself. For human doing is free and responsible. Within it is contained the reality of morals, of building up or destroying character, of achieving personality or failing in that task.”⁵⁹⁹ This realization heralds the transition from the rational subject to the existential subject, from the subject that can make a choice to the subject that recognizes her or his responsibility for each choice and the impact thereof on character, on the constitutive meaning and originating value of the subject as a mediator of meaning and creator of meaning and value. We recognize the self that will be created by each choice as among the legitimate reasons to choose one option over another, even if we do not yet have the language to properly articulate that insight.

⁵⁹⁸ As Lonergan observes, “The reign of sin...is the priority of living to learning how to live, to acquiring the willingness to live rightly, to developing the adaptation that makes right living habitual.” (*Insight*, 715)

⁵⁹⁹ Lonergan, “The Subject”, 68

Like intellectual conversion, moral conversion is an ongoing and continually renewed commitment to working with our distinctively human way of knowing the value of ourselves and the world and everything in it, the ethical structure we outlined above, and embracing as good whatever is known to be valuable. Like intellectual conversion, we can abandon it. The commitment to value over satisfaction, especially where the two conflict, is a choice we have to make at every turn, implicit in every choice we make and every action we take.

Moreover, like intellectual conversion, moral conversion gives us the awareness needed to resolve tensions in our horizons of feelings. In intellectual conversion, these tensions in our horizons of knowing come to light when we run up against things that we cannot properly explain if knowing is just taking a look. In moral conversion, these tensions in our horizons of feelings come to light when we encounter contradictory felt valuations. For Cicero, his opposition to Julius Caesar, Marc Antony, and Octavian was not absolute but the result of resolving contradictory tensions in his horizon of feelings: he initially valued the work that Julius Caesar in particular was doing to restore the great old traditions of the Republic to efficacy, but he also felt the disvalue of the way they began to erode those traditions. Once he understood that each would create a fundamental and (to Cicero's mind) negative change in the way Rome understood itself, given time, he resolved the tension by putting the cultural values of the Republican traditions over the social values of efficient government. For Martin Luther, the attempts to reform the Church sprang from a contradiction between the felt value of the Church as an institution and the felt value of the people the agents of that institution were abusing in the sale of indulgences. He

composed his 95 Theses when he resolved the tension by putting the personal values of the parishioners over the social and cultural values of the Church as an institution.

In each case, the tensions brought to light the unauthenticity of each man's then-current horizon of feelings, and in each case, the resolution of these tensions created a lasting shift in each man's horizon of feelings. This shift was necessary in order for their felt valuations of the components of each situation to no longer contradict. Such shifts happen on smaller scales as well, and as a rule, they are no less watershed moments in each of our lives than they were for Cicero or Luther because they change how we value persons, things, and situations, even if the large-scale consequences of the shifts are not so dramatic for most of us as they were with Cicero and Luther.

But what often remains inchoate, even when such shifts are taking place, is what our scale of values is ordered to. Moral conversion is driven by the unrestricted notion of value, but that is not alone enough to move us beyond that notion to a secure knowledge of what ultimate value is, and thus what our existential scale of values should be ordered to. Most often, when we begin the process of critical self-reflection, we find our values ordered to something at the level of cultural or personal values.⁶⁰⁰ In some cases, the tensions in our horizons of feelings will demonstrate that we have ordered our scale to the wrong thing, often provoking a form of existential crisis. For Lonergan, the normative

⁶⁰⁰ It has been suggested to me that in fact, most people would find themselves ordered to the two lowest levels. This explains, for instance, part of the success of Reagan's question, "Are you better off now than you were four years ago?" It is certainly possible that I'm being overly optimistic about the human condition. But I think that if you asked most people why they care about the vital and social values (and got honest answers), only a minority would give answers about cars, smartphones, and money as an end in itself. More, I expect, would give answers about making sure their families have enough to live comfortably or helping others live with a measure of dignity, in other words, concern for the welfare of others, even if not *all* others. This, I think, is what stands behind the right's emphasis on family values and the left's emphasis on social justice.

scale is ordered to the love of God, both from us and for us, on the level of religious value. Changing what our operative scale of values is ordered to requires affective conversion.

4.3 *Affective Conversion*

The reader acquainted with Lonergan will perhaps be surprised that I have titled this subsection ‘Affective Conversion’—Lonergan usually referred to this conversion as ‘religious conversion’. He did so in part because of his context and position as a Catholic theologian, but in the context of political philosophy, it will behoove us to use a different term, especially in the next chapters when we begin to discuss governments—we do not wish to raise the specter of theocracy. I have adopted the term ‘affective conversion’ in no small measure because this is the alternate term Lonergan himself used in his 1977 lecture “Natural Right and Historical Mindedness”. There he said that self-transcendence “includes an intellectual, a moral, and an affective conversion”, the last of which he said “is commitment to love in the home, loyalty in the community, faith in the destiny of man.”⁶⁰¹

My use of the term ‘affective conversion’ should not suggest to the reader that this conversion cannot be religious—Lonergan dominantly talks about this as religious conversion for a reason. The difference is primarily one of emphasis. As religious, this conversion is falling in love with God, a self-transcendent participation in the divine rather than an emotion rendered towards an all-too-human dogmatic construct called “God”. “[T]hen the supreme value is God, and other values are God’s expression of his love in this world, in its aspirations, and in its goal. In the measure that one’s love of God is complete,

⁶⁰¹ Lonergan, “Natural Right”, 173

then values are whatever one loves and evils are whatever one hates... Then affectivity is of a single piece.”⁶⁰² As affective, this conversion is a radical reorientation of priorities and restructuring of the horizon of feelings by love of God and the outworking of that restructuring in the various aspects of one’s life.⁶⁰³

The natural limitations of moral conversion leave us with a problem: though the existential subject has, in moral conversion, shifted his decision criteria from satisfaction to value, his decision-making is yet relative to his own scale of value preference, which is to say, his decision-making relies on values felt through his own very probably distorted horizon of feelings. Even if he decides to do one thing because he feels it as more valuable than the other, there is nothing to say that it is not simply more valuable *for him*. Returning to Chapter 2, there is nothing to say he is not Sibley’s Mr. A, rational but not especially reasonable. Even an egoist could be morally converted on Lonergan’s account. But as we have noted above and in the previous chapter, we not only feel values, we feel their relative importance. We each operate with an implicit and usually unconsidered scale of value preference that structures and is structured by our horizons of feelings and so conditions the ways we feel values, but we often operate with significantly different scales. In the egoist’s operative scale of values, the egoist is himself the highest value.

Affective conversion answers this challenge. It “is being grasped by ultimate concern. ... It is total and permanent self-surrender without conditions, qualifications,

⁶⁰² Lonergan, *Method in Theology*, 40

⁶⁰³ In *Method in Theology*, Lonergan gave this distinction in a rather more theological register couched in explicitly Christian language: “Operative grace is religious conversion. Cooperative grace is the effectiveness of conversion, the gradual movement towards a full and complete transformation of the whole of one’s living and feeling, one’s thoughts, words, deeds, and omissions.” (226)

reservations. But it is such a surrender, not as an act, but as a dynamic state that is prior to and principle of subsequent acts.”⁶⁰⁴ Affective conversion is driven by tensions in the horizon of feelings originating in unrestricted being-in-love.

This third driving factor is a fulfillment, partially, of the unrestricted notions of being and value. It is “a dynamic state of love, joy, peace” that produces “a feeling of unshakeable reassurance that all of our questions have answers (especially all of our questions for evaluation, deliberation, and choice), before we find out just what those answers are”.⁶⁰⁵ Unrestricted being-in-love is no less intentional than the unrestricted notions of being and value, but where the unrestricted notions of being and value intend being (intelligibility) and value not already apprehended (and not always apprehensible by humans), unrestricted being-in-love is the assurance of those notions being satisfied.

This is grounded in religious experience, our experience of “an orientation towards an unknown [which] reveals its goal by its absoluteness... It is, then, an orientation towards what is transcendent in loveableness and, when that is unknown, it is an orientation to transcendent mystery.”⁶⁰⁶ In the later Lonergan, religion has two parts. The outer trappings of institutional religion are “a suprastructure of context, problem, discovery, formulation.”⁶⁰⁷ This applies not just to religious *institutions* but to religion as articulated and characterized in all cases whatsoever. This superstructure is built around the religious experience itself, the experience of an orientation of love of which we are conscious.

⁶⁰⁴ Lonergan, *Method in Theology*, 226

⁶⁰⁵ Lonergan, *Method in Theology*, 102; Byrne, *Ethics of Discernment*, 218

⁶⁰⁶ Lonergan, *Method in Theology*, 315.

⁶⁰⁷ Lonergan, “Study of Emerging Religious Consciousness”, 54

Unlike the religious superstructure of concept, context, and articulation, though, “that consciousness is not knowledge but only the infrastructure in a potential knowledge”.⁶⁰⁸

For Lonergan, operating in the Christian tradition, unrestricted being-in-love is what it means to really be in love with God, and this is “the gift of grace”.⁶⁰⁹ But he’s explicit that it’s not restricted to the Christian tradition. In underwriting affective conversion in its religious valence, this is “a vocation to holiness” but it is “interpreted differently in the context of different religious traditions.”⁶¹⁰ ‘Unrestricted being-in-love’ is an attempt to formulate this experience; Lonergan also calls it “otherworldly falling in love.”⁶¹¹ “Lonergan held that unrestricted being-in-love in fact does reside in the consciousness of each and every human being, and forms the foundation of every authentic religious tradition.”⁶¹² So this driving factor, unrestricted being-in-love, has the potential for each of us to reorient our feeling horizons.

Unrestricted being-in-love can do this because in all cases, this is a love of the divine and through it, a love of the world of being and value. The final objective of affective conversion, then, is for this love of the unrestricted act of understanding and valuation to structure our horizon of feelings. For Lonergan, this love is instilled in us and this conversion accomplished by operative grace.⁶¹³ “It is not similar to human intersubjectivity, for that is between persons with a common horizon”, and we do not share

⁶⁰⁸ Lonergan, “Study of Emerging Religious Consciousness”, 55

⁶⁰⁹ Lonergan, *Method in Theology*, 226

⁶¹⁰ Lonergan, *Method in Theology*, 226

⁶¹¹ Lonergan, *Method in Theology*, 226

⁶¹² Byrne, *Ethics of Discernment*, 221; see also Frederick Crowe, “Lonergan’s Universalist View of Religion”, *Method: Journal of Lonergan Studies* 12 (1994): 147-179.

⁶¹³ Lonergan, *Method in Theology*, 226

a common horizon with the divine.⁶¹⁴ But it is similar insofar as it *creates* a common horizon, and rather than shifting God's horizon, God shifts ours. So "this being in love determines the horizon of total self-transcendence by grounding the self and all its self-transcendence in the divine lover whose love makes those he loves in love with him, and so with one another."⁶¹⁵

The name 'affective conversion' is, in this way, far more descriptive than Lonergan's usual term. What is converted here is the horizon of feelings itself. The unrestricted notion of value has a part to play here, but unrestricted being-in-love is what tells us that the horizon of feelings we currently experience is not the one we should have, and the tensions this induces tell us where it is unauthentic. Unrestricted being-in-love, insofar as it is anticipatory, "does not yet know what hierarchy among values it feels or which values are higher or why" and so "can reside within and permeate our horizons of feelings without being explicitly attended to, understood, affirmed, or deliberately accepted."⁶¹⁶ But it nonetheless creates tensions in our habitual and customary ways of valuation that drive us to alter our scale of value preference, and it does so in ways that the unrestricted notion of value could not.

Lonergan gives the objective scale of value preference evident in a fully converted horizon of feelings as "vital, social, cultural, personal, and religious values, in ascending order."⁶¹⁷ The work of affective conversion is to begin resolving the tensions prompted by unrestricted being-in-love within our horizons of feelings by shifting our horizons of

⁶¹⁴ Lonergan, "Horizons", 22

⁶¹⁵ Lonergan, "Horizons", 22-23

⁶¹⁶ Byrne, *Ethics of Discernment*, 220

⁶¹⁷ Lonergan, *Method in Theology*, 32

feelings so that we feel values and feel their relative importance according to this normative scale. As assessed within a fully converted horizon, our judgments of value will be not just objective relative to our horizon but normative themselves.

Affective conversion, then, first leaves behind the scale of value preference assembled *ad hoc* both as given in community (especially the family) and as an accident to the demands of life for valuations of situations and events, assembled absent conscious intent and only rarely with serious consideration of its hierarchy. But what we have said so far should not be taken to imply that affective conversion is a jump straight from the *ad hoc* scale of preference discernable in the immediate aftermath of moral conversion to the objective scale of values. Conversion is an ongoing process, and with affective conversion, that process manifests itself in the great many things with which we might be in love that could structure our value horizons. Any love described by the words ‘passionate commitment’ that leads one to risk lower values for the sake of higher ones could do so. For that matter, so could any hate of similar description: *ressentiment* driven by comparing oneself to an ‘evil’ Other structures one’s scale of values as surely as love does, which is part of why it creates such a damaging distortion of the horizon of feelings.

Because unrestricted being-in-love as a driving factor will be satisfied with nothing less than the unrestricted act of understanding and valuation as that with which we are in love, when lesser loves structure our horizons of feelings, they leave at least tensions in our feelings of value preference unresolved. As a process, then, affective conversion is a decisive commitment to pay attention to those tensions in the feelings of value preference and resolve them by reordering our scale of value preference to a new beloved. This may be a radical shift (from hate to love; from money to family) or it may be a more subtle shift

(from one person to another; from one conception of God to another). The end-point of this decisive commitment is a love of God that orders our scale of value preferences such that our feelings of value preference evince no further tensions.

Put another way, in moral conversion we discover our existential selves as responsible for valuing, deciding, and acting, and we always already value according to an operative felt scale of value preference. We order our scale of value preference to some passion, be that love or hate, and we begin resolving the tensions within our horizon of feelings and our feelings of value preference according to the demands of that passion. The work of affective conversion is to shift which passion orders that scale.

This shift is not the work of moral conversion because it is driven by unrestricted being-in-love, rather than the unrestricted notion of value. The unrestricted notion of value leads us to desire value, and as we noted above, values are always already felt within a scale of preference. But the ordering of that scale is not determined by the unrestricted notion of value. It's determined instead relative to the focus of our passions, which is properly specified by unrestricted being-in-love. The kinds of moral reasoning by which we critically assess our scale of values may be sufficient to tell us that the object of our passion is either prompting or insufficient to resolve the felt tensions in our horizons of feelings, but it is insufficient to direct us to a new and better object.

What affective conversion brings, in its fullness, is the operation of the objective scale of values. As our loves are superseded, our scale of values creates fewer contradictions in concrete situations and fewer tensions in our feelings of value preference. Affective conversion is complete when none remain. And like intellectual and moral conversion, it is a continually renewed commitment to that highest love, one which can be

undone. The danger of misordered loves never fully recedes, and life has a way of pulling our focus away from what should be ordering our scale of values.

4.4 *Psychic Conversion*

Lonergan does not himself specifically elaborate psychic conversion, but he did endorse this as a fourth conversion.⁶¹⁸ The idea originates with one of his students, Fr. Robert Doran, S.J., shortly after the publication of Lonergan's *Method in Theology*.⁶¹⁹

Psychic conversion is “the transformation of the psychic component of what Freud calls ‘the censor’ from a repressive to a constructive agency in a person’s development.”⁶²⁰ We have already noted the role of the psychic censor in Lonergan’s thought as the gatekeeper at the threshold of consciousness, operating according to a narrative about who and what we are and supplying phantasms to the consciousness and patterning those images to either reinforce or challenge that narrative. As authentic, the psychic censor operates to bring us the phantasms we need to properly challenge the narratives about our lives where they need to be challenged, bringing us to an ever fuller understanding of ourselves both with respect to our intellectual horizons and our feeling horizons. As unauthentic, the psychic censor represses certain phantasms in response to the fear we feel of what comes when that narrative is threatened, resulting in a bias in the drama of human living.

In this way, psychic conversion is the answer to dramatic bias. Intellectual conversion cannot accomplish this because its changes begin in intelligent consciousness

⁶¹⁸ Bernard Lonergan, “Reality, Myth, Symbol”, in *Philosophical and Theological Papers, 1965-1980*, ed. Robert Croken and Robert Doran (Toronto: University of Toronto Press, 2013), 389-90.

⁶¹⁹ Doran recounts the history of his insight in “Two Ways”. He traces its history to 1973, while working on Heidegger and Kant shortly after having read *Method in Theology*, which was first published the year prior.

⁶²⁰ Robert Doran, *Theology and the Dialectics of History* (Toronto: University of Toronto Press, 1990), 59; hereafter cited as Doran, *Theology and the Dialectics of History*.

and only debatably in experiential consciousness. Because the psychic censor operates at the threshold of consciousness to supply experiential consciousness with its phantasms in the first place, it is beyond the reach of intellectual conversion. In *Insight*, Lonergan notes that the biased psychic censor, in its quest to prevent insights from challenging the narrative, inhibits only images, not affects, and that the affects associated with the inhibited images will be inhibited themselves only if they remain attached to those images. But because the neural demands must be satisfied, the affect “becomes detached from its apprehensive component, slips along some association path, and attaches itself to some other apprehensive component.”⁶²¹ By “apprehensive component”, Lonergan means the imaginal symbol: the neural demands are for both symbol and affect, and when a symbol is unavailable, the affect that it would evoke and that would evoke it becomes attached to a different symbol. The work of the therapist, then, is to point out where such incongruities of association occur, by whatever route is appropriate to the patient, “investigate association paths, argue from the incongruous to the initial object of the affect, and conclude that this combination of initial object and affect had been inhibited by a repression.”⁶²²

Neither the problem nor its solution can be recognized without intellectual conversion’s shift from the world where knowing is taking a look to a world mediated by meaning—if knowing is taking a look, the necessary toolkit to accurately recognize incongruous associations of symbol and affect and especially to accurately identify the proper symbol of the affect will be lacking. If knowing is taking a look, then we lack the

⁶²¹ Lonergan, *Insight*, 216-17

⁶²² Lonergan, *Insight*, 217

tools to say which of the phantasms given in consciousness is erroneous and why because the psychic censor supplies what we see when we take a look but is not itself seen.

But neither is intellectual conversion alone sufficient correct the scotosis. The dramatic bias is “a flight from knowledge that is to be cured by knowledge”, but the biased psychic censor remains quite resistant to its cure, and the necessary “insights must occur, not in the detached and disinterested intellectual pattern of experience, but in the dramatic pattern in which images are tinged with affects. Otherwise the insights will occur but they will not undo the inhibitions”.⁶²³ The subject will develop understanding of the problem but not self-understanding; the impact will be theoretical instead of existential. Intellectual conversion, then, does not have the tools to correct for dramatic bias. Neither do moral or affective conversion, which change operations in the cognitional and ethical structure posterior to those shifted by intellectual conversion.

Instead, what is needed is something that can shift the psychic censor out of its repressive mode and into a constructive mode. The work of psychic conversion is not so much to create that shift as to enable “one to acknowledge” one’s dramatic biases as an “aberration of sensitivity”.⁶²⁴ The dramatic bias works quite hard to hide itself—that’s one of its primary means of resisting correction—and because it controls the phantasms coming into consciousness, the insight that such a dramatic bias exists can be quite elusive. The work of psychic conversion is to create space for the subject to have that insight and make that admission.

⁶²³ Lonergan, *Insight*, 224-25

⁶²⁴ Doran, “Two Ways”, 16

This does, of course, leave open the possibility of multiple psychic conversions, and that presents a potential problem. Since we each have multiple dramatic biases operating in our horizons at any one time, it might be reasonable to assert that a separate conversion is necessary for each. But that comes with its own set of problems. It would be better to say that psychic conversion effects a basic shift in our stance towards such blind spots, so that we seek them out instead of ignoring their presence. In this way, psychic conversion, like the other conversions, remains an ongoing commitment. Psychic inertia is difficult to overcome, and at least at first, establishing the new patterns of thought and behavior as habitual will be a daunting challenge. But more than that, it's a challenge that will never truly depart us. The temptation to ignore blind spots is ever-present, and we are arguably more comfortable when we do so. As a result, a kind of psychic entropy has to be continually fended off to maintain this willingness to find and properly address scotoses, and this is the long-term commitment to psychic conversion.

In his later work, Doran claims a bit more for psychic conversion than just this. Broadly speaking, our conscious operations break into two sets, passive and active.⁶²⁵ The passive set includes not just our experiences but also most or all of our affectivity. The active set includes our intellectual operations, including understanding, judging, deliberating, choosing, and, of course, acting. Put another way, these are the two sides of the “dialectic of the subject...between the neural undertow that emerges into consciousness in the form of images and affects...and the orientation of the intelligent, rational, existential subject constituting one's world and oneself through one's insights, judgments, and

⁶²⁵ Bernard Lonergan, *The Triune God: Systematics*, trans. Michael Shields, ed. Robert Doran and H. Daniel Monsour (Toronto: University of Toronto Press, 2007), 139.

decisions”.⁶²⁶ In Doran’s view, these two have become disconnected and regarded as contradictory, and what he is “attempting to do in proposing the notion of psychic conversion [is] establish the link between these two ways of being conscious.”⁶²⁷ The dramatic bias, then, is the result of a deeper rift in our psyches between the active and passive sets of our conscious operations, such that the work of psychic conversion is to reconnect the two.

This makes a degree of sense in light of what we have already said: the psychic censor as repressive prevents certain phantasms from entering consciousness where they would allow the consciousness as active to have uncomfortable insights. At first blush, this seems to put the passive and active consciousnesses at odds with one another, but they remain connected on a deeper level insofar as the narrative the psychic censor protects in doing this is one that the active consciousness approves and feels as valuable, even if it does not generally recognize this to be the case. In some cases, this narrative has been intentionally affixed as the backdrop of active consciousness in a bid to replace a worse narrative.

The work of psychic conversion, then, is to put the passive and active consciousness back in touch with one another, to let the neural demands and the conscious subject operate in harmony rather than at cross purposes. This begins to highlight for us the scotomata in our cognitive and affective horizons so that we can work towards the insights that will correct the dramatic biases operative in each of our lives. This, in turn, is necessary if one is to rely on the data of consciousness to provide the necessary materiel for needed insights.

⁶²⁶ Doran, “Two Ways”, 9

⁶²⁷ Doran, “Two Ways”, 16

4.5 Alternate Perspectives

There is some disagreement among Lonergan scholars as to the exact nature and structure of the conversions, and we will do well to take note of that here. There are three alternative accounts of moral and religious (affective) conversion we should address before moving on.

The first is presented by Fr. Robert Doran. In his work *Theology and the Dialectics of History*, Doran presents five conversions: intellectual, moral, religious, affective, and psychic. Intellectual, moral, and psychic conversion, he discusses in much the same terms we did above. But he divides religious and affective conversion.

“Religious conversion is falling in love with God.”⁶²⁸ In characterizing what this comes to, Doran quotes extensively from Lonergan in *Method in Theology*: “It is total and permanent self-surrender without conditions, qualifications, reservations. But it is such a surrender, not as an act, but as a dynamic state that is prior to and principle of subsequent acts.”⁶²⁹ He quotes at much greater length, but this is the core piece for his subsequent discussions of religious conversion. This quote should be familiar: we gave it above in our characterization of affective conversion. Religious conversion supplants all the loves we have had or could have with the love of God as the highest ordering principle of our scale of values, which is how it’s “a dynamic state that is prior to and principle of subsequent acts.”

Doran characterizes affective conversion as the outcome of religious conversion. Affective conversion is “the achievement of an affectivity that is of a single piece because

⁶²⁸ Doran, *Theology and the Dialectics of History*, 36

⁶²⁹ Lonergan, *Method in Theology*, 226

one loves God with all one's heart and soul and mind and strength."⁶³⁰ It is the complete reorientation of one's scale of values in accord with religious value. But for Doran, this "unrestricted love is the goal of a complete conversion process involving the four distinct but related dimensions of religious, moral, intellectual, and psychic conversion."⁶³¹ So while he acknowledges affective conversion as closely connected to religious conversion,⁶³² affective conversion is nonetheless a different conversion, separate from religious conversion.

Doran is right that such an affective unity is the goal of the complete suite of conversions, but we have not followed him and given this as a separate conversion for two reasons. First, the keystone of this effort is falling in love with God. Lonergan repeatedly said that this is most often the first conversion, not the last, even though he consistently presented intellectual conversion first for pedagogical reasons. Falling in love with God (or falling in love with something else in a way parallel to falling in love with God—an affective perversion that puts an idol of sorts in God's place is also quite possible) is what prompts us to re-examine our previous valuations and creates tensions in our horizon of feeling that the morally converted subject must resolve (or prompts moral conversion in the first place). Indeed, while communities push us towards an inchoate moral conversion as part of growing up, even if they don't push us all the way, religious conversion quite often pushes one to become morally converted in more explicit terms. Affective conversion, then, as Doran has characterized it, is part and parcel of religious conversion, the obverse to the reverse of a single coin.

⁶³⁰ Doran, *Theology and the Dialectics of History*, 59

⁶³¹ Doran, *Theology and the Dialectics of History*, 59

⁶³² Doran, *Theology and the Dialectics of History*, 35

Second, with each conversion, we emphasized that each turns away from something, that each turns towards something else, and that each is a continuing commitment that must be maintained, rather than a singular event. But it is unclear that Doran's affective conversion is a turning at all, since it is not clear what we're turning *from*, especially as distinct from moral conversion, and it is not clear why affective conversion requires continuing affirmation—it is an “achievement”, a “goal”, an end-state.

Given the structural elements we have emphasized about conversion, it makes more sense to think of religious and affective conversion as being the two sides of one coin. Then, it's clear what we're turning from (whatever was ordering our loves before, e.g. money, children, career), what we're turning to (God, ideally), and why it's a continuing commitment: there's lots to do in fully re-ordering our operative scale of values once we have put in place a proper object (or rather, a proper subject) as the keystone religious value. Such a keystone is the *sine qua non* of this conversion, but that's really only the beginning of the process, and we will be constantly tempted to let our commitment to that love flag.

So, for these reasons, I maintain that there are four conversions: intellectual, moral, affective (religious), and psychic.

The second alternative account we should consider comes from Patrick Byrne's *The Ethics of Discernment*. There, he characterizes moral conversion rather differently than the account we have given here: “Moral conversion is a decisive commitment to a horizon of feelings that embraces the whole range of values.”⁶³³ On Byrne's account of moral conversion, the reordering of the scale of values from the accidental ordering in

⁶³³ Byrne, *Ethics of Discernment*, 241

which we initially find it operative to the normative ordering is part of the long-term work of moral conversion. But where Byrne concludes that “moral conversion...brings one’s own existential scale of value preference into alignment with the normative objective scale”, I have reserved this shift to affective conversion because that realignment cannot happen without a change in what we recognize as religious value.⁶³⁴

Byrne does acknowledge that affective conversion is a necessary piece of reordering the scale of values. Such a reordering usually follows religious conversion, as he points out that Lonergan frequently remarked, and when it doesn’t, it creates an exigence for the transcendent.⁶³⁵

...apart from religious conversion, [moral conversion] is a commitment to the normative order of the first four levels in the normative scale, but not to the fifth level. However, this is an inherently unstable commitment. As long as the morally converted person remains open to unconditional love, she or he will be able to think and act in accord with the normative order of the first four levels of value. But sooner or later such persons will be faced with the need to articulate their moral stances in relation to traditions that are explicitly religious in the authentic sense. ... If such a choice is deliberately rejected, it will become increasingly difficult to live out the normative order of the first four levels. Almost inevitably some lower value will become ascendant and supplant higher cultural and personal values. The initial genuine commitment of moral conversion will be undermined.⁶³⁶

Without affective conversion, then, moral conversion can commit us to values on the vital, social, cultural, and personal levels, but not on the religious level. But without an explicit principle ordering the commitments at those levels, which would be part of the work of religious values, such commitments are “inherently unstable”. Eventually, one must articulate a commitment to religious value, or something masquerading as religious value, or surrender moral conversion entirely.

⁶³⁴ Byrne, *Ethics of Discernment*, 277

⁶³⁵ Byrne, *Ethics of Discernment*, 268

⁶³⁶ Byrne, *Ethics of Discernment*, 269

The difference between Byrne's account and that we gave above is one of emphasis. We are drawing the line between moral and affective conversion differently than he did. We all think that the same things are going on; we disagree only on when one has crossed from moral to affective conversion. For Byrne, in principle, human nature could exist without the tensions of a distorted horizon, living completely in an orientation towards what is good and with an operative normative scale of values, but in practice, this does not happen. Moral and affective conversion are required to reorient us, and the line he draws between them is that moral conversion orients us to the human good (the bottom four levels) while affective conversion orients us to transcendent good (religious value). The two go hand in hand—one cannot have a correct orientation to the human good without being oriented to the transcendent good—and if we speak in a theological register, both require moments of grace.

In this respect, then, our difference comes down to how we think about affective conversion rather than moral conversion. Byrne discusses it as religious conversion and discusses it in a primarily religious vein. For the reasons articulated above, such a treatment is not appropriate to our purposes here, so we have chosen to think about affective conversion instead primarily in the outworking of the restructuring of one's scale of value preference. This opens the door to what we might call affective perversions, where the scale is reordered by something wrongly considered to be a religious value, as well as genuine affective conversions. These will be recognized through the tensions they create in the horizon of feelings, meaning that recognizing and correcting such affective perversions will require the toolkit of moral conversion. The transcendent exigence will continue to agitate the horizon of feelings until it is satisfied correctly.

The third alternative perspective we should consider is an account of moral conversion from Elizabeth Murray. In her article “Compunction and Passion: Two Moments of Moral Conversion”, she makes the case that it is possible to be morally converted both positively and negatively. We emphasized at the beginning of our discussion of conversion that each conversion has both a positive and a negative aspect, and we have outlined what each is for each conversion.

Using Kant, Kierkegaard, and Scheler as her touchstones, Murray wants to take this a step further to say that it is possible to be morally converted in the negative but not positive sense insofar as one has “sacrifice[ed] one’s inclinations or satisfactions to the demands of reason” as the criterion for moral decision-making.⁶³⁷ The result is Kierkegaard’s knight of infinite resignation. “Inasmuch as it is possible to lead a joyless life of rational consistency and moral duty, to have a rigid grip on one’s actions, to aim for nothing more than moral consistency,” one can be morally converted only in the negative sense.⁶³⁸ One has had the existential moment of realization of oneself as a moral actor and has understood that one must make a choice, and one has made the choice to surrender simple satisfaction of desires as the criterion of action. One is, in some sense, dourly resigned to one’s fate.

Moral conversion in the positive sense requires more: Beyond rational consistency as the criterion of ethical judgment, we embrace the notion of value as defining the kinds of reasons that count in these judgments. “The notion of value as the dynamism of moral consciousness does not replace the exigence for rational consistency; it subsumes and

⁶³⁷ Murray, “Compunction and Passion”, 224

⁶³⁸ Murray, “Compunction and Passion”, 224

augments the rational exigence.”⁶³⁹ Because values are disclosed to us in feelings as intentional responses, and because “our spontaneous preferences for one value over another” demonstrate a “hierarchy of values, which governs one’s heart”, positive moral conversion occurs in re-ordering that scale according to a love.⁶⁴⁰

When the beloved is God, this is religious conversion, “which would render moral conversion a mode of religious conversion. However, it is possible...to be morally converted without being religiously converted. It is possible to fall in love passionately without being religiously converted.”⁶⁴¹ This love is, for Murray, the second and positive moment of moral conversion.

Her account agrees with the one we have given to a point. Again, we disagree with her principally on where to draw the line between moral and affective conversion. What we have above called moral conversion goes as far as Murray’s negative moment but not further. Whether it is possible to live that way is debatable; I rather think it is not. What she has called the positive moment of moral conversion, we have instead called affective conversion. As Murray helpfully points out, the love of God is not the only love that can structure our horizons of feelings in such a way that all tensions are resolved, which also points, similarly to what we said above, to the possibility of several successive positive moral conversions (in Murray’s sense) as our various loves are superseded. In what we said above on affective conversion, though, this is progress towards the goal of a true love of God, what Murray limits to religious conversion.

⁶³⁹ Murray, “Compunction and Passion”, 222

⁶⁴⁰ Murray, “Compunction and Passion”, 222

⁶⁴¹ Murray, “Compunction and Passion”, 224. I think this would instead make religious conversion a mode of moral conversion, but either way, this reduces one to the other.

Our consideration of conversions, then, would seem to be in agreement with these three alternative perspectives on the important things, on the work that conversion carries forward. In each case, our disagreement is one of nomenclature. With Doran, we disagreed about the number of conversions, but on the grounds that the work being done by affective conversion as we described it above was being split between his account of religious and affective conversion, and this split could not be accounted for under the rubric we gave of the general features of a conversion. With Byrne, we disagreed about the line between moral and affective conversion, concluding that Byrne had given to moral conversion much of the continuing work of affective conversion in rooting out the tensions in our horizons of feelings. With Murray, likewise, we disagreed about whether what she calls the second moment of moral conversion is really part of moral conversion at all, rather than being part and parcel of affective conversion. But the way these lines are drawn is less important than the substantive agreement between all four accounts on the terrain over which they are drawn.

The way we have divided the conversions will give us a few advantages as we press forward to discuss communities and institutions with a special eye to their political features. First, as we said above, we would prefer to avoid the specter of theocracy, and by focusing on the way affective conversion re-orders the scale of values rather than on its religious aspect, we can avoid much of that concern. Second, in focusing affective conversion on the shift in the top of the scale of values rather than on to what exactly the new keystone value is, we gain a good way to talk about converting the value-goal hierarchies of institutions that would be very difficult were we to maintain a focus on affective conversion as being only religious in character. Third, as we have observed, the

shift from the simple satisfaction of particular desires to the realization of values as the criterion for decision-making is something that every community pushes its members towards in demanding value-reasons for their actions. By drawing the line where we have between affective and moral conversion, we avoid a great deal of confusing nomenclature around the re-ordering of the scale of values within the community and the value-goal hierarchies of institutions. As drawing the distinctions this way gives us significant advantages and does not put us in serious disagreement with other Lonergan scholars concerning the substance of the conversions, only where the lines between them are drawn, we will proceed with the distinctions as we have laid them out.

5 An Impossible Standard

At the end of this account of individual, we should say a few words about the utopian nature of the authentic subject. What we have described as authenticity for the individual will, without question, be the work of a lifetime and more. Whether a perfectly authentic individual has ever existed (apart from Christ himself) is an open question, and the reader could certainly be forgiven for being pessimistic about the answer.

Why should this concern us? After all, an impossible ethical standard is nothing new. But given that our general goal here is not just to describe the authentic individual as ethical but the authentic individual as subject to authority and the authentic individual *in* authority in the institutional (political) sphere, and then to give a method for evaluating who is authentic and who is not, this could present us with a problem. It seems to make little sense to go to all this trouble just to say that no individual, no community, no institution, no government could be perfectly authentic, so that there is no genuine authority, no political legitimacy, just naked power.

To answer this concern, we should remind ourselves of two things we said when we began this discussion of authenticity at the beginning of the previous chapter. First, “human authenticity is never some pure and serene and secure possession. It is ever a withdrawal from unauthenticity, and every successful withdrawal only brings to light the need for still further withdrawals.”⁶⁴² For Lonergan, authenticity is not something we *have*. It is something we *do*. We are authentic only insofar as we operate authentically, only insofar as we consistently and persistently discover and withdraw from unauthenticity. We will not do this perfectly all of the time. But we can do it well most of the time. In withdrawing from unauthenticity, our goal is to be ever more authentic, not to arrive at some perfectly authentic utopian state. It is always a matter of degrees.

Second, “authenticity is reached only by a long and sustained fidelity to the transcendental precepts. It exists only as a cumulative product.”⁶⁴³ Because it’s a cumulative product that’s a matter of degrees, not absolutes, we can evaluate not just whether a government, institution, community, or individual is authentic or unauthentic but how relatively authentic or unauthentic one is on the whole. Lonergan suggested one method of evaluation in “Dialectic of Authority”, and we will discuss that and more in the Conclusion. This is true of the individual subject to authority, but it’s true also (and perhaps moreso) of the individual *in* authority. Having authority as legitimate power doesn’t mean that one never makes mistakes. It does mean that one seeks to understand the mistakes one makes, correct them, and correct the processes by which they occurred—one seeks, in other

⁶⁴² Lonergan, *Method in Theology*, 106

⁶⁴³ Lonergan, “Dialectic of Authority”, 6

words, better data, a better framework of understanding for that data and more consistent valuations of the data, the situation, and the alternatives in that situation.

This means that legitimacy is still possible because authenticity exists as a cumulative product of sustained fidelity to the transcendental precepts, but that allows for both the occasional error about which one should have known better and the more-than-occasional error about which one couldn't have known better. The question for evaluating the individual subject to authority and the individual in authority in each situation, then, isn't "Have you done perfectly?" but "Have you done as well as was reasonably possible?" We will expand on this thought in the Conclusion.

Moreover, because this is a utopian standard, there is always room for improvement, and striving for authenticity gives us the tools to say where improvements could be made with significant precision. Unlike other political theories, the goal isn't to arrive at a certain state of affairs, to have just the right bureaucratic processes, or to approximate a specific historical model—as we discussed in the first two chapters, these things will always be in flux, on a historical scale, so that what's right one decade may be very wrong the next, and they're always subject to corruption and perversion. The goal is to recognize the right way to be operating in every circumstance, and then to act accordingly. The transcendental precepts provide a guide to what authentic operation looks like for each individual in each situation, whether subject to authority or in authority, and as we will see in the next chapter, the transcendental precepts do the same for communities.

So it shouldn't worry us that the standard of authenticity seems impossible for an individual to meet in this life. Rather, in asking whether a given government is legitimate in terms of whether that government is operating authentically, space opens between "yes"

and “no” so that the answer is non-binary and we are better able to identify needed changes to the goals and operations of government, facilitating the improvements needed to get to a more authentic, more legitimate authority.

Chapter 5: Communal Authenticity

In “Dialectic of Authority”, Lonergan said that “[a]uthenticity and unauthenticity are found in three different carriers: (1) in the community, (2) in the individuals that are authorities, and (3) in the individuals that are subject to authority.”⁶⁴⁴ In the previous chapter, we considered the authenticity of the individual subject to authority, and in part the individual who is an authority, but we have yet to properly venture into the authenticity of the community. In “Cognitive Structure”, Lonergan says that “the authentic living of anyone reading this paper, though it must start at home, cannot remain confined within the horizons of the home, the workshop, the village.”⁶⁴⁵ The authentic life of a community, in other words, is the outgrowth of the authentic life of its individual members, and how this comes together will be our subject in this chapter.

⁶⁴⁴ Lonergan, “Dialectic of Authority”, 6

⁶⁴⁵ Lonergan, “Cognitive Structure”, 221

Before we begin, though, we should say a few words about the relationship between this chapter on communal authenticity and the next on institutional authenticity. Though Lonergan never gives a thoroughgoing discussion of institutions, as we will see at the beginning of the next chapter, he does say at a couple different points that institutions are “communities of commitment” to value.⁶⁴⁶ Certainly, the institution is made concrete when the framework of cooperation it provides is inhabited and put into practice by a community of individuals. The reader could, then, be forgiven for wondering why we need two different chapters to discuss communities and whether there actually is a substantive distinction between ‘community’ and ‘institution’.

A short statement of that distinction begins in *Insight*, where Lonergan posited a dialectic of community between “[i]ntersubjective spontaneity and intelligently devised social order”, between “the two principles of human intersubjectivity and practical common sense.”⁶⁴⁷ In *Method in Theology*, he says that “community develops its institutions to facilitate cooperation”, and institutions “constitute the commonly understood and already accepted basis and mode of cooperation.”⁶⁴⁸ The two are closely tied, and reading *Method* in light of *Insight*, we will deal with the intersubjective side of that dialectic of community in this chapter while mostly reserving discussion of practical common sense and the intelligently devised social order in the next chapter. The two are closely tied, but they are also different and in tension, so we will deal with them separately.

This chapter will follow a format similar to that of the previous chapter. As before, we will begin this chapter with a discussion of the nature of this intersubjective community

⁶⁴⁶ Lonergan, “Analogy of Meaning”, 202

⁶⁴⁷ Lonergan, *Insight*, 239, 241

⁶⁴⁸ Lonergan, *Method in Theology*, 51, 48

and the intersubjectivity that binds it together. Along the way, we will discuss the formation of common sense in the community and, from that, the rise of the practical intelligence that begets institutions. As before, we will then consider what constitutes authentic processes for a community in this chapter, and as before, we will consider how and where they can go wrong through the biases. And as before, we will conclude by considering what it might mean for the community to be converted.

1 *The Nature of Communities*

Lonergan's most complete treatment of what the word 'community' means for him is found in *Insight*, Chapter 7, on "Common Sense as Object". Though his later work extends his remarks in *Insight*, this is not a subject on which he revises himself significantly, so we will take the *Insight* discussion as foundational. In *Insight*, Lonergan tells a story, a speculative history of the development of civilization-level communities as rooted in the exercise of common sense within primitive family groups.⁶⁴⁹ Unfortunately, though, because he does so in the midst of his discussion of common sense, he begins the story of community *in media res*, returning to the beginning of community only later in the story. We will therefore need to untangle some of what he says. The basic outline of the narrative is that community begins in intersubjectivity, which begets common sense, which begets practical intelligence.

⁶⁴⁹ Lonergan, *Insight*, 233

1.1 Intersubjective Community

Lonergan, unlike the consent theorists we considered in Chapter 2 (Rousseau in particular), leaves to one side the question of how two humans come to live in proximity in the first place and instead takes it for granted that the family unit pre-exists more complex societies. With family as a point of departure, we find ourselves always already in community; the question is what to do now that we're in community, now that we're in proximity to one another. This question is settled in an *ad hoc* manner, and proximity thus leads to intersubjective community.

In Chapter 3, we talked about intersubjectivity as a carrier of meaning, but we never really defined that term. At its root, the word “intersubjectivity” refers to what takes place between two (or more) subjects. In the previous chapter, we quoted Lonergan as saying, “The subject is a substance that is present to itself, that is conscious.”⁶⁵⁰ In intersubjectivity, multiple subjects are present to one another. This presence does not entail any specific form of interaction—Lonergan’s dominant example of intersubjective meaning is a smile, but others include the meaning of a stranger tripping, stumbling, and about to fall and the meaning of a shriek heard from a person not otherwise encountered.⁶⁵¹ When intersubjectivity is in play, the “distinction between you and me, the speaker and the hearer, is something that somehow is subsequent.”⁶⁵²

By ‘intersubjectivity’, then, Lonergan seems to have in mind something like a spontaneous willingness to understand and/or empathize with others’ experiences through

⁶⁵⁰ Lonergan, *Topics*, 83

⁶⁵¹ Lonergan, “Time and Meaning”, 96

⁶⁵² Lonergan, “Analogy of Meaning”, 187-88

recognizing the similarities between each other person's experience and one's own in a way that's not just cognitive but affective as well: "the bonds of intersubjectivity make the experience of each resonate to the experience of others".⁶⁵³ Intersubjectivity binds us together because it underwrites the common language of experience and meaning of those we interact with on a day-to-day basis. We understand what each person experiences because, for Lonergan, we have not just had experiences similar to others', we can be with the other in their experiences. We each feel on another's behalf what the other feels in his or her circumstances because we can, in some sense, put ourselves in his or her shoes. Because the other can be present to me as a second subject, he or she can be present to me in the way I am present to myself, and so I can share in the other's concerns, joys, griefs, experiences, etc., rather than understanding their experiences only by analogy with my own. Being present in that way is the work of intersubjectivity.

Out of this intersubjectivity, this mutual understanding and fellow-feeling, arises common sense, understood as common but usually unarticulated ways of knowing and doing. We understand what another is likely to do in a given situation, partly because we understand what we would do in that situation and partly because we become capable of understanding how the situation seems to them. Our expectation is that another person would behave in the same way we would, or at least that another person will behave in the way we empathetically sense that they would usually behave. We have that expectation because we have been formed by a set of experiences that we take to be analogous to the other's formative experiences, and so we interpret his actions in a given situation in terms of what we would ourselves do (and he interprets our actions in the same way).

⁶⁵³ Lonergan, *Insight*, 240

As this goes on, we two begin to sync up, after a fashion, as we establish additional meanings and valuations held in common (or establish where they are different and why). This common understanding of how we relate to things and people in the world (and so to each other) forms the framework of our future interactions. This is common sense, common without being general because neither of us knows the whole score, not articulated as a legal framework would be, and focused on what works to solve problems between us and problems we each face with the rest of the world.⁶⁵⁴ As we persist in community with one another, we have additional experiences *together* which we talk through and understand in the same way in constitutive acts of meaning, adding to that common fund of understanding and expectation and slowly altering it.⁶⁵⁵ And at its foundation *remains* our intersubjectivity, our presence to one another as subjects, which becomes the carrier for the constitutive meanings as objects of our communities and creates the context for instrumental acts of meaning.

Wherever two or more are gathered for any length of time, there you will find a community of a sort, “the primordial basis of [which] is...a spontaneous intersubjectivity.”⁶⁵⁶ The economy and the administrative state simply restructure that intersubjective community into a civil community along the lines demanded by practical intelligence. But the intersubjective community perdures. The structures put in place by practical intelligence can fall out of relevance or fail to confront the challenges of the times. We saw that in the pressures that shifted Rome from a Republic to an Empire in Chapter

⁶⁵⁴ Lonergan, *Insight*, 199

⁶⁵⁵ Lonergan, *Insight*, 240

⁶⁵⁶ Lonergan, *Insight*, 237

1, and again in the pressures that undermined legitimation through majesty in Chapter 2. And “as intersubjective community precedes civilization and underpins it, so also it remains when civilization suffers disintegration and decay.”⁶⁵⁷

But the community actually sustained on the basis of intersubjectivity alone will be small. “Even after civilization is attained, intersubjective community survives in the family with its circle of relatives and its accretion of friends,” but intersubjective echoes outside that relatively small set of people rarely sustain a community as such.⁶⁵⁸ This is the difference between the character and culture of a city of any size worth the name and life in a small town where everyone knows everyone and anonymity is impossible. Small town life remains intersubjectively structured in a way urban existence cannot be, and those who live in cities recognize that lack and seek to fill it by creating smaller intersubjective communities within their larger polity. The opening theme to the ‘80s sitcom *Cheers* sums it nicely: “Sometimes you want to go where everybody knows your name and they’re always glad you came. You want to be where you can see the troubles are all the same. You want to be where everybody knows your name.”⁶⁵⁹

1.2 Common Sense in the Community

After *Insight*, Lonergan began speaking of community slightly differently, not in ways that contradict *Insight* but in ways that deepen and compliment his earlier thought. “Community means people with a common field of experience, with a common or at least

⁶⁵⁷ Lonergan, *Insight*, 238

⁶⁵⁸ Lonergan, *Insight*, 237

⁶⁵⁹ Gary Portnoy, “Where Everybody Knows Your Name”, co-written with Judy Hart Angelo, recorded 1982, theme song for *Cheers*, aired 20 September 1982 to 20 May 1993, NBC.

complementary way of understanding people and things, with common judgments and common aims.”⁶⁶⁰ In other words, community is “a common apprehension of the common meaning that we call common sense [and] there is actual community insofar as many are committed absolutely or relatively to the same meaning”.⁶⁶¹ And again, “human community is a matter of a common field of experience, a common mode of understanding, a common measure of judgment, and a common consent.”⁶⁶² We ought not, of course, mistake Lonergan for a consent theorist like those we considered in Chapter 2; by common consent, he seems to mean a shared commitment to realizing a certain set of values as ordering actions, without which people “operate at cross-purposes.”⁶⁶³

We did not start with this definition because, as we noted above, we are interested in the intersubjective side of community here, and this definition is rather more broad, and because intersubjectivity is what turns a collection of people into a community in the first place. But it does point out that common sense is not at odds with intersubjectivity (because intersubjective experiences are among the “common experiences”) and is in fact one of the natural byproducts of the creation of an intersubjective community. Once generated, common sense is the shibboleth that defines who is and is not a member of the community.⁶⁶⁴ Though he never thematizes it this way in *Insight*, Lonergan later says that “[t]he world of community is the world of common sense,” as contrasted with a world of

⁶⁶⁰ Lonergan, “Dialectic of Authority”, 5

⁶⁶¹ Lonergan, “Analogy of Meaning”, 207

⁶⁶² Lonergan, “Natural Right”, 164-65.

⁶⁶³ Lonergan, “Natural Right”, 165; *Method in Theology*, 329

⁶⁶⁴ Lonergan, “Analogy of Meaning”, 207

theory.⁶⁶⁵ This makes sense both with respect to *Insight*, where community lives in the tension between practical intelligence and human intersubjectivity, and with respect to *Method in Theology*, where the contrast between common sense and theory is clear. We said in Chapter 2 that theory was the context of commonsense judgments which is demanded by the systematic exigence but which common sense is unable to supply for itself. The more complete way of stating the contrast would be to say that common sense relates persons and things to my interests and concerns or those of my particular community while theory relates persons and things to each other more generally.⁶⁶⁶ In saying that the world of community is the world of common sense, Lonergan connotes that intersubjectivity relies on relating things to us and then analogizing those relations to others. Insofar as community deals with practical issues, it deals with them in a very commonsense manner.

As it is realized in the community, common sense concerns not only how to act in given situations but also insights into how someone else will (or should) act in a given situation. This common sense is both constantly renewed and constantly enforced through regular, interpersonal, intersubjective encounters between members of the community. Members of the community who forego such encounters do not remain as members of the community for long: common sense passes them by. It is, “as it were, a schedule of concrete anticipations. Imagine him in this situation. What would he do? What would he say? We have a pretty good idea of the way other people would behave.”⁶⁶⁷ This is the

⁶⁶⁵ Lonergan, *EWTM I*, 136; see also 54, 67. This comes in a series of lectures given at Regis College in July 1962, five years after the publication of *Insight*.

⁶⁶⁶ Lonergan, *Method in Theology*, 79

⁶⁶⁷ Lonergan, *EWTM I*, 218

informal beginning of institutions. Those who violate those expectations regularly and/or egregiously are punished with social ostracization, unless their arguments or obstinacy can persuade or force the community to change its common sense.

This common sense of the community is also reliant on a kind of existential history. As the individual's self-identity is structured by a narrative, so also is the self-identity of the community, and that narrative tells the community not only what its role is in the present but what it's done in the past. This narrative is the history of the community, artistically thematized and understood as the foundation of current practices, which in turn becomes part of the community's common sense. On this, social continuity relies.⁶⁶⁸

That narrative is explanatory in that "it narrates how things started and what happened after that, communicates to the members of the society some understanding, some explanation of the society."⁶⁶⁹ It is artistic in that its composition is selective—it hits those parts generally thought to be most important while leaving others to one side. It is ethical in that it "praises what the historian considers good, and it lays blame on the facts that the historian regrets and does not want to see recur."⁶⁷⁰ It structures the defense of the society against its critics. And it "expresses a viewpoint on the present direction the society has taken, and it favors or does what it can to favor a given direction of social development."⁶⁷¹ We saw, briefly, two examples of such narratives in Chapter 1: Q. Ennius' *Annals* and Virgil's *Aeneid*. Both were "national epic[s]—heroic, moralizing, and

⁶⁶⁸ Lonergan, *EWTM 1*, 237

⁶⁶⁹ Lonergan, *EWTM 1*, 238

⁶⁷⁰ Lonergan, *EWTM 1*, 238

⁶⁷¹ Lonergan, *EWTM 1*, 238

patriotic in nature” that were “staple[s] for educating Roman schoolboys and thus shaped the Romans’ view of their past”.⁶⁷²

A community requires such a narrative to remain cohesive, past a certain size, when regular, interpersonal, intersubjective encounters can no longer sustain the collective identity by ensuring a relatively uniform common sense (which is to say, when it becomes a society, a community too large to be sustained by intersubjectivity alone). This happens in smaller communities as well, where intersubjective experiences remain common between all members of the community, but it becomes especially important when there are too many members of a community for each to regularly encounter all the others, or even for their interactions to be mediated through other members.

In such situations, the common sense of the community fractures as sub-groups with regular intersubjective contact form and begin to develop their common sense in ways distinct from or at odds with the developmental line of the common sense of other subgroups or the larger community. At the fictional bar *Cheers*, everybody knows your name because you’re there regularly and interact with a relatively consistent set of staff and patrons. The staff in such an establishment can set the tone and culture such that regular patrons who have never met one another nonetheless operate according to the same set of common sense precepts when they’re at the bar and, in this way, both be part of the bar’s community despite a lack of intersubjective encounters with one another. But the regulars at a different bar will be a different intersubjective community. Intersubjectivity by itself cannot support their collective identity as residents of the same city or citizens of

⁶⁷² Forsythe, *Early Rome*, 61

the same country. The common sense narrative modified and disseminated through various channels does that work instead.

Narrative-building is not all that common sense does, though. Its practicality is not restricted to solving problems about group identity. Common sense exists to solve problems of whatever kind in communities of whatever kind, and it is nothing if not practical. Hunter-gatherer cultures, no less than modern societies, rely on common sense in solving their problems. Each problem is concrete and concerns a concrete good to be obtained, and common sense as practical human intelligence brings forth solutions (insights) in response to the exigence of the problem. Each solution, moreover, begets further problems as each solution to old problems remolds the status quo and upsets balances and schemes of recurrence in other arenas. “As inventions accumulate, they set problems calling for more inventions.”⁶⁷³ This begins the process of technological development and capital formation as we begin to restructure natural schemes of recurrence to suit our needs, which in turn calls forth the economy and the polity. All of these processes, problems and solutions alike, become part of a community’s narrative. And so common sense begets the practical intelligence of the community.

1.3 Community’s Practical Intelligence

The practical intelligence of the community is the specialization of common sense in getting things done at the level of the community, and making them happen in the most efficient way possible. “The concrete realization of the succession of new practical ideas does not take place without human cooperation. It demands a division of labor, and at the

⁶⁷³ Lonergan, *Insight*, 233

same time it defines the lines along which labor is divisible.”⁶⁷⁴ This creates the economy, as people begin to specialize and become dependent on one another’s work to satisfy their own material needs and, eventually, wants. This division of labor calls people together but does not yet create a community (e.g., an American frontier railroad building a campsite, where people are thrown together through division of labor and economic incentive but no community initially exists). It is rather a system that ticks along, producing material goods to satisfy the demands of the population it serves. Likewise, the structures of governance for this collective, the polity or the state, are not themselves *ipso facto* a community, though those responsible for their operation can certainly become one through regular contact in the same way any other intersubjective community develops. Rather, each is an institution, or more accurately, an interlocking set of institutions, and we will discuss these further in the next chapter. These are the outworkings of practical intelligence, and “just as technology and capital formation interpose their schemes of recurrence between man and the rhythms of nature, so economics and politics are vast structures of interdependence invented by practical intelligence for the mastery not of nature but of man.”⁶⁷⁵

This is an outgrowth of common sense, but it is no longer the common sense that helps us know what constitutes an appropriate interaction with our barista or bartender or tells us that running into traffic is generally a bad idea. It begins to specify not just the rules of our behavior towards one another but also the precise activities in which we will engage, how our activities will function in concert, and towards what goal those activities are being concerted. Along the way, it begins to articulate particular rules about our

⁶⁷⁴ Lonergan, *Insight*, 233

⁶⁷⁵ Lonergan, *Insight*, 238

behavior towards one another as those brought together by the economy have different commonsense ideas about proper behavior that require harmonization for the continued cooperation of the community. The Golden Rule, do unto others what you would have them do unto you, is a great proverb but a remarkably poorly operationalized regulation because what each of us would have others do unto us will be a bit different for everyone, and sometimes a great deal more than just ‘a bit’ different.⁶⁷⁶

Practical intelligence, then, has begun to frame institutions with the power to create law or analogous bodies of rules and regulations.⁶⁷⁷ Common sense is the common fund of acts and objects of meaning; practical intelligence is concerned with controlling those meanings in the interests of more and better cooperation. In doing so, practical intelligence takes the common sense of a small sub-community (those charged with making the law) and enforces it against the whole of the population using tangible rewards and punishments, and the common sense of the community begins to shift over time as people begin to expect that others will act according to each new law. The law, then, exists first to organize the common sense of the community to achieve at least tentative agreement on certain points and second to purposively regulate behavior by means that common sense of a more organic provenance could not employ and to achieve thereby that behavioral regulation with far more alacrity than organic common sense could generally manage.

⁶⁷⁶ Anthony Appiah has a helpful extended consideration of this point in Chapter 4 of his *Cosmopolitanism: Ethics in a World of Strangers* (New York: W. W. Norton & Company, Inc., 2006).

⁶⁷⁷ We will consider this at greater length in the next chapter, but a corporation is an institution no less than the government, and a corporation will tend to exercise power over its employees in a quasi-governmental fashion, at least while they are in the workplace. Corporations are their own little polities because they are communities called together by the economy rather than created by intersubjectivity. HR departments exist to manage that side of corporate life, which is why any corporation past a certain size needs an HR department, and they tend to run as more-or-less benevolent oligarchies.

The mastery of man that institutions are created to exert is often at odds with the intersubjective fellow-feeling animating their day-to-day experiences. We see this in numerous places, but we had cause to advert to one instance in the previous chapter in our discussion of juries and the practice of jury nullification. The law, as an institution, exists to exert control over human behavior in community, but it does so in a very commonsense way, as we argued in Chapter 2. This means that it “is an incomplete set of insights that is ever to be completed differently in each concrete situation.”⁶⁷⁸ The law is structured in this way insofar as it sets out a series of abstract situations left open for completion by concrete details—it is essentially a tool adaptable to all. The judiciary and the law enforcement apparatus is asked to evaluate different concrete situations to see if they are instances of the situation outlined abstractly in a given law. But despite attempts to provide specificity and differentiation, it often remains the case that laws do not cover every situation their framers might have envisioned and do cover a number that they were not intended to. A well-built system will include mechanisms, such as prosecutorial discretion, jury nullification, commutations, and pardons to ensure that concrete situations that were not intended to be covered under a given set of legal abstracts are left to one side. These are cases where the law demands one thing and our intersubjective fellow-feeling demands another, and it is telling that in entreating the authorities for an exception to the law’s demands, we often couch our arguments as an ‘appeal to your humanity’.

This sets up the dialectic of community we mentioned at the outset of the chapter. In Lonergan’s usage,

⁶⁷⁸ Lonergan, *Insight*, 236

“a dialectic is a concrete unfolding of linked but opposed principles of change. Thus there will be a dialectic if (1) there is an aggregate of events of a determinate character, (2) the events may be traced to either or both of two principles, (3) the principles are opposed yet bound together, and (4) they are modified by the changes that successively result from them.”⁶⁷⁹

The dialectic of community is, as we said, between practical intelligence and human intersubjectivity, to which are attributable, either singly or collectively, the aggregate events of the community as a whole. They are opposed insofar as institutions arise out of the exigence for systematization that accompanies practical intelligence while human intersubjectivity insists that systems ignore the particulars of each situation in problematic ways. They are linked insofar as both arise from humans and will persist wherever humans are to be found together. And they are modified as each is forced to accommodate itself to the pressures of the other. Such pressures are why jury nullification (juries voting to acquit a guilty defendant, usually because the law shouldn't apply to his situation or is just a bad law) is possible, on the one hand, and why we don't typically engage in mob justice (a group of people deciding a person is guilty of a crime and punishing them, usually physically, outside the law) on the other.

As we said at the outset, we will deal with the practical intelligence side of this dialectic in the next chapter. Notice, though, that we have called it practical intelligence, not common sense. This is in part simply in keeping with Lonergan's own usage, but in part also to distinguish between the two. Though practical intelligence is perhaps its most prominent outgrowth, common sense is not nearly so focused or specialized as practical intelligence. The manner in which it does so and by which it's steered will be subjects for the next chapter.

⁶⁷⁹ Lonergan, *Insight*, 242

2 Authentic Processes

In Chapter 3, we emphasized that each of us chooses the value to make of her- or himself in each of our actions. At the outset of this chapter, we said that the authentic life of a community will be the outgrowth of the authentic life of its individual members. The ongoing choice for an authentic life we emphasized in the conversions in Chapter 4 thus functions as the pivot point between the authentic individual life and the authentic communal life: “On this level, men are responsible, individually, for the lives they lead and, collectively, for the world in which they lead them.”⁶⁸⁰ This is true of both meanings and values: the world mediated by meaning as we find it every day is structured by the meanings we and others have chosen individually and in concert to realize certain values and avoid certain disvalues.

But this leaves us with a problem. It’s impossible to say that I am solely responsible for the total present state of affairs in the community, even if one charismatic figure has an effect on most things. This is so because first of all, the community is complex, and second because with so much complexity, everyone is responsible, and so no one solely (or even significantly) responsible for any present state of any (complex) community. This collective responsibility houses “the principle component of the collective subject”, which makes grounding collective responsibility in a collective subjectivity rather difficult.⁶⁸¹ Lonergan nicely sums this problem at the beginning of his 1977 lecture “Natural Right and Historical Mindedness”:

The notion of collective responsibility is not without its difficulty. One may claim that, as men individually are responsible for the lives they lead, so collectively they must be

⁶⁸⁰ Lonergan, “Cognitive Structure”, 219

⁶⁸¹ Lonergan, “Cognitive Structure”, 219

responsible for the resultant situation. No doubt, single elements in the resulting situation are identical with the actions or the effects for which individuals are responsible. But the resulting situation as a whole commonly was neither foreseen nor intended or, when it does happen that it was, still such foresight and intention are apt to reside not in the many but in the few and rather in secret schemes and machinations than in public avowal.⁶⁸²

In other words, while yes, we are each accountable for our own actions, and yes, the sum of those actions does result in a certain collective state of affairs, it is very rarely the case that this state of affairs is one that either the individual actors or the group as a whole deliberately intended in every detail, and on such very rare occasions, the schemes by which they steered the course of events are generally not publicized—indeed, publicity is the last thing such individuals desire. The problem here is that the “source of meaning, of itself, reveals no more than individual responsibility.”⁶⁸³ In the world mediated by meaning, the sources of meaning are many and varied, but a collective subject is not among them because we can name a responsible individual in each case. Even in complex cases, every component of the situation remains attributable to particular individuals. But Lonergan also says,

The condition of the possibility of the collective subject is communication, and the principle communication is not saying what we know but showing what we are. ...it is enough to be it; showing will follow; every movement, every word, every deed, reveal what the subject is. They reveal it to others, and the others, in the self-revelation that is their response, obliquely reveal to the intelligent subject what he is. In the main it is not by introspection but by reflecting on our living in common with others that we come to know ourselves.⁶⁸⁴

Part of what constitutes the lifeworld for each of us, then, is the persons⁶⁸⁵ of those with whom we are in community. In their actions towards one another and towards us they show us what they are, what they have made of themselves, the value they have chosen to

⁶⁸² Lonergan, “Natural Right”, 163

⁶⁸³ Lonergan, “Natural Right”, 170

⁶⁸⁴ Lonergan, “Cognitive Structure”, 219-220

⁶⁸⁵ I use this word here in the sense Hobbes employs in *Leviathan* XVI.

be. Their responses to us help us understand what we have made of ourselves and the values we have chosen to be. Community helps each of us understand ourselves, and it does so when we reflect with others on who we are, the value we have chosen to be, both individually and as a group.⁶⁸⁶

In this, we find not just Lonergan's answer to the problem of individual responsibility in communal affairs and the construction of communal responsibility and the communal subject but also the authentic operation of a community. In the authentic community, the authentic individual communicates to the community by his or her actions the value that he or she has made of him- or herself, is recognized as being authentic, and is emulated by other members of the community. This authentic individual thus becomes a leader within the community and, by his or her emulated example, shapes how others go about their lives.

Notice that what we've said doesn't actually discuss the apportionment of responsibility among individual community members for the total state of the community or for any particular thing within the community. Each member of the community has to deal with what is presented in their lifeworld as it is given and can only act to shape the communal world within those constraints. Instead, we have said that we are responsible for who we become, both individually and in community, and that the total state of the community is attributable to the interplay of those people. For Lonergan, then, collective responsibility is less concerned with the outcomes that emerge from the community than

⁶⁸⁶ There is an ambiguity in Lonergan's phrasing in the last sentence of the quote; "reflecting on our living in common with others" could be read in two ways. In the first way, we reflect not just on our individual life but on our collective life. We are always already in community with others, and our lifeworlds are structured by others as a result. In the second way, we reflect on our individual lives with the help of others with whom we are in community. I have elected to preserve this ambiguity in reading it both ways.

with how the stage is set for those outcomes to emerge. Any event has a probability, but the probability of anything occurring is determined by the circumstances at play. What constrains the lifeworld of each of us, and so of the communal Hobbesian person, is who we have made ourselves and continue to make ourselves together.⁶⁸⁷ What matters for communal responsibility for Lonergan, then, will be precisely that recursive process of building identity in community, both our individual identities and our collective identity. Here “resides the principle constituent of the collective subject referred to by ‘we,’ ‘us,’ ‘ourselves,’ ‘ours.’”⁶⁸⁸ This is true both with respect to the coordinated activities that are the hallmark of institutions and with respect to the subtle accretion of uncoordinated individual actions that come together to create the world in which each member of the community finds her- or himself.

But as we pointed out at the close of the last chapter, Lonergan’s account of the authentic subject is utopian, and this account of the authentic community is no less so. This gives rise to three issues we must address. First, the lack of perfectly authentic individuals in our communities creates questions about whom we ought to believe and emulate. Second, the intersubjective recognition of the chosen value of each person by the others gives each community a collective horizon of feelings within which collective valuations are made. Our discussion in this section will deal with the nature of that horizon; we will defer discussion of its distortions and how those might be mended to sections 3 and 4. Part of community’s operation here is to push individuals towards moral conversion, though depending on just how distorted that horizon is, it does this more or less well both with

⁶⁸⁷ Lonergan and Hobbes, of course, do not have parallel accounts of the polity or its proper governance. But Hobbes’ concept of personhood provides a convenient construct for us here.

⁶⁸⁸ Lonergan, “Cognitive Structure”, 219

respect to moral conversion itself and with respect to the scale of values community encourages one to adopt. Third, as good as communities are at communal valuation, they have problems about communal knowing. There are many things that “everybody knows”, but few of those are specific truth claims (e.g. “The world is round”). Most of that store consists in common-sense proverbs and aphorisms applicable to many different situations. A community outside of a specialized discipline is unlikely to be able to answer questions for intelligence within that specialized discipline, and many communities, including families and religious communities (broadly construed), are not built around specialized disciplines to begin with. We will address ourselves to each of these in turn.

2.1 The Provenance of Leaders

Within any community, one notices leaders, opinion shapers and kingmakers with influence from fashion to entertainment to politics. Their influence is rarely universal, but it does seep into everything by shaping conversation between individuals and forcing individuals to respond by either conformity or critique. Response is demanded not by the leader but by the rest of the community. Even if I pay comparatively little mind to the runways of Paris, Milan, and New York, for instance, I am nonetheless forced to respond indirectly to the styles presented there by designers insofar as they substantively influence the themes on which clothing makers produce their variations. I am forced to clothe myself accordingly or very intentionally push in a different direction. (This is more evident in color than in cut, but it holds loosely across the market.) Likewise, there are sophisticated systems in place to entice people to certain forms of entertainment and certain content within those forms, and this exerts significant social pressure on the individual (me) to consume mainstream entertainment if only to be conversant in it so as to not be alienated

from my peers. There is, moreover, significant crossover between the various domains of social pressure. One finds, for instance, leaders in entertainment influencing fashion trends, and those responsible for the ‘look’ of entertainment content themselves draw inspiration from the fashion industry.

Politics and religion, because of how passionate responses to the leaders in those fields can become and what can happen when those with discordant responses interact, tend to be exceptions to this rule of crossover in Western society. As Michael Jordan is said to have quipped, “Republicans buy shoes, too.”⁶⁸⁹ One did not need to be a Bulls fan in the 1990s to recognize that Michael Jordan was among the greatest ever to play basketball (though whether one was a Bulls fan tended to color one’s perception of that fact). The same often cannot be said of leaders in politics and religion, and Jordan recognized that if he took sides in partisan politics, he would alienate a great many customers who disagreed with him politically, as Nike has experienced recently with Colin Kaepernick. Nonetheless, one must respond to leaders in those fields, even if one’s response is violent disagreement.

The leaders, then, those to whom the community must respond and to whom the community in turn pushes individuals to respond, have a responsibility to discern the state of the community and the nature of their influence over it and then to push the community appropriately. This doesn’t necessarily mean pushing in one direction by exemplifying the direction in which one wants to push. One might as easily recognize that one must create controversy to confront society with an important question. But whether or not one must

⁶⁸⁹ Sam Smith, *Second Coming: The Strange Odyssey of Michael Jordan – from Courtside to Home Plate and Back Again* (New York: Harper Collins Publishers, 1995), xix.

push directly, in reverse, or in some other way, effecting a shift in society is more than one person can manage because of the piecemeal nature of each leader's influence. It requires a community of leaders, an elite.

When the action of this community of the elite is coordinated, it can be remarkably effective, but it can also be quite dangerous. The question is whether the leaders are themselves converted and self-appropriated, whether they are operating authentically both individually and with respect to their roles in society. But in the same way a counterposition invites its own reversal, so also does an unauthentic elite find itself bereft of the influence that made it elite in the first place. Not even money can save a truly unauthentic collection of elites; indeed, money is often their downfall.

History is replete with examples of the collapse of unauthentic elites, but rather than evincing a new one, recall what we said in Chapter 1 about why the patriciate lost their power in the Roman Republic. Despite their money and their position as both the political and religious elite, they said that the laws they made for everyone else did not bind them. Ironically, the greatest illustrations of this error concerned money: while they regulated the interest one could charge by law, they were (often to a man) guilty of usury well in excess of what was allowed by the laws they themselves had written, and the indebtedness crisis of the early 4th century BC was a significant factor in why the plebs were first allowed into high political office.

Likewise, recall what we said in Chapter 2 about the collapse of the medieval synthesis between church and state: it happened when the literal emperor was exposed as lacking metaphorical clothes. The temporal majesty of the pope was shown to be grounded on a lie, and the spiritual majesty of the pope was shown to be subject to significant abuse

with indulgences while significant questions were being raised about whether a man who could embody the ideal goodness of the Church could also be an effective ruler. The kings were unable to take up that burden because they were, on the whole, no better than the popes as men or as rulers. Because the rulers were unable to sufficiently withdraw from their inauthenticity, they were stripped of their authority, which was ultimately vested in the people themselves.

Lest the reader think we have slipped inadvertently into a discussion of institutions, bear in mind that the position of influence the elite occupy within a community is dependent on the respect the individual members of that community have for each member of the elite. This is one of the critical components of majesty we evinced at the end of Chapter 1: it occurs at the intersection of apparent divine approbation, demonstrated military prowess, and perceived personal virtue. That personal virtue is critical for influential members of the elite. Most people in the Western context will never have the opportunity to demonstrate military prowess, and what ‘apparent divine approbation’ comes to is far more murky now than it was a thousand years ago, so additional weight and emphasis is put in the perception of personal virtue.

This is where we run up against questions of whom we should choose to emulate. ‘Perceived personal virtue’ translates to the value someone has demonstrated her- or himself to be. How we make that choice will depend considerably on our own extant scale of values. Our extant individual scales of values are always significantly informed by the values of our community, particularly prior to affective conversion—the scale of values, to the degree that it is agreed within the community, stands as an influential part of the background for our decision. What constitutes virtue for a given culture, the values

extolled for emulation, will vary from culture to culture and time to time. Few communities indeed could be said to be properly affectively converted, so there will always be a distortion in how we choose our role models, at least prior to individual affective conversion, and there are always grey areas or fuzzy pieces to the community's scale.

We must therefore be discerning in three ways. First, we must pay careful attention to the influence our community has had on our extant scale of values and the ways in which it encourages us to emulate one person over another. Even before affective conversion, we can and should pay attention to the tensions within that communal scale of values. As we'll discuss in the next section, part of what community does is push us to moral conversion, and in doing so, it pushes us towards a particular scale of values, one often at odds with the normative scale in some significant ways.⁶⁹⁰ In choosing someone to emulate because we admire the value they've made themselves, then, we need to be attentive, intelligent, reasonable, and responsible in assessing the values the community has pushed us towards and deciding whether we actually want to adopt the community's scale of values either in part or in whole. If I am to emulate someone, authenticity demands that I do so because they embody a value I wish to embody from within my own scale of values, not because it's what the community wants of me. And if there are areas of overlap, so much the better. But we must discern where the community is pushing us to make something of ourselves that we find repugnant.

⁶⁹⁰ Remember that in contrast to other Lonergan scholars, we have addressed moral conversion as very limited, ascribing to it only the work of shifting the criterion of judgment from the satisfaction of particular desires to the realization of values. We left the work of determining which values should be prioritized and of aligning the individual's operative scale of value with the normative scale of value to affective conversion. So the community can push an individual to moral conversion *and* to a problematic scale of values without being in contradiction.

Second, if we consider emulating someone, we must pay careful attention to and intelligently assess the value they actually demonstrate themselves to be, not to their media buzz or PR spin. It has rather distressingly often been the case that someone has been destroyed when their private and public lives have been exposed as diverging rather significantly. Even when that doesn't happen, the presentation of a given member of the elite tends to glamorize both the life they live now and how they came to live it—the values of their lives are showcased for our consideration and emulation. But this presentation will usually elide over the disvalues they had to actualize on their way to where they are now or that they continue to actualize in their daily existence. We have each made ourselves into a mix of value and disvalue, and that is no less true for elites than it is for the rest of us. But we tend to hide the disvalues while emphasizing the values. It happens in a thousand tiny lies of omissions that steadily diverge the reality from the presentation. If we are to emulate someone, especially if we are to model our lives after them, we must first seek the disvalues in their lives and ask if we can make ourselves the values they are without also making ourselves the disvalues they are. More often than not, the answer will be no, and we will have to choose which values and which *disvalues* to make ourselves. The goal should be to maximize the value and minimize the disvalue, and even then, we will often make ourselves into new and interesting values and disvalues without quite knowing how or why.

Third, if we emulate someone, we must be reasonable and responsible to how we communicate that to others. A friend who knows us well will generally be willing to listen to why we have chosen to emulate celebrity *X* or politician *Y*, but our sphere of influence will often be far wider than that, even if announcing our choice merely adds one more

pebble to a mountain of approbation. If I say that I want to emulate a controversial figure, most people will not take the time to understand that I mean to emulate him only in part or to use her as an exemplar for just this one thing. This has consequences beyond simply that I am misunderstood and, in some cases, unfairly maligned. We might rephrase the maxim “imitation is the sincerest form of flattery” to “emulation is the profoundest form of approval”, and when we have not articulated briefly and well the nature of our emulation of someone controversial, we seem to others to be emulating them in whole rather than in part and so *approving* of them in whole rather than in part. This is a more significant hazard today than it has been in the past as the advent of social media has given us both a far broader audience and far shorter attention spans.

The more people who emulate a person, the more significant that person is as a member of the elite. Their influence has somewhat of a snowball effect—the more followers they have, the more followers they get, up to a point, as more people are led to consider emulating them. Name recognition can, by itself, be a remarkably powerful force in this regard. But beyond that, their influence extends through the lives of their followers in two ways.

First, they often tend to build up or cause to be built up personal networks of emulators dedicated to a particular terminal value or set thereof. Advertisers like to take advantage of this in flogging their products, and if a given leader is thought to like a particular activity or brand, sales will jump. In its more benign manifestation, this influence points people towards a specific goal, something to achieve, something which the leader demonstrates to be important to them by their words and deeds. This might be something as generic as making as much money as possible or as specific as helping youth

in a given neighborhood avoid or depart gangs or encouraging people to give blood following natural disasters. This is the sort of thing we saw Augustus Caesar doing at the end of Chapter 1 as he built up the image of *tota Italia* as the focus for Roman patriotism. This is also what Christ did in creating the Church, work forwarded by the Apostles, Paul in particular. The more specific this goal, the more obviously the leader begins creating an institution around him- or herself, and we will address this in the next chapter.

Second, these elites influence the personal decisions in the everyday lives of those following them. Exactly how this manifests will change from day to day and era to era, but the reader is likely to remember the acronym “WWJD?” festooning clothing and accessories not so very long ago. It encouraged those who noticed it to ask, before acting, “What would Jesus do?” If one is genuinely trying to model oneself on a leader in any area, a similar question will animate one’s decision-making process in the relevant domain to a considerable degree. And in its heyday, it wasn’t hard to find many other similar acronyms for just that reason.

Inasmuch as their example alters individual behavior in this way over a large number of individuals, the elite exercise considerable influence over the community’s value structures by changing the values that people make themselves. Moreover, since we do not choose things we view as evil unless offered no good option, the wider community to a greater or lesser degree reshapes its extant scale of values to bring it more in line with that modeled by each member of this elite. And because of the reciprocal pushing and pulling we mentioned at the outset of this section, the elite come to reflect their community. Change does happen, but only slowly for the most part.

The available selection of elites to emulate is one of the first and most consistent places we run up against a community's extant scale of values. The agglomeration of values the elite have chosen to make themselves will be a reliable barometer for that of the community as a whole and can provide a quick reference for evaluating that scale and the ways in which it may deviate from the normative scale.

2.2 Communal Valuation

This brings us to the question of how a community evaluates its actions and any state of affairs it might care to bring about. As we said in Chapters 3 and 4, the individual operating authentically will, as a first step, attempt to understand the situation and possible actions he or she could take within that situation, resulting in formal acts of meaning giving their objects, constructs (be attentive, be intelligent). These constructs are winnowed by full acts of meaning (i.e., judgments) that leave the individual with knowledge (or at least strong probabilities) about the situation and actions available for that individual to take (be reasonable). As a second step, these concepts are given to feelings for valuation, much as the phantasms are placed before intelligence for inquiry. The third step, then, is to select the one that will actualize the highest value and then do it (be responsible).⁶⁹¹ The community operating authentically responds to the same transcendental precepts as does the individual and will do the same thing as an individual, but in a more mediated way.

⁶⁹¹ This is not, of course, to say that lower values are not to be desired or that their actualization would not be worthwhile. The responsible choice between available values depends on both the extant scale of value preference, in this case in the community, and on circumstance. In general, one would want to actualize not only the highest possible value but as many of the lower values as possible as well within a given situation, assuming that doing so does not create new long-term problems. We will say more about this below.

The community follows a similar process, but it occurs in three distinct cycles. The first concerns knowing and is not just distinct but discrete from the other two—institutions have a cycle of knowing in between. We will address communal knowing below; for now, we are concerned with how a community can be said to value something. As with the individual, this means presenting a construct to feelings, but how a community gets the constructs it's presenting to feelings is a different matter. The short version is that communities are actually remarkably bad at making judgments of fact or even competently assembling constructs without an institutional framework giving procedures for doing so, so the authentically operating community will create institutions competent to answer the kinds of questions of fact the community regularly encounters, then refer questions of fact to those institutions, adjusting the institutions as necessary to accurately and appropriately answer the questions presented.

But for the moment, we will assume that adequate constructs have been made available through an institutional process. How, then, are those constructs presented for evaluation to a communal subject? And how does the communal subject evaluate them? These are the other two cycles in the communal process. The first concerns whom the community ought to believe; the second concerns the community's valuation of given constructs.

In Chapter 3, we discussed the formal act of meaning, which has a construct as its object, and the instrumental act of meaning, by which a construct is communicated to everyone in the intersubjective or political community.⁶⁹² We discussed in the previous

⁶⁹² We are discussing the formal rather than final act of meaning here because the meaning-as-object of the formal act of meaning is just its construct. The final act of meaning is the act of judging whether that construct actually exists or needs further refinement. But we present a construct, not a judgment about that construct,

section how a community comes to create leaders for itself, and how this helps mold the collective subject by engendering and reinforcing the operative scale of values within the community. In the previous chapter, as part of our discussion of moral conversion, we discussed how communities push their members to give value-reasons for their actions or desires, and we discussed the possibility of not just affective conversion but affective perversion. Here, these four pieces come together. In short, both the intersubjective community and the political community push us not just to give value-reasons but to adopt a particular scale of values as expressed in particular decisions and particular judgments of value, even if that scale of values is very rarely the normative scale. When the great majority of the community is operating with similar-enough scales of values, each member will have a similar affective response to a given meaning-as-object of communal concern and will advocate for similar and readily reconcilable courses of action.

The instrumental act of meaning by which a widespread communication is achieved will generally be something public, something that will reliably convey the same meaning-as-object to everyone. But because instrumental acts of meaning can change the meaning-as-object communicated depending on the culture, such instrumental acts will be themselves culturally conditioned. What will be an effective instrumental act of meaning in this sense will be constituted reciprocally by the individual and the community. On the individual side, communication has happened not when I've simply finished saying something but when you've actually understood my meaning, however long that may take,

to our feelings for valuation. When a judgment of fact is made, that judgment becomes part of the construct and, in general, how we judge the construct will impact how we feel its value—when a possible, hypothetical construct becomes known as actual, there is a discernable shift in our intentional felt response to that construct. But the construct, whatever hypothetical or actual, remains what we value. We do not value judgments of fact as divorced from the constructs they concern.

so that I have to tailor my instrumental act of meaning to you as my audience. On the community side, if a sufficiently large portion of the community has adopted a standard of communication (though this need not be at all formal, as is the case with slang), it behooves me to learn to understand their communicative acts of meaning.

Such communicative acts rely on an existing background knowledge of meaning and consensus on value—the world mediated by meaning and motivated by value as manifest in a particular community. This is the narrative self-understanding of the community. The educational process exists not only to teach young people facts about the world but to train them in what it means to be a member of the community—to help them understand the community’s narrative self-understanding, the world mediated by meaning and motivated by value in and through which the community communicates. “For the world mediated by meaning is a world known not by the sense experience of an individual but by the external and internal experience of a cultural community, and by the continuously checked and rechecked judgments of the community.”⁶⁹³ Enculturating the youth in this way is part of passing on our cultural heritage, but it’s also how they learn how to function as independent members of the intersubjective community and the broader society. In other words, this is part of passing on our common sense to a new generation.

This is the beginning of building a common horizon of knowing and feeling within a community. Individuals being educated are pointed to examples to emulate (or not) as they are taught about who those exemplar individuals were and what they did. They’re pointed to additional examples alive today in various other ways, both in the classroom and outside it. In doing so, the educational system pushes young people (and not-so-young

⁶⁹³ Lonergan, *Method in Theology*, 224

people, insofar as there's a secondary influence on parents) towards common understandings and common valuations. As part of making these understandings and valuations credible, we also give instruction on how they were arrived at. In doing so, we create a common horizon of knowing by quite intentionally pointing people to issues of concern, and we create a common horizon of feeling by telling them how we think about, and how we think they ought to think about, what's right and wrong in given situations—how they are to value. This encourages them towards a common scale of values and begins to create a communal subject.

Not all communicative acts rely on the same background of meaning and value, of course. Those within one intersubjective community may rely on a very different background from those in another intersubjective community. Both will be different from the background of the larger society, which will generally be less definite, less in focus. This is part of why common sense delineates different communities and sub-communities and can function as a shibboleth for those communities. This means that how the communicative act of meaning is done will (or ought to) depend on the intended audience—if it's done well, it will be tailored to the narrative of the community it's targeting. This can be done both overtly and covertly, especially when communicating to a broad audience at the societal level: a communicative act can be tailored to the whole society but framed in such a way that a separate, additional (or sometimes contrary) message is sent to a smaller community, a subset of society or a particular set of intersubjective communities, which is not intended to be understood by the broader target audience. This is the concept of a dog whistle, for instance. But in all cases, the

communicative act will be conditioned by the background of meaning and value available to the target audience.

When the formal meaning-as-object is successfully communicated, two things happen. First, there is always an implicit or explicit appeal for belief attached. “Knowing...is experiencing, understanding, judging, *and believing*.”⁶⁹⁴ Individual members of the community are unlikely to be able to verify the formal meaning-as-object personally in such a way as to competently perform a full act of meaning and arrive at a virtually unconditioned judgment of fact about it. And as we will discuss below, communities as a whole are singularly and remarkably bad at arriving at judgments of fact about a given formal meaning-as-object. So the *primary* goal of the communicative act of meaning is not to encourage us to investigate for ourselves the formal meaning-as-object being presented. Rather, it is to get us to believe the communicator. This requires a judgment of fact and value as to the trustworthiness of the communicator, and that has to be made by each individual, though the background of meaning and value informing the communication will also inform how each of us arrives at a decision about who to believe.

Second, those to whom the formal meaning-as-object has been successfully communicated reflexively evaluate it: the formal meaning-as-object is presented as a phantasm to the feelings for valuation. The community receiving this communication will have a range of valutive reactions, and, with varying degrees of self-awareness, those valutive reactions often form part of our judgments on who to believe and who not to believe: “It’s so horrible, I can’t believe it’s true” or “That sounds too good to be true”, for

⁶⁹⁴ Lonergan, *Method in Theology*, 224, emphasis mine.

instance, usually reflect a judgment not just about the meaning-as-object but about the person or organization communicating it.

In general, on most issues, a community will have a dominant valuation so that there is a majority and a minority on each point. Some issues do not achieve such a consensus so that it is difficult to talk credibly about the “community’s reaction” to the communicated meaning-as-object. But most will. We can, then, distinguish sets within the community based on (1) whether or not one believes the meaning-as-object being communicated, which is often to say, whether or not one believes the one communicating it, and (2) how one evaluates that meaning-as-object.

Those within the dominant set push those outside it to adjust their judgments of belief and their valuations, while those outside the dominant set seek to persuade others to depart it in favor of a different judgment of belief or a different valuation. The two engage dialectically and alter one another’s beliefs and valuations as a result. In each instance, the dominant set within the community pushes each member not just to explain themselves in terms of values but to operate according to a more-or-less specific scale of values—it is not enough to give me value-reasons for your response to a given issue, you should agree with me about it. Social pressure will tend thus to spread the valuation at issue from one person to the next, with success or failure determined in large measure on the credibility and persuasiveness of the exponents on each side with respect to both fact and value.

This continues the process begun in education: social pressures forge a common horizon of feelings by pushing a more-or-less specific scale of values on each other member of the community. Because it does this by pushing each member of the community to make particular value judgments in a plethora of particular cases, this scale of values is

established in each member of the community in a piecemeal fashion, which is a large part of why it is more-or-less specific. It is, moreover, open to change. We will discuss what that comes to below in affective conversion.

But the scale of values will always be oriented to a highest value, and we have noted that only rarely do communities push individuals towards a normative scale of values. While there can certainly be tensions below the level of religious value, most often, the problem is at the top. Relatively few communities push one towards an appropriate religious value—quite often, what ends up on top are social or personal values instead, and in some cases, one is pushed towards a very problematic conception of deity. In the previous chapter, we called these affective perversions because they shift the entire scale of values in one way or another, depending on what exactly takes top billing, and so our affective intentional responses to constructs might also be perverted. More often than not, this is what characterizes the horizon of feelings and scale of values to which communities push their members. We will discuss this further below in the discussion of bias.

Those operating largely within the common horizon of knowing will tend to believe the same sources and those operating largely within the common horizon of feelings will evaluate most such meanings-as-objects in the same sort of way. They will generally suggest or accept responses or solutions that are similar and readily reconcilable. Communities, by pushing people to these similar, overlapping horizons of knowing and feeling, meld themselves into a Hobbesian person which can receive instrumental acts of meaning from its institutions in a relatively unified way and proceed to a process of valuation which will otherwise largely resemble the valuative process in which the

individual engages—after all, the community’s valuation process is the agglomeration of many individual valuation processes working in about the same way.

This, I think, is what Lonergan has in mind in talking about a collective subject. Because the community operates in this way, there is collective responsibility for what’s done about any given issue on the macro scale, and there is collective responsibility for the world mediated by meaning and motivated by value as manifest in each community. When each member of the community is operating largely within the common horizon of feeling, each will tend to react valuatively and actively in similar ways to similar events in their daily lives. In so doing, each builds the world mediated by meaning and motivated by value that structures the lives of all the others.

2.3 Communal Knowing

The common horizon of knowing, though, is rather more difficult to assemble. We all participate in the community’s common sense, by which we judge the facts of what happens in similar instances, but we don’t all have the same common sense. As we pointed out above, common sense “is parceled out among many, to provide each with an understanding of his role and task, to make every cobbler an expert at his last, and no one an expert in another’s field.”⁶⁹⁵ Some bits are more common than others—most likely, the lawyer next door and the cashier at the grocery store can both successfully navigate a fast-food drive thru and know equally well what a blinking light on the left side of a car probably means—but important pieces are not always so common. The parts on which there is often the most disagreement are how we should establish facts and what will count as sufficient

⁶⁹⁵ Lonergan, *Insight*, 237

evidence to satisfy the conditions on our judgments of fact. Often, these are simply not part of common sense in society at large.

The problem of communal knowing was parodied in *Monty Python and the Holy Grail*'s witch trial scene.⁶⁹⁶ "We found a witch! Burn her!" screams the crowd. "How do you know she is a witch?" asks Sir Bedevere. "She looks like one!" responds the crowd, which, after questioning, rather quickly admits to having dressed her as a witch in the first place, so Sir Bedevere asks again, "What makes you think she's a witch?" "She turned me into a newt!", cries one man, to an incredulous look from Bedevere, who requests clarification. After a moment's awkward silence, the man sheepishly admits, "I got better." Even so, the community insists that she is a witch and ought to be burned. The community in *Monty Python* does eventually turn the alleged witch over to Sir Bedevere, who functions as an institution in himself, to test her and determine whether she is actually a witch because the community is manifestly incapable of telling for themselves who is and is not a witch. Of course, Bedevere's logic in devising his tests leaves rather a lot to be desired, but that is a point we will consider in the next chapter.

There are several problems with what happened there, and we'll take them in turn. First, the phantasms being used by various members of the community were not the same. We have three distinct sets of experiences at issue: the alleged witch's, the mob's, and Bedevere's. The alleged witch does not seem to experience herself as a witch; the phantasms she might usually associate with that have presumably never crossed her path. The phantasms related to this insight given in the film are restricted to her dress and alleged

⁶⁹⁶ "Witch Village", *Monty Python and the Holy Grail*, directed by Terry Gilliam and Terry Jones (1974; Culver City, CA: Columbia Tristar Home Entertainment, 2001), DVD; hereafter cited as *Monty Python*.

behavior. But, as the crowd acknowledges, she didn't dress herself that way. The crowd had two distinct sets of phantasms: the way the alleged witch looked both before and after they played dress-up. But even then, their phantasms are not entirely unified, apparently, since one man has been turned into a newt (even if he got better). Bedevere's phantasm, however, takes in the entire scene: the alleged witch in her costume, the mob, not just as individuals but as a collective subject collectively taking responsibility for having found a witch, and the sense of rage suffusing the entire situation. For Bedevere, notice, his reaction and insights are partially predicated on the affects that came with the phantasm of that crowd carrying their prisoner and his immediate valuation of what they had done and wanted to do.

We find a similar set of issues similarly animating problems of knowing in communities generally. Eyewitness testimony is generally unreliable because no two people who saw what happened had the same phantasms about it, nor did they process those phantasms in an identical way. Only when we start getting into second-hand accounts do we begin to find consistency among the phantasms at issue, and there, it's because we all listened to or read or otherwise consumed the same communicative act—we all had a similar experience of being communicated to and all processed it in roughly the same way because it was built to communicate to those with a certain brand of common sense. But the unity of communal experience remains sorely lacking.

Second, there is no agreement on the conditions on the judgment that the woman is a witch. Recall from the last chapter that a conditioned judgment has three parts: the conditioned, the conditions, and the link connecting them. The community has agreed that this woman *is* a witch—the conditioned—but they have a great deal of trouble recounting

to Bedevere *why* they think that—the conditions on their judgment that she’s a witch. They readily agree to the answers given by any of their number because they have nothing better to say. Those among them who speak in this way become leaders as we outlined above because they at least seem to be trying to have a good answer to what they recognize as a significant set of questions. That none of them—including Bedevere—can provide such good answers is also a problem. The community, then, has rushed to their judgment without having explored the conditions on that judgment until forced to by Bedevere.

We have a similar experience in our intersubjective communities. Consider Byrne’s experience as a juror that we recounted in the previous chapter. He and the other jurors identified different conditions on their judgments of the guilt of one of the defendants. When each was pointed to the evidence the others had noted, they recognized a new condition, at least two of which, when met, were sufficient to end the pertinence of further questions. In that case and others like it, the conditions were sufficient to the judgment at issue, and the evidence available was sufficient to satisfy those conditions.

But that is not always the case. More often, we do not consider the conditions on our judgments in the way Byrne and his fellow jurors did—we are not given any particular reason to—and we do not have access to a pool of evidence that will satisfy the sufficient conditions on our judgment. And we often do not communicate the conditions that we have attached to a judgment or the evidence available to satisfy those conditions until pressed about why we accept a certain judgment. In such cases, we act as though a provisional judgment is virtually unconditioned, but we have not recognized the conditions on that judgment, and those conditions we do recognize are often insufficient. When we

are asked why we have arrived at this judgment, our answer, if we are being honest, is often, “Because person x told me so, and I believe person x.”

And this is the third problem with what happened in Bedevere’s village: before Bedevere involved himself as an authority, the people believed other people who didn’t know any better than anyone else in that crowd and certainly didn’t *seem* to be more informed than anyone else there. Despite the evident problems with the testimony of the man who claimed to have been turned into a newt, the rest of the crowd takes his story at face value—they take his word for it. In other words, they have not properly vetted those they’re choosing to believe. And, unsurprisingly, this creates some problems for them.

We experience similar problems in many situations in intersubjective communities of every stripe. The office gossip is a great source of gossip, but probably not a great source of truth. The opinion media is often heavy on spin but light on facts. Dr. Google is not an oncologist and does not play one on TV. The canvasser (or candidate) who comes to your door to solicit your vote is, perhaps, not the best source of information about their opposition. Yet people routinely take these and similar sources as purveyors of truth for no better reason than “Person x told me so, and I believe person x.” It routinely becomes very difficult to articulate *why* one believes person x, and no strong account is forthcoming.

What the intersubjective community without institutions lacks, then, is (1) a common set of phantasms on any issue, except insofar as each has received a communicative act of meaning and so is aware of the issue only second-hand; (2) a common set of conditions, or at least a commonly *sufficient* set of conditions; (3) reasonable choices about whom to believe. Correcting these defects is part of why institutions are established in the first place, either formally or *ad hoc*.

As such, I am not persuaded that a community has an authentic process for knowing beyond attending to the data on various issues, recognizing when a question of fact has arisen which will be significant for communal valuations, and knowing to whom to refer that question. One could not readily deny that some questions of fact *will* be important for communal valuation, but we've given reasons here to think that intersubjective communities are singularly bad at evaluating those directly in the absence of institutions. The authentic community will recognize this and will follow its leaders in withholding judgment on these questions of fact until an answer can be competently gained.

Competently gaining those answers is part of the business of institutions. There may be some questions of fact that a community can answer without the intervention of institutions, but these will be limited to claims like "So-and-so said x" where that claim can be independently verified through video or audio recordings. Even then, these claims will begin to run into trouble when, for instance, we ask questions about the context of the statement or whether the recording is complete or has been altered. Unless a complete recording of the context is available to the public, there is often not enough evidence for the community to arrive at a judgment of fact. The number of judgments of fact that an intersubjective or political community can reliably make without appeal to their institutions, then, is vanishingly small.

We recognize, of course, that communities are almost never without institutions. As we observed at the outset of this chapter, "community develops its institutions to facilitate cooperation", and that means that communities of the kind we've described in this chapter (which is to say, any community) will develop institutions quickly where they

do not already exist as a simple matter of necessity.⁶⁹⁷ We'll go further here and say that communities almost always have institutions available to them to help answer these questions of fact, and if the institutions available are not adequate to the task for whatever reason, those institutions will be augmented, extended, or replaced in comparatively short order.⁶⁹⁸ This is perhaps most easily seen in political communities, where formal institutions are the order of the day, but it happens no less in intersubjective communities, e.g. the family, which Lonergan says is also an institution in itself.⁶⁹⁹

Insofar as it is being attentive, then, the community will recognize first that there is a question of fact of some relevance to communal decision-making which must be answered. Bedevere's village knew that whether this woman was a witch was a question of fact relevant to how the community would treat her going forward. But it's often the

⁶⁹⁷ Lonergan, *Method in Theology*, 51

⁶⁹⁸ For instance, when 9/11 happened, it became clear that the institutions of the United States' national security apparatus were not sufficient in their current forms to answer questions of fact about who wants to do us harm and how close they are to trying. A significant part of the problem was that these institutions were focused in the wrong place, addressing challenges far more relevant two decades prior, and there was no good way to reorient them all quickly and coordinately to respond to new threats. Another part of the issue was the institutional relationship between agencies, a relationship structured in a way that prevented them from putting together pieces held by disparate agencies.

In response, Congress created two new Cabinet-level institutions with the evident purpose of restructuring those relations. The first was the Department of Homeland Security (DHS), and many of the relevant agencies were reorganized into that department. This allowed them to be quickly oriented to new goals by a single executive authority rather than having to get buy-in from a dozen agency heads, each with a different agenda. For those which could not be reorganized in this way, Congress created the Director of National Intelligence (DNI) to address some of the lingering problems in communication between agencies by creating a clearing house through which all intelligence could flow, sidestepping a large number of concerns about the threats to privacy implied in the free flow of intelligence between foreign intelligence services and domestic law enforcement agencies.

The most remarkable part of the tale is not the solutions reached but the speed with which they were implemented. Under normal circumstances, it can take significant legislation upwards of a decade to become law in the United States, particularly if, as with both DHS and DNI, there is significant controversy about how to proceed. DHS was created in Nov 2002, 14 months after the terror attacks that prompted its formation, and the first Secretary of Homeland Security was confirmed the following January. The DNI was created in response to specific recommendations in the report of the 9/11 Commission in June 2004. The problems the 9/11 Commission pointed out were not news to lawmakers, and they were able to put together a response with some speed. The relevant legislation was signed into law just 7 months later in Dec 2004.

⁶⁹⁹ Lonergan, *Method in Theology*, 76

case that, in the rush to judgment, questions of fact can be overlooked with disastrous consequences. Part of the responsibility of the elites is to help the community recognize its questions or to help the community recognize that it should be asking certain questions. This is a key point in awareness campaigns: until the community recognizes that there is a question to address, that question will not be referred to the community's institutions (though a well-constructed institution may begin considering questions it thinks are or should be of relevance to the community even so).

In turn, the more foundational point of an awareness campaign is to give members of the community the phantasms necessary to prompt that question of fact, which is a facet of the first problem, above. If the community does not have a common set of phantasms, it will not be able to settle questions of fact, but in many cases, the relevant questions of fact do not occur to the community because the community as a whole does not have access to the necessary phantasms. When that happens, the community cannot properly attend to the questions of fact. This gap may be attributable to various benign factors—geographic or relational distance, for instance—but it is also often the product of bias, especially a group bias that suppresses the entry of certain phantasms into the awareness of the group, as we will discuss below.

In our recent history, the #metoo movement has been, functionally, an awareness campaign of just this kind because while we all publically decry the abuse of women, the community has been guilty of turning a blind eye and a deaf ear to evidence of ongoing abuse. In this case, the question of fact, “Are women treated well in professional settings today?”, did not occur to the community at large until the first well-substantiated accusations against Harvey Weinstein were published in a coherent narrative by a major

outlet.⁷⁰⁰ This failure of attentiveness resulted from a long-standing group bias dismissing the evidence of mistreatment in the interests of upholding the narrative that our elites are paragons of virtue (or, at least, not *that* bad). Once Ronan Farrow's piece appeared in *The New Yorker*, though, a veritable avalanche of stories about other women (and men) abused by other men (and women) began coming to light and the community could no longer refuse the phantasms concerning this abuse.

Insofar as it is being intelligent, the community will do what it can to give the question focus. As we emphasized in the previous chapter, having a pre-linguistic tension of inquiry is not the same as having a formulated question, and for the authentic community, being intelligent means considering how that question should be formulated and framed. This will be important not only because answers to a poorly formulated question are unlikely to resolve the underlying tension of inquiry but also because a community routinely has multiple institutions. The framing of the question will suggest the institution that should be employed in seeking the answer. We see this, for instance, in the adage "pick your specialist, pick your disease": different kinds of institutions or institutions with differing foci will tend to find answers relevant to or in line with their structure and focus.

A community's elite will play a significant role here too. The elite's function is, at a minimum, to present a variety of alternative formulations for the community to consider. The discussion the community then has about this question, both directly and by proxy through the elite, will consider what has happened to prompt the question in the first place,

⁷⁰⁰ Ronan Farrow, "From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories", *The New Yorker*, 23 October 2017, <https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>, accessed 24 January 2020.

what evidence is generally available and is (or ought to be) generally known, and in which direction inquiry should press. In some cases, this is straight-forward: a crime has happened, and we want to know who did it. In other cases, this is less immediately clear: a crime might have been committed, but depending on how we understand the relevant facts and statutes, what happened might actually have been legal. The inquiry into that situation can and probably should push in several directions, including what the law says, what actually happened, who is accountable for it both under the law and in a general sense, and whether the law needs to be changed. The elites involved in the discussion will, in such a circumstance, be looked to by the rest of the community for guidance on which of these is important, with weight given to those with relevant areas of expertise, and how they consider the question will shape how the community considers the question—or whether the community ultimately decides there are multiple questions at issue.

The question as formulated by a community is, of course, not what the question as formulated by any given individual might be. The closest one might come to a single linguistic formulation for a community might perhaps be ballot questions, where significant effort has been put into the specific formulated question being asked of voters in an attempt to close the gap between those who are sure about the question and its answer and those who remain in tension on the subject. Instead, the formulated question in the community is a set of related linguistic formulations expressing the same refined tension of inquiry: the process of formulation is less to do with wordsmithing than it is to do with refining the question from the initial tension of inquiry into a question likely to yield an actionable answer. This step in the process is complete when the community has understood what its question is and appropriately distinguished between related inquiries.

Insofar as it is being reasonable, the community will recognize that it lacks the competence to answer the questions posed and will arrive at a judgment about which of the available institutions is most likely to be able to give an answer that will resolve the tension of inquiry. The elites' role here is two-fold. First, they usually have a far greater knowledge of and familiarity with the available institutions than the general public, and so will be able to provide the list of alternatives and reasons why each would be suitable. As it happens, the elites are often part of the relevant institutions, which is how they acquired the relevant greater knowledge in the first place. Second, they will argue for one alternative over the other, and their followers will generally go along with them on the point. But there is an inherent challenge here, a dilemma that recurs probabilistically because of group bias: because elites are often part of these institutions and because of potential group and traditional biases⁷⁰¹ inclining them to their own institutions, they have a vested interest in claiming the question is within their ken insofar as dealing with a question implies the payment for institutional services or at least additional notoriety and influence. However, insofar as the elites are being reasonable and responsible here, they will argue the point without consideration of what may happen for them personally if the question is sent to one institution rather than another, provided that a certain question actually is much better suited for another institution, not one's own.

Insofar as it is being responsible, the community will then actually refer the question to the appropriate institution. This is where many communities fail at being authentic, being convinced that they've come to a sufficient answer in their deliberations

⁷⁰¹ We'll discuss traditional biases of institutions in the next chapter; in this case, it's to do with defending the institutions traditional prerogatives and subject-matter purview.

over where the question should be sent. But the authentic community will prescind from considering answers on its own without referring them to institutions. This is not to say that communities will sit patiently and wait for an answer—if the institution is not fast enough in coming to a conclusion, the community will likely take matters into its own hands. But it is to say that a community, when it is being responsible, will genuinely refer questions to the relevant institutions rather than making a show of referring the question while continuing to operate as though an answer is already available. And it is the community's elites, above all, who must abstain here, and not just because they will be emulated by members of the community. As well-placed members of the relevant institutions, they often will have better information and so a better chance of coming to an accurate judgment of fact than most of those following them. As such, the temptation to proceed with the judgment they can make on the available evidence, even and perhaps especially when that judgment is only probable, will be far greater for them than it will be for most others in the community.

Of course, the process is only rarely so neat as even this messy process. On issues of significance, institutions begin their machinations well before the community has come to anything like a well-formulated question to refer to their institutions. Communities are routinely confronting multiple questions at once and need to sort out for themselves which questions are related to which and how they're related. And the processes of attending to data and formulating questions will often run concurrently with the process of trying to figure out where to refer those questions. But eventually, these processes run their course and the authentic community will appeal to its institutions for answers while the unauthentic community will run with their assumptions.

2.4 Summary

There are, then, three cycles of operations through which the authentic community will go in deciding what to do about any given situation. This stands in contrast with the individual, which has only one cycle to perform on any given question, as messy as that can get. We have presented the community's cycles above out of order to place the emphasis on what the authentic community does well, but we should be clear on these cycles and their relationship to one another and to the institution.

The first cycle concerns communal knowing. In this cycle, the community attends to the data about an issue, recognizes that it needs to address that issue, and recognizes that how it should address that issue will depend on the answers to certain questions of fact (be attentive), refine the question into something likely to yield actionable answers and delineate between distinct but related questions (be intelligent), determine which available institutions have these questions most directly within their purview, if any (be reasonable), then determine which institution will be best equipped to answer those questions (or, if need be, construct a new institution to deal with the question) and actually refer the questions to those institutions while prescinding from action until the institutions are able to issue their responses (be responsible).

Once the institution has addressed the questions and come to a judgment of fact concerning their answers, the second cycle begins. Here, communities must be attentive, intelligent, and reasonable, and responsible in deciding whom to trust to communicate answers on a given issue. It is often the case that institutions are not the best at communicating their conclusions to those outside the institution since the answers are often veiled by the jargon of the community within the institution. This can be on such a scale as the legalese of government reports or, at the opposite extreme, a doctor trying to explain

the condition of a family member. So a translator of sorts is needed, and the community must in each decide who that should or will be.

The third cycle continues with communal valuation. The first step is the proper communication of the construct, during which the sufficiently attentive community studies the product of the machinations of the institutions and familiarizes itself with the relevant features of the construct. Second, the intelligent community queries the institution to ensure that nothing has been overlooked (and, if it has, the question is sent back to the institution for further consideration). Third, the community concludes that the construct is sound and appropriate as an answer to the question it presented to the institution (be reasonable). Lastly, the community values the construct and either acts to realize the highest available value or finds itself with a new question concerning available options which must be referred back to the institutions, restarting the first cycle (be responsible).

The institution exists to fill a gap in this process of communal knowing, valuing, and doing that we will address in the next chapter. We said at the beginning of the section on communal valuation that the community goes through the same basic process as the individual, only in a more mediated fashion, and that remains true. The first cycle concerns, for the community as well as the individual, the questions and not their answers, and these questions may be *de novo* as a product of attentiveness to data or they may arise about available options to address a problem already understood. The community must then arrive at judgments of fact, and these are almost always settled on the basis of decisions about who to believe. There is a difference here in that the individual is sometimes able to independently and directly verify claims and arrive at judgments of fact through their own experience, but in far more cases, the relevant question for the individual

no less than for the community is who to believe. The decision about who to believe made, the community values the facts of the matter and their available courses of action, chooses one or more, and enacts them, just as does the individual.

We are left, then, with one conspicuous gap: what does it mean for a community, as opposed to its institutions, to enact a course of action? The community commits to a course of action by referring those actions to its institutions in one way or another and constructs the necessary institutions where they don't exist. These are not always formal institutions; we can see examples of informal institutions in the leadership of protest movements. We will discuss how this happens and the distinction between formal and informal institutions in the next chapter.

3 Communal Biases

We turn our attention, then, to three ways biases manifest themselves in the community. The group bias that we deferred from the last chapter actually turns out to be two biases, one around the operation of groups and one around the development of the social order, which do not operate in the same way, though they are underwritten by the same affective components. We will then consider the general bias of common sense, also a developmental bias, as it manifests in the community, and we will conclude this chapter's discussion of bias in considering how the developmental biases in the community interact to produce what Lonergan called the shorter and longer cycles of decline.

In the previous chapter, we deferred discussion of the group bias until this chapter, since it is primarily manifest in community and not in the individual, and we will give our complete discussion of group bias here. We also deferred to here part of the discussion of the general bias of common sense. This promise, we will not fully deliver on until the next

chapter on institutions, but we will here discuss the general bias as it relates to communities and interacts with the group bias. And as in the previous chapter, we will discuss also the affective components of each bias.

3.1 Group Bias

Unlike the egoistic bias we discussed in the previous chapter, group bias is actually underwritten by intersubjective fellow-feeling.⁷⁰² Unlike most of our discussion of the other biases, then, we will want to discuss the affective component of group bias first. Group bias is remarkable for having four possible affective components, any two or three of which could be active for any given person at any given time, and these affective components are each orientations to something specific in the process of communal decision-making. “Now social progress is a succession of changes. Each new idea gradually modifies the social situation to call forth further new ideas and bring about still further modifications.”⁷⁰³ As we have observed, the community changes as it confronts new concrete situations and has to decide how to respond. Quite often, those new concrete situations are the implementation of ideas by this community or some other community or the sequelae of such implementations. Apart from what insurance underwriters might deem ‘acts of God’, this characterizes almost all the situations a community must deal with. Our communal responses are the product of practical intelligence operating in the individual and with results approved by the community, but these “responses are made by

⁷⁰² Lonergan, *Insight*, 247

⁷⁰³ Lonergan, *Insight*, 248

intelligences that are coupled with the ethos and the interests of groups”.⁷⁰⁴ The affective components of group bias are orientations to group ethos and interests.

The first and perhaps most stereotypical is the love for one’s own group. There is something of the egoist at play here since to act in the interest of one’s group is to act in one’s own self-interest, and this is one of the ways the egoist can be persuaded to pay attention to the needs and welfare of others. But this is also the stereotypical pride in one’s group one sees in nationalism of any stripe, civic pride, or school spirit. These things have many positive manifestations, but they can also lead one to place the interests of one’s own group ahead of the interests of one’s community in general and/or ahead of the interests of other communities wholly separated from one’s own.⁷⁰⁵ Sometimes this manifests merely as a set of blinders blocking out the interests of other groups or leading one to mistake one’s group’s interests for those of the whole community; other times, there is consideration and deliberate disregard of other groups.

This is the factionalism that so concerned Hamilton and Madison in *Federalist* Nos. 9 and 10: “By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”⁷⁰⁶ In other words, he was concerned about groups operating in a biased way in the conduct of the economy and polity of the young nation for

⁷⁰⁴ Lonergan, *Insight*, 248

⁷⁰⁵ Of course, a community can be biased against other communities. We are leaving aside that discussion for the sake of space, but in principle and often in practice, the two can become groups of the kind discussed in this section in relation to one another. In the limit, this can include nations or blocs of nations becoming groups within the community of nations.

⁷⁰⁶ James Madison, *Federalist* No. 10, in Alexander Hamilton, James Madison, & John Jay, *The Federalist Papers*, ed. Clinton Rossier (New York: New American Library, 1961)

no reason other than concern for their own interests above those of anyone and everyone else. History showed his concern to be justified: on several levels, this was the problem from which the American Civil War resulted.

Second is the polar opposite of the first, hatred for one's own group. This is the recognition that one's group has problems within it, that one's group has behaved badly in the past or has a history of not just ignoring the interests of the whole community but actively disregarding those interests where they conflict with the interests of one's own group. In general, this will be a manifestation or outgrowth of shame that one feels in being part of one's group. Sometimes this comes generationally; sometimes there's a single galvanizing incident or series thereof that shifts one's attitudes 180 degrees. But in all cases, this second affective component means that one is not just displeased with but disgusted by the ethos of one's group and actively works against its interests. In some cases, this may make one a member of a new group, such that what is really at work is the fourth affective component, but in other cases, one remains a member of one's original group.

The third available affective component is also to do with hatred, but this time hatred, revulsion, and disgust for another group. No less than individuals, communities all have their demons, only for communities, this usually means demonizing another group. Such a thing is very nearly as common for humans as breathing: it's part of how we define the boundaries between groups and keep them in place, and we quite naturally divide ourselves into in groups and out groups (witness any school cafeteria). As a result, it's remarkably common to find this paired with the first affective component, love of one's own group. This affective component relies on the creation of a sustainable and sustained

hostility toward another group that blinds one to anything good or worthy, often including the intersections of their interests and ethos with one's own group.

This does not always manifest itself in outright hatred, revulsion, or disgust, as we might expect to find in versions of racism that see the 'other' as subhuman or a diseased, deformed, or otherwise degenerate version of humanity. Rather, it often manifests in understanding others as, in Kant's words, "merely as a means."⁷⁰⁷ In this valence, the affective bias manifests itself in a flat denial that the other group could ever have interests divergent from one's own group's interests and that the other group's ethos could have anything of value to it. At best, this comes across as a relatively benign neglect. Unfortunately, it more often presents itself in a malevolent guise. This is also the affective component of the group bias animating the general colonial mindset of Europe's great powers, for instance, where the goal wasn't to just use those they conquered but to erase their culture and language—their group ethos—and turn them into model Europeans.⁷⁰⁸ The point here is that this affective component relies on defining and demonizing in some

⁷⁰⁷ Kant, *Groundwork*, 4:429

⁷⁰⁸ Consider, for instance, the residential schools the English set up throughout Canada to evangelize the First Nations. These were the product of cooperation between the Canadian federal government and various churches, including the Catholic, Anglican, and Methodist denominations. The general thought behind those schools was that spreading the Gospel to the heathen savage can only be a good thing, but that to make them Christians, they had to first make them English, culturally and linguistically. In service to that, students enrolled in the residential schools were forcibly separated from their communities, subjected to significant physical hardships, made to speak English, and generally made to assimilate into the Euro-Canadian culture. The first such school opened in 1831, but the model didn't gather steam until the 1880s, and it continued unabated until the mid-20th century. The last of these schools finally closed in 1998, and the Canadian federal government issued reparations in 2007 and a formal apology in 2008.

For more on the history of these schools, see John S. Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986* (Winnipeg, MB: University of Manitoba Press, 1999). See also the memoir of the former chief of the Xat'sull First Nation, Bev Sellars, *They Called Me Number One: Secrets and Survival at an Indian Residential School* (Vancouver, BC: Talonbooks, 2013), which recounts the experiences of three generations of women in these schools.

respect an ‘other’, justifying the disregard of that other’s interests that characterizes the cognitive component of group bias.

The fourth and last available affective component is the complement of the second as the third was the complement of the first, and this fourth affective component is love for another group. In this case, one advocates and advances the interests of another group not because one has a hatred for one’s own group (though they are often found together) but because one has a genuine intersubjective fellow-feeling for those in another group. We should distinguish carefully between two kinds of loves for another group here.

On the one hand, we have people like Rachel Dolezal, whom the reader may remember as the former head of the Seattle-area NAACP chapter. She identifies still as black, despite having no identifiable African ancestry, and lives her life this way.⁷⁰⁹ When the absence of African ancestry came out, she was engulfed in a firestorm of controversy. But though she identifies this way, she doesn’t seem to have been driven to this by hatred of being white or of the white population of this country. Rather, she has a genuine affection for minority communities, and she has gone so far in trying to forward their interests that she has taken on their identity.

On the other hand, we have people like Mother Theresa, whose lives are lived in service to the interests of another group even without changing identity. Here we see people who are passionately committed to the ethos and interests of other groups often because those other groups have no effective voice for themselves and need voices from groups in power for their interests to be taken into account in the decisions of the wider

⁷⁰⁹ For more on this point, see Rachel Dolezal and Storms Reback, *In Full Color: Finding My Place in a Black and White World* (Dallas, TX: BenBella Books, 2017).

community. Such people may be professionally obligated at first, but it would be far from unusual for someone working with such a disadvantaged group to begin to acquire an affective commitment to their ethos and interests in consequence of being in intersubjective community with them, itself a consequence of being in proximity to members of the disadvantaged group and to their struggles as a part of one's daily life. When this is done out of genuine concern and an authentic attempt to understand and help others, this is not a bias at all but corrective of group bias.

In most cases, though, this benevolence is, at bottom, more to do with an affirmation of one's place in the world and general superiority to others. Both the third and fourth affective components rely on a well-recognized process of othering; the only question is whether that othering is hostile, as in the third affective component, or benevolent, as in the fourth. Recent research in social psychology suggests strong links between the two: "benevolent othering, like hostile forms of othering, involves simplistic and self-serving representations that gloss over the complexity and diversity of people's lives, constructing a self-affirming image of 'benevolent subjects' as superior and masterful (just as hostile forms of othering serve to justify colonialism)."⁷¹⁰ What is important here is not the orientation to love or hate, though this usefully distinguishes between the two outwardly-oriented affective biases, but that in most cases, both are self-serving. Mother Theresa is remarkable not only because of the life she lived but because in living it, she demonstrated herself to be an exception to this rule.

⁷¹⁰ Flick Grey, "Benevolent Othering: Speaking Positively about Mental Health Services Users", *Philosophy, Psychiatry, & Psychology* 23, no. 3/4 (2016): 243

As we said at the outset, up to three of these affective components may be active in a group bias at any given time. One cannot both love and hate one's own group in the relevant way at the same time, but one can love or hate one's own group while loving or hating other groups. In just such a way, one could imagine a white supremacist operating with a love of their own group and an antipathy for people of color who is also engaged in philanthropy and advocacy for victims of sexual abuse, persons with disabilities, or (in a significant irony) starving children in Africa. As a result, there is considerable complexity available with group bias beyond what Lonergan spelled out in *Insight*. The affective component of group bias creates a *Zeitgeist* within a given group as the tools available to intersubjective communities to forge a common horizon of knowing and feeling begin to operate within that group. The biased dominant perspective operates as a contagion for some and an enforcer for others with the end result that affective orientations of the group bias become shared to a greater or lesser degree by a significant majority of the group.

On the cognitive side, in his discussion of group bias in *Insight*, Lonergan is actually discussing two biases, one operational and one developmental, and we will follow him in that. The first is what he actually calls group bias, and this operates in two ways, one similar to and the other very different from the other biases we've seen to this point. The first operation is actually similar to the dramatic bias. We said above that each community tells itself a story about itself, its history artistically thematized into a narrative that justifies communal actions and orientations towards others both inside and outside the community and underwrites social continuity by helping younger generations understand the community and molding the community's self-understanding into their individual self-understandings.

But groups in the sense of our discussion here are also communities unto themselves, albeit smaller subsets of a larger community. Much as the individual can have a problematic narrative, so also can a community, and just as the individual's psychic censor will seek to avoid certain phantasms to prevent insights that would challenge or disrupt the individual's narrative self-understanding, so also the community has forces that regulate its story by encouraging individual members to avoid uncomfortable insights that would challenge the community's narrative and, when individual members do have such insights, preventing their spread. This is how the group bias can persist. This narrative functions as a bridge between the cognitive and affective components of the bias by preventing both the insights that would challenge the social order and the affective realizations that would change each group's affective orientation to other groups.

Group bias's second cognitive operation, though, is quite different from what we saw with the individual biases. The cognitive aspects of the biases we discussed in the last chapter operate to restrict our inquiry by preventing things from occurring to us: phantasms are blocked in dramatic bias, we're forced by practical necessity to prematurely terminate our inquiry and settle for solutions that are "good enough" by the general bias of common sense, we're blind to what's not before our eyes in the picture thinking bias, and the egoistic bias stops us from attending to further pertinent questions about applicability. Instead, the cognitive aspect of the group bias forces us to consider questions that aren't actually pertinent.

As new, practical ideas come forth from common sense in response to concrete situations, one encounters the challenge that "all the responses [are not] made by pure intelligences" but rather "are made by intelligences coupled with the ethos and the interests

of groups, and while intelligence heads for a change, group spontaneity does not regard all changes in the same cold light of the general good of society.”⁷¹¹ As a result, group bias means that in sorting through possible courses of action, one will consider not only which are likely to actually correct the problem situation, that is to say, which are practical, but also which of the practical options will “meet with no group resistance or else find favor with groups powerful enough to overcome what resistance there is.”⁷¹² Lonergan calls these operative insights. The cognitive component of group bias doesn’t insert solutions that won’t work, but it does insert a new question into the winnowing process: What will be the impact on my group, as opposed to my community?

Particularly when the affective component of hatred for another group is operative, a second question is also inserted: What will be the impact on that other group, as opposed to my community? The operative principle then becomes a definition of justice that Plato puts in the mouth of Polemarchus in *Republic*: to do good to one’s friends and never evil, and evil to one’s enemies and never good.⁷¹³ Group decision-making becomes a game of maximizing benefit to one’s own group while minimizing benefit to those groups opposed to one’s own group.

This component is cognitive insofar as it springs from a failure to answer correctly a different question: Who is my community with respect to the problem at hand? When there are problems that need dealing with as a community, this question is often overlooked because we know the answer, or we think we do. When we mistake who is included in the relevant community, we begin to trim away courses of action that would be effective and

⁷¹¹ Lonergan, *Insight*, 248

⁷¹² Lonergan, *Insight*, 249

⁷¹³ Plato, *Republic*, 332a-b

appropriate for the community actually at issue but either hurt or don't appropriately help the community we think we need to be working for, which is to say, our group.

As a result, when various courses of action are submitted for valuation to the either the actually relevant community or the assumedly relevant community (depending on other factors around the disposition of social, economic, and political power), the communal horizon of feelings in which the dominant group responds is warped. Each proposed solution to a concrete situation requiring a communal response will create social change. We said in Chapter 3 that the role of cultural values is to determine who will bear the brunt of social changes, and this distortion is specifically operative at the level of cultural values. This distortion is where the question about the impact of a proposed solution on my group comes from: its answer is a significant and necessary part of the construct presented for valuation, without which the distorted horizon of feelings will not be able to give a firm answer. There may also be distortions underwriting this distortion of cultural values at the level of personal values in particular, as the humanity of those in other group is either discounted or commoditized, but the point at which the problems occur is in the consultation of cultural values and the communal affective response to the proposed solutions relative to those cultural values.

3.2 Developmental Bias of Communities

But this is not the end of the story. "Thus group bias leads to a bias in the generative principle of a developing social order."⁷¹⁴ This second is a bias not in the sense of a prejudice but in the sense of fabric or the arc of a deformed ball's motion: the line of the

⁷¹⁴ Lonergan, *Insight*, 248-49

social order's development lies at an oblique angle to its normative course. Just how oblique is another question, depending largely on the degree of social fracture and the impact of previous policies on disadvantaged groups. But to some degree,

the course of development has been twisted. The social order that has been realized does not correspond to any coherently developed set of practical ideas. It represents the fraction of practical ideas that were made operative by their conjunction with power, the mutilated remnants of once-excellent schemes that issued from the mill of compromise, the otiose structures that equip groups for their offensive and defensive activities.⁷¹⁵

The reader familiar with Lonergan will likely ask, at this point, why we have found it necessary to split this out from group bias. There are two reasons. First, the operational biases are operative in particular decisions; the developmental biases describe the cumulative result of those biased decisions. Developmental biases don't have cognitive and affective components in the way the operational biases do—they don't operate. Operational biases, which include the dramatic, egoistic, picture-thinking, and group biases and the general bias of common sense in its individual manifestation, distort how one makes decisions by distorting various parts of the structure of knowing, evaluating, and deciding that we set out above and in the previous chapter by preventing one from following the transcendental precepts. Often, this answers to the name 'prejudice'. Developmental biases, however, are biases in the sense of deviating from an expected course, in the way a deformed ball does: the line of development lies at an oblique angle from its normative course. The operational structures of the system a developmental bias describes are certainly deformed, but the key point of a developmental bias is that it sets the stage for the manner in which operational biases will manifest, and in turn, the

⁷¹⁵ Lonergan, *Insight*, 249

operational biases dictate the distorted course development will take, usually biasing it further.

Second, developmental biases have a significantly different set of outcomes. As the group biases of not just the dominant group but the oppressed or repressed groups continue to struggle to implement practical ideas that will be to their separate advantages, two things happen. First, each group builds up offensive mechanisms to counter the power of other groups and defensive mechanisms to prevent their own power being countered. Second, the groups “become distinguished, not merely by social function, but also by social success; and the new differentiation finds expression not only in conceptual labels but also in deep feelings of frustration, resentment, bitterness, and hatred.”⁷¹⁶ The end result is a “grotesquely distorted reality” created by the gaps where proper solutions should have been implemented, the compromise on practical solutions necessitated by power dynamics between various groups, the implementation of impractical solutions to appease those in power, ‘solutions in search of a problem’, and (from the perspective of the whole community) the useless armaments of the various factional camps.

As a result, the developmental biases create cycles of decline. The shifts are subtle in the beginning but gather pace as time marches forward and biased decisions pile up. Group bias, as a refusal to consider questions and answers not immediately relevant to the group, results in the group’s communal fund of insights and judgments, the group’s common sense, being critically incomplete in some way that will cause problems in the near term. Practical insights are divided between those which met significant resistance in the dominant group and those that don’t, and only those that the dominant group approves

⁷¹⁶ Lonergan, *Insight*, 249

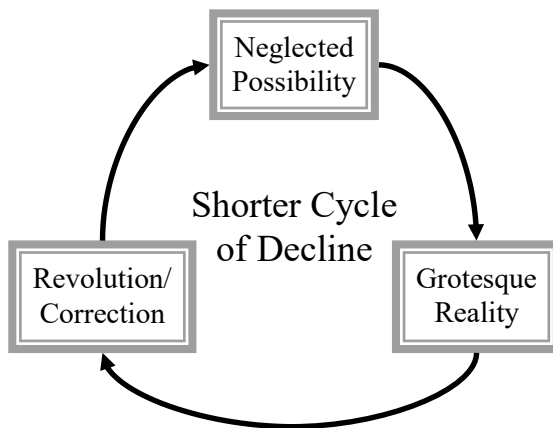
are put into effect. Those practical insights that are neglected are often the things that needed to happen to resolve the problem the community is trying to address, and their neglect means that the immediate problem may be resolved but only at the cost of creating more and more significant problems in future.

This leads to three problems. First, we have the development of figuratively (and sometimes literally) armed camps. Leadership becomes polarized, and the structures of the community which are not themselves already institutions become appropriated by one group or the other. People will decline to listen to those they perceive as being in opposition to them. Subgroups will operate with a distorted communal horizon of feelings at odds with that of the overall community and will resist attempts at correcting those distortions. Conversely, distortions introduced into the overall community's horizon of feelings are pushed on those of every group, and those create responses of capitulation, resistance, or evasion. But the distortions in the larger community's horizon of feelings cannot be ignored and will generally create responsive distortions in the horizons of subgroups.

Second, and partly in consequence of the distorted horizons of feelings, the disintegration of the community into groups means that groups set up *ad hoc*, informal institutions, which we'll discuss in greater detail in the next chapter, rather than relying on the institutions already set up in the larger community to answer their questions of fact. They do this not formally, as we say, but informally, and often use individual leaders within the group as institutions, taking their pronouncements as authoritative. This is part of the distorted social order that comes as a result of the operation of group bias. And these informal institutions within groups are generally not terribly well-prepared to undertake

the tasks with which they're entrusted. As a result, the group, as a subset of the larger community at issue, appeals in vain to the institution of the group.

The other notable problem that results is the corruption of institutions. They are part of the social order, created by communities to address problems within the community or challenges the community is facing. But the developmental bias of community means, among other things, that groups vie to co-opt those institutions and make them part of the group's institutions. This is the jeopardy of factionalism we quoted from Madison in *Federalist* No. 10 above, and maintaining their independence from competing groups is a critical piece of the operation of legitimate institutions. But it's rare that a community's institutions are wholly successful in this endeavor. When that happens, the institutions lose legitimacy, feeding the drive to create informal (and sometimes formal) institutions within each group.



This creates the shorter cycle of decline. Lonergan says little about the shorter cycle, but it arises when a dominant group neglects certain ideas that repressed groups later take up as their standard. The shorter cycle is corrected when the dominant group is

forced to take these ideas into account (think the 1960s civil rights movement) or is dissolved as dominant (think the US Civil War). In the meantime, the shorter cycle is characterized by a series of mini-crises, each of which can be resolved, at least in the short term, by appeals to common sense. This often means kicking a can down the road and letting some problems get worse while creating others, and society's *status quo* degrades a

little further every time—the hallmark of a common sense solution is that it works, but it rarely works perfectly and often doesn’t work all that well.

The shorter cycle repeats continuously, only rarely rising to the level of a cultural cataclysm, as in the 1960s and 1860s in the US. It doesn’t stop when the “grotesquely distorted [social] reality” is corrected; the correction merely creates a new starting point for the cycle.⁷¹⁷ An authentically operating community, then, will be always on watch for a bias in its course of development. Not even after a major correction of that course back to something closer to what should already have been can one rest. There is always another problem to be met, and so always another opportunity for this bias to manifest.

3.3 General Bias of Common Sense

Paired with the shorter cycle of decline coming out of the developmental bias of communities is the longer cycle of decline coming out of the interaction between that bias and another developmental bias, the general bias of common sense. The general bias skews development in two ways: it skews the development of institutions and it skews the development of the communal horizon of feelings. We will discuss each in turn.

Above, we said that a community operating authentically will refer most questions of fact to its institutions because, for various reasons, communities as separate from their institutions are actually remarkably ill-equipped to come to anything close to a virtually unconditioned judgment of fact. But communities often don’t recognize that. As we said, the list of communities operating authentically is, historically, arguably a null set. With respect to common sense, this is because communities tend to rely on their common sense

⁷¹⁷ Lonergan, *Insight*, 250

to decide questions of fact even in cases where there's something out of the ordinary that demands further attention.

“To err is human, and common sense is very human.”⁷¹⁸ Here, the error the community makes about common sense is to assume that it's omniscient. This is typified by a certain kind of intellectual laziness dressed up as a claim about the adequacy of other routes to answering questions. Common sense “has no theoretical inclinations” and accretes only “by the discovery of solutions that will work.”⁷¹⁹ Its focus is always on the practical, always on the concrete. It's great for telling us how to interact with our barista but terrible for telling us what conditions increase the probability of criminality. But it can make enough guesses well enough to hit the mark a lot of the time.⁷²⁰ The problems come from the rest of the time.

The trouble comes in that there are really a lot of questions of fact a community has to settle, and without institutions, the community has an exponentially harder time in settling them than an individual would. Part of the difficulty is that each individual member of the community has to settle the question of fact, and then the community has to come to a consensus about the answers. Institutions are established to speed this process and provide a framework of delegation. But they are never established whole cloth; rather,

⁷¹⁸ Lonergan, *Insight*, 250

⁷¹⁹ Lonergan, *Insight*, 201

⁷²⁰ This problem is illustrated by a joke my father (an actuary) is quite fond of: Three actuaries go hunting and spot a deer. The first shoots and misses ten feet to the front; the second shoots and misses ten feet to the rear. The third jumps up and shouts, “We got him!” And, on average, they did. It just happens that in the instance, the deer was still quite whole and hale and there were a couple more pertinent questions for that third actuary to have asked.

Because common sense “entertains no aspirations about reaching abstract and universal laws”, it operates in very much this same way. (*Insight* 251) It is concerned with what happens *on average*, what happens *most of the time*, and not necessarily with *why*. But its methodology is insufficient to the task of actually hitting that deer sometimes, and usually those times are critically important.

they are established in response to the needs the community has or perceives itself to have—not always the same thing. Such actual needs of the community will be met by institutions, but if not by formal institutions, then by informal institutions. We will say more about these in the next chapter.

This means that institutions are called into being and subsequently altered by the exigences of communities' developments, so they develop parallel to and complimentary with the community's common sense. Their role is interpreted in light of common sense, which is rather more immediate to most of us than the institutions in the community. When we over-read common sense's competence, we end up assigning to common sense a greater role than it ought to have, which is a problem, but parallel to that, we improperly reduce the role of institutions. If we assume that common sense is omniscient, whether or not we make that assumption explicit or even recognize that we're making that assumption, we will wonder why we should go to the expense, both in time and money, to have institutions consider questions of fact to which the answers are 'obvious'. As a result, we will diminish both the roles a given institution plays and, in so doing, the institution itself.

We said in the previous chapter that the general bias as it manifests on the level of the individual is, in part, the impossibility of fully considering everything we encounter or do in the way that we would like and perhaps ought to. The counter to this bias was a combination of the conversions, especially intellectual and affective, enabling us to engage in discernment about when the further questions are pertinent and when "good enough" is actually good enough. The intellectual laziness comes in the refusal to engage in that discernment, and this most often begins with the elites, from whom the rest of the community take their cue.

As a result, the institutions of the community are diminished as people begin to ask questions about why we spend time and money on certain things or certain parts of institutions. If common sense gives us the same answer as a more detailed analysis from the institution in the great majority of cases, why do we need the institution? We can just rely on common sense for that and notice when it's steering us wrong. Except, of course, that we generally don't notice that—we've given up the tool set we'd need in order to do so.

This can happen, for instance, when institutions become factionalized, when they surrender their independence or are co-opted by one side or another and lose legitimacy. When this happens, communities begin to behave in critical matters more and more as though they don't have institutions, and when the pronouncements of the remaining institutions disagree with the conclusions of common sense, the community begins to trust common sense over their institutions. This is the assumption of common sense's omnicompetence in action, even if not yet acknowledged, and this is the first way in which the general bias of common sense begins distorting the development of communities and institutions both as the community begins to repurpose or diminish existing institutions, subordinating them to the community's common sense, or to create new institutions, formal or informal, built around common sense as both the architect and guarantor of their processes. Even those institutions that remain independent begin to struggle to adapt to the common sense of the community on one hand and the various factional groups on the other. This challenge only becomes more acute when the older, established institutions are faced with newer, competing institutions with different sets of answers, institutions created by one group or the other to answer to their particularized interests.

As an example of this: The reader will be aware of the crashes of Lion Air flight 610 in October 2018 and Ethiopian Airlines flight 302 in March of 2019. Both flights were using a Boeing 737 MAX 8 jetliner, which was billed by Boeing as an upgrade of their existing 737 airframe such that pilots did not need additional training on how to handle this new plane—their existing training on other 737 model jets should be sufficient. What Boeing did not disclose was that in an effort to compete with Airbus, they had raised the angle of the fuselage slightly to accommodate larger engines. The change was slight but significant. The 737 MAX 8 risks stalling if the angle of the plane exceeds 10° while it climbs to cruising altitude. This changed the flight characteristics of the plane sufficiently to require retraining, which would have been a significant expense for any airline and something a comparable Airbus model did not require, putting Boeing at a significant competitive disadvantage.

To compensate for this without letting that be known, Boeing installed an automated system, called the Maneuvering Characteristics Augmentation System (MCAS), to push the angle of the nose down if the pilot (operating on his or her own common sense about how the plane *should* be behaving, which is to say, how older 737 models *would* behave) inadvertently raised it too far. Boeing did not even disclose to airlines that the system existed; information on the system was deliberately removed and excluded from the 737 MAX 8's flight manual, operating manual, and training manual.⁷²¹ Both crashes were caused by failures in sensors in the nose cone of the planes that told the MCAS system

⁷²¹ “Boeing 737 MAX Flight Control System: Observations, Findings, and Recommendations”, Joint Authorities Technical Review, https://www.faa.gov/news/media/attachments/Final_JATR_Submittal_to_FAA_Oct_2019.pdf, 11 October 2019, xi-xii, accessed 30 December 2019; hereafter cited as JTAR.

the angle was above 10° when in reality, the angle was far short of that.⁷²² As a result, in both cases, the planes' pilots engaged in a tug of war with their rear stabilizers and the MCAS system without knowing why they were suddenly and repeatedly being pointed at the ground.

Boeing was able to do this because their planes were not properly vetted at any point by the appropriate regulatory agencies, the institutions responsible for ascertaining whether a plane can fly safely. In the developing world, many countries, including Indonesia and Ethiopia, don't have the expertise to properly vet plans or inspect prototypes at the necessary level, and they also don't have the money to acquire and employ such expertise. Instead, they have had an explicit policy of relying on the determinations of the best-funded aviation regulators in the most litigious and safety-conscious country on the planet, at least by reputation, the United States. Common sense said that the FAA would catch any flaws and that to avoid lawsuits and hits to their share price, companies would be very interested in having the FAA go over things with a fine-toothed comb, something the FAA is assumed to be able to do and to actually engage in on a regular basis. As such, when the FAA signed off on the Boeing 737 MAX 8 as safe to fly, most of the world took the Americans' word for it.

The FAA, however, was not doing that. Instead, the FAA has for years had two relevant policies. First, they don't re-consider the entire craft every time the manufacturer

⁷²² This has been well-documented in reports from government agencies in Indonesia and Ethiopia with assistance from American and European officials. See, for instance, "Boeing 737 Max Lion Air crash cause by series of failures", BBC News, 25 October 2019, <https://www.bbc.com/news/business-50177788>, accessed 30 December 2019. Lion Air had indications of problems with this sensor, and the Indonesian government's report found that 31 pages of the plane's maintenance log had vanished into the ether. It seems likely that they would have disclosed an awareness of more serious problems and attempts to correct for them or a decision to ignore them.

wants to make an incremental set of changes to an existing model; instead, they consider the changes discretely and certify the entire package (or not).⁷²³ Second, they rely extensively on aircraft manufacturers' own engineers to assess the safety of any changes made so as to minimize the time projects spend under regulatory review (already about 5 years on average) and the amount the federal government has to spend on that bureaucracy.⁷²⁴ Common sense dictated that Boeing and other aircraft manufacturers would be very interested to produce safe products to minimize their exposure to litigation and protect the company's share price, market capitalization, and market share—after all, airlines will be much more hesitant to buy planes from a manufacturer with a questionable safety record.

This arguably began with the deregulation of the airline industry in the US in the 1980s, but the emphasis on doing things more cheaply and achieving economies of bureaucratic scale meant that by the time the FAA was reviewing the 737 MAX 8 and 9 in 2017 and 2018, respectively, the FAA could not properly analyze what Boeing's engineers were telling them. As a result of the crashes, the FAA commissioned a review of their certification process by experts from the US, the EU, Indonesia, and six other countries. When they released their report in October 2019, they found that the FAA's process for reviewing incremental changes "was effective for addressing discrete changes [but] did not adequately address cumulative effects, system integration, and human factors issues. The ... process allows the applicant to only address in a limited way changed aspects (and areas

⁷²³ JTAR, iii-iv

⁷²⁴ JTAR, vii

affected by the change) and does not require analysis of all interactions at the aircraft level.”⁷²⁵

Additionally, what Boeing’s engineers had told the FAA about the MCAS system was both “extensive and fragmented” and in several areas was not updated as the design for the MCAS system evolved, including updates to the system safety assessment (Is this safe overall?), functional hazard assessment (What could go wrong and under what conditions?), and “potential crew workload effects resulting from MCAS design changes”.⁷²⁶ Because the FAA had “delegated a high percentage of approvals and findings of compliance to” Boeing, they were in a more limited oversight role, “had inadequate awareness of the MCAS function which, coupled with limited involvement, resulted in an inability of the FAA to provide an independent assessment of the adequacy of the Boeing proposed certification activities associated with MCAS.”⁷²⁷ The review also found that the FAA lacks the ability to robustly consider human factors and human/systems integration as part of its certification process.⁷²⁸ And Boeing’s own analysis of the MCAS system as documented was itself quite problematic: “The MCAS design was based on data, architecture, and assumptions that were reused from a previous aircraft configuration without sufficient detailed aircraft-level evaluation of the appropriateness of such reuse, and without additional safety margins and features to address conditions, omissions, or errors not foreseen in the analyses.”⁷²⁹

⁷²⁵ JTAR, iv

⁷²⁶ JTAR, viii, vi

⁷²⁷ JTAR, vii

⁷²⁸ JTAR, ix

⁷²⁹ JTAR, viii

All of this was possible because the community, both internationally and in the United States, concluded that saving money was important and that the institutions did not need to conduct in-depth independent holistic safety analyses on new aircraft designs, driving the institutions to focus on incremental changes without considering the holistic impact of incremental design changes. Previous assumptions could be “good enough”, such that many aspects of the safety certification of all existing Boeing 737 models remain governed by the regulations in force in 1967, when the Boeing 737-100 was originally introduced, because subsequent 737 models have been variations on a theme. The community, by restricting the availability of funds to its institutions on the basis of ‘common sense cuts’, forced the FAA, as an institution, to rely on common sense instead of employing dynamic systems theory to evaluate the impact of each change to the total performance of the plane.

We should clarify here that we are not claiming that most institutions are models of efficiency (quite the opposite, actually), so the common sense claims about bloated bureaucracies do actually have a basis in fact. But we will address this in the next chapter when we take up the question of the authentic operation of institutions and the biases that may impact them.

We said at the opening of this discussion that the general bias of common sense distorts communal development in two ways, and the example we’ve just given begins to touch on the second as well. The general bias leads to a focus on systems efficiency and particulars because this is what common sense actually does well. Assuming common sense’s omnicompetence closes or begins to close our communal horizon of knowing to things not immediately impacting either, and this means that questions of value considered

live for the community will tend to focus on those things as well. This focuses the communal horizon of feelings at the levels of vital and social values, so that a community's operative scale of values often puts those ahead of cultural, personal, and religious values.

Remember that cultural values condition social values by considering what kinds of systems will be allowable. When there is no way to sustain the entire community in the way we all might prefer given available resources, cultural values dictate how limited resources will be divided for the good of the rest of the community or who will bear the burden of a change in social structures and systems. "Personal value is the person in his self-transcendence, as loving and being loved, as originator of values in himself and in his milieu, as an inspiration and invitation to others to do likewise", and this orders cultural value by emphasizing that the choices of system should aid the development of each individual in this direction.⁷³⁰ Religious values are the heart of the matter and might be thought of as the personal value of God.

The problem is that common sense will consider as primary vital values, which is to say, survival. Remember, we said in the previous chapter that the affective component of the general bias of common sense is the need to survive and satisfy my desires for particular goods. At the level of the community, common sense will consider as primary the survival of the community and the distribution of particular goods to satisfy particular desires, even if this means the loss of some small number of individuals. This adds social values to vital values as primary considerations for common sense.

The emphasis, then, is on systems efficiency. But common sense, because it is blind to cultural values, lacks the constraints cultural values would impose. "In the limit,

⁷³⁰ Lonergan, *Method in Theology*, 33

culture ceases to be an independent factor that passes a detached yet effective judgment upon capital formation and technology, upon economy and polity.”⁷³¹ The result, then, is that common sense will push communities to demand efficiency of institutions without considering how that efficiency will be achieved, without setting clear limits on it, and, as we’ll discuss in the next chapter, the values guiding existing institutions get skewed and new institutions the community creates either have a strongly reduced emphasis on cultural value constraints (social values having been placed above them) or lack cultural value considerations altogether. The secondary result of this is that personal values are also not taken into account insofar as they directly condition cultural values but often condition social values only indirectly, through cultural values.

This is, in large measure, what happened with the FAA and Boeing. As we said, the federal government has been under pressure to economize where possible at various points in the last several decades, and this has led to burden shifting in many instances. In the FAA’s case, the cultural values about who should bear which burdens have been de-emphasized but not entirely removed—Americans do still regard the FAA’s core value orientation as ensuring the *safe* and efficient administration of air travel in the United States, so burdens can’t be put on passengers in ways that would jeopardize their lives.

⁷³¹ Lonergan, *Insight*, 262. We should point out that this is a somewhat different use of the word “culture” than we have been employing to this point. In later writings, Lonergan defines culture “in the anthropological sense [as] the current effective totality of immanently produced and symbolically communicated contents of imagination, emotion, and sentiment; of inquiry, insight, and conception; of reflection, judgment, and valuation; of decision and implementation.” (*Phenomenology and Logic*, 302) Later still, the empirical notion of culture “is the set of meanings and values that informs a way of life”, and “the function of culture [is] to discover, express, validate, criticize, correct, develop, improve such meaning and value.” (*Method in Theology*, 3, 33)

This is different insofar as here, we are talking about the cultural level on the scale of values. That does (or should) exercise a certain level of control over the available possibilities for realizing social and vital values. But Lonergan’s other meaning from his later work considers culture as, in many respects, the background against which action is taken by individuals and communities. While it does provide a check on action, that check is usually passive and prescriptive—“just the way we do things.”

Boeing is another institution, just corporate rather than governmental, and it has a different set of value orientations than does the FAA—that is part of why the regulatory agency exists. Boeing is there to make an attractive product, sell it for as much of a profit as possible, and pass on those profits to their shareholders both with respect to share price and with respect to dividends. They have a legally enforceable fiduciary responsibility to do just that and can be taken to court by shareholders if they act in a way openly contrary to those responsibilities, *including* by acting in ways that expand their existing regulatory burden with respect to time or expense, especially if that also means making their product more expensive to operate. Cultural values exercise control only externally insofar as they are made part of the laws and regulations governing available business models with appropriate and sufficient enforcement mechanisms. But because of that fiduciary responsibility, the law here places its emphasis on the value of profit, not on cultural values constraining the pursuit of profit. The motto of the corporation in such a circumstance must be “efficiency *uber alles*”, and that leads to errors in judgment like Boeing trying to pass off significant changes to the airframe and compensatory changes to flight control systems as just variations on an already-approved theme.

In Boeing’s case, this enforced efficiency motive led their engineers to make the same sorts of common sense assumptions the FAA oversight team made about the impact of changes: the impact is negligible, previous certifications are good enough, and we can include a new automated system to correct for any errors where the impact is non-negligible. As a result, they missed the butterfly effect of the changes to the airframe and do not seem to have appropriately investigated what might happen if the MCAS system died or glitched during flight. Part of this was the deliberate refusal to inform customers

and pilots about the new MCAS system, what it was responsible for, and how to deal with a glitch or failure in any part of the system. Boeing thus encouraged their staff to act in common sense ways in “disregard of larger issues and indifference to long-term results.”⁷³²

This led to Boeing having personnel in compromised and difficult positions—they were at once trying to act as regulators and employees of Boeing, a company with a different set of priorities than the FAA. The review found “signs of undue pressure on [Boeing employees] performing delegated [regulatory] functions, which may be attributed to conflicting priorities and an environment that does not support FAA requirements.”⁷³³ As a result, they did not do either job as well as they might have and were, instead, the very definition of ‘compromised’. Their personal value (i.e., their own personal integrity) was not respected in this process in large measure because the social value of getting the plane approved quickly and with a minimum of muss and fuss, a value embraced more by Boeing than by the FAA but not absent from the calculus of either.

The result of this emphasis on an efficient approval process was changes that were not properly vetted and, according to the review, could not be properly vetted, two airplane crashes, and 346 deaths. Because the general bias of common sense twisted the value horizon of the community in such a way that emphasis was placed on efficiency and profit with lip service to safety, the value orientations of the relevant institutions shifted as well. This, we should emphasize, was not an operative bias, though the individual iteration of the general bias was also operative here with respect to individuals at Boeing and the FAA trying to fulfill their roles without the necessary resources. This was a developmental bias,

⁷³² Lonergan, *Insight*, 251

⁷³³ JTAR, 28

one that remains in American culture and continues to adduce moral hazards like the one of which Boeing and the FAA ran afoul here.

3.4 Bias and the Cycles of Decline

We noted above that an operative group bias has among its effects a developmental bias of communities, which issues forth in the shorter cycle of decline. This joins with the developmental bias that is the general bias of common sense to create the longer cycle of decline. We said above that the shorter cycle of decline arises because group bias blinds us to questions and answers not immediately relevant to a given group, where relevance is determined by our affective orientation to that group. As a result, practical insights are divided between those that conform to our operative affective orientation and those that do not. We each advocate only for those conforming to our operative affective orientations and only those conforming with the operative affective orientations of the dominant group are put into effect.

The shorter cycle of decline is the result of the twisted developmental path the community takes because of group bias, and it's corrected when the dominant group is forced to take neglected practical insights into account and possibly implement some of them. It only rarely results in cultural cataclysm, trending more towards a constant series of mini-crises resolved by common sense solution. But the common sense corrections are rarely perfect, and this generates the longer cycle of decline. General bias, as a failure to appreciate that even perfectly developed common sense is not omniscient, results in a failure to develop common sense as subsidiary to "a human science that is concerned...with

directing” human history.⁷³⁴ Common sense is concerned with fixing the immediate problems caused by group bias, but it does so by seeking the most expedient solution that won’t create new and significant near-term difficulties—which, coincidentally, is often not the best solution for preventing new problems in the medium- and long-term.

The longer cycle of decline happens, then, because common sense can’t implement fixes “that suppose a long view or...involve the solution of intricate and disputed issues.”⁷³⁵ It can’t prevent the shorter cycle, in other words, because that would require resolving the differences between groups, and the best common sense can do is ease the tensions. So when a common sense solution is employed to fix the shorter cycle, the can is kicked down the road and society’s *status quo* degrades just a little further.

The outworkings of the shorter and longer cycles of decline eventually require a re-imagining of the situation and a reconstruction of society’s institutions to reflect the needs of the degraded reality. Because the neglected ideas of the dominant group are taken up by the repressed groups, nothing’s left by the wayside in the shorter cycle and it corrects itself (mostly). The longer cycle also provides solutions, but “it does so only by confronting [us] with the alternative of adopting a higher viewpoint or perishing.”⁷³⁶ Every repetition of the shorter cycle degrades the intelligibility of the community until community breaks down and the shorter cycle creates a cultural cataclysm. This happened at the Revolution, at the Civil War, after WWII with the end of empire, during the 1960s civil rights movement, and may be happening again today. In each situation, it became

⁷³⁴ Lonergan, *Insight*, 253

⁷³⁵ Lonergan, *Insight*, 253

⁷³⁶ Lonergan, *Insight*, 260

clear that we could not go on as we were, that we had to be able to think about the world in a new way. And so we did.

The full solution of the longer cycle of decline is behavior at the level of the individual, communities, and institutions in accordance with Lonergan's transcendental precepts (be attentive, be intelligent, be reasonable, be responsible), and that's tough to achieve. The outcome of this will be progress; the outcome of its opposite (inattentiveness, obtuseness, unreasonableness, and irresponsibility) will be decline.

There is never only one shorter cycle in motion, and in our day, our single biggest challenge is that there seem to be more shorter cycles in play than once there were. As our society has become progressively more differentiated with respect to identity, and so splintered into ever more groups vying for power and influence, it has become far more difficult for common sense to suggest solutions that won't create new and significant near-term difficulties. We call this complication 'intersectionality'. Intersectionality's core claim is that membership in multiple oppressed groups multiplies discrimination and oppression such that the sum experience for each is qualitatively distinct from that of others more or less multiply oppressed. Someone who's black, female, and pansexual will thus experience her oppression differently from someone who's black, female, and asexual. As Audre Lorde said, "There is no such thing as a single-issue struggle because we do not live single-issue lives."⁷³⁷

This happened as an outworking of the 1960s civil rights movement, which was brought on by the failure of common sense to answer why African Americans and women

⁷³⁷ Audre Lorde, "Learning from the 60s", <https://www.blackpast.org/african-american-history/1982-audre-lorde-learning-60s/>, accessed 2 January 2020.

should continue to be oppressed when we fought wars to free others. The higher viewpoint adopted to answer this challenge was one from which the group bias could be recognized and fought. But after this crisis point, we retreated back to common sense to answer subsequent assertions of a group bias. In the first case, the solution was to recognize that there *was* a group bias at play, then root it out. That worked because the short cycle of decline arises partly because groups “become distinguished, not merely by social function, but also by social success”.⁷³⁸ This not only creates the problem, it also allows solutions to emerge. It’s essentially a balancing problem: progress creates balance and détente between the various groups; decline disrupts it. On a small number of axes, that balance can be achieved with relative ease.

In the subsequent cases, since nothing succeeds like success and common sense seeks known, practical solutions, our common sense has followed the same course, resulting in the radical differentiation of identity as ever more groups claimed distinction and oppression by a series of previously unrecognized or unconsidered group biases. But this complicates the matter as we are no longer straightforwardly of one group or another. The complications for Western societies increase exponentially as we continue to add new, distinct identity facets to our communal awareness: race, ethnicity, gender, sex, sexuality, religion, language, nationality, immigration status, wealth, family status, ability (vs. disability), mental health, occupation, age, educational attainment, and ideological commitments, for a lengthy but nonetheless partial list in no particular order. Some of these are visible, some not, and few are binary.

⁷³⁸ Lonergan, *Insight*, 249

So we're now trying for balance on not just one or two axes but an indeterminate and growing number. It's therefore become difficult to discern between progress and decline in any given societal change: How many underprivileged groups will be hurt? How populous are they? How does the population of a given group impact whether the move will be progress or decline? Who's right about what constitutes progress and what, decline? What constitutes balance anymore? Because the general bias orients our communal horizon of feeling and operative scale of values, the places this becomes most obvious are in fights over tax and healthcare policy (which are, coincidentally, so fraught because of the relative lack of agreement on cultural values). In the interests of space and sparing controversy, we will trust that the reader can find a plenitude of examples in those two areas. But this is the point at which Western society now finds itself within the longer cycle of decline.

4 *Conversion*

As with the individual biases, the solution the communal biases is found in conversion, but this time a conversion of the community or the construction of a community of converted individuals. Conversion “is not so private as to be solitary. It can happen to many, and they can form a community to sustain one another in their self-transformation and to help one another in working out the implications and fulfilling the promise of their new life. Finally, what can become communal can become historical. It can pass from generation to generation.”⁷³⁹ We noted above that one function of the community is to push its members towards a certain operative scale of values, which will

⁷³⁹ Bernard Lonergan, *Early Works on Theological Method I*, ed. Robert Doran and Robert Croken (Toronto: University of Toronto Press, 2010), 452; hereafter cited as Lonergan, *EWTM I*.

help existing members of the community maintain their existing conversions and help new members to become converted in the relevant ways.

But neither the community nor the institutions it generates are subject to the full suite of conversions. The community is subject to intellectual, affective, and psychic conversion, while in the next chapter, we will consider the institution as subject to intellectual and affective conversions. Absent from both these lists is moral conversion, and our reason for that is simple: as we observed in Chapter 4, whether or not we owe each other reasons for our actions, we certainly do demand reasons of one another, and as we said above, both the intersubjective and political community push for value-reasons. Moral conversion for the individual, as we discussed it in Chapter 4, is the conversion from the satisfaction of particular desires to the realization of ever-greater values as the criterion for action. But the community, in demanding value-reasons for our actions, demonstrates that it is already operating on the paradigm of realizing values to which moral conversion would nominally move it. As such, a moral conversion of the kind described in Chapter 4 will be unnecessary for any community as we have understood the term above. Likewise, we will say in the next chapter that institutions are committed to the realization and maintenance of specific values as their organizing and orienting principles, so they too are already operating in the way moral conversion as we have understood it would have them do.

We will consider, then, what it means for a community to become intellectually converted, affectively converted, and psychically converted. As with the individual conversions, this will involve the community, or its dominant part, consciously turning away from something and towards something else in a way that is not permanent but can be reversed if sufficient care is not taken. And as with the individual, unless the decision

is conscious in this way, unless the community is being purposive rather than just stumbling into a new and better way of proceeding in a particular instance, the community cannot be said to have converted in Lonergan's sense.

4.1 *Intellectual Conversion*

In the previous chapter, we said that intellectual conversion turns from the paradigm of knowing as taking a look to the paradigm of knowing as the virtually unconditioned judgment of fact—this brings us into the world mediated by meaning. But this cannot be only an individual enterprise. “For the world mediated by meaning is a world known not by the sense experience of an individual but by the external and internal experience of a cultural community, and by the continuously checked and rechecked judgments of the community. Knowing, accordingly, is not just seeing; it is experiencing, understanding, judging, and believing.”⁷⁴⁰

The problem, as we said above, is that the community is very bad at knowing things. It has common sense, the checked and rechecked judgments of the community, and it develops that common sense to deal with new concrete problems as they occur. But the community really remains abysmal at actually knowing things—it instead makes assumptions and relies on answers that are ‘good enough’, and as we said above, an integral part of the general bias of common sense is that because that more often than not gets a good result, the community assumes that common sense is omniscient.

In discussing communal knowing in §2, we said that the problem is, in part, that the community has a difficult time paying anything like unified attention to a situation, so

⁷⁴⁰ Lonergan, *Method in Theology*, 224

that the phantasms presented for judgment as the formal objects of meaning are rather disjointed; there is great difficulty in coming to a unified set of conditions on a given judgment; and because we cannot each individually verify the evidence that would satisfy the conditions, we have to decide who we will believe in each case, and we have the greatest difficulty in doing that well. Correcting this means turning over the community's questions to the institutions set up to handle those things. In discussing the general bias of common sense, we noted that the community ignores all these things in its biased operation. This leads to several consequences, not all of which can be remedied at the intellectual level, but some of which can.

Intellectual conversion for the community is turning away from this reliance on common sense above all else and the accompanying insistence that common sense is omniscient. Part of what scares us, as communities, is the idea that we can't do everything or know everything ourselves, that we have to rely on Someone Else to handle certain things for us. In the present era, this comes uncomfortably close to outsourcing our jobs. Intellectual conversion means recognizing that making judgments of fact was never the job of the intersubjective community or the political community writ large in the first place. The fear blocking this conversion is the thought that we're surrendering power, but conversion is the recognition that the power was never the community's to start with—if the community was functioning properly, the authority to make most judgments of fact was always with the institutions.

But we said that conversion is an ongoing commitment turning away from something and turning to something else. This means, first and foremost, that communities need to be able to recognize when they're out of their depth, when they need to hand of

questions of fact to competent institutions. And the biggest challenge that comes out of that is the need for competent institutions, which we'll discuss in the next chapter. But for now, we'll say three things. First, communal intellectual conversion turns the community to appeal to trusted institutions to answer questions of fact rather than assuming answers and proceeding to judgments of value, decisions, and communal actions. Second, those trusted institutions must themselves be intellectually converted such that their operations are not structured by the picture-thinking bias, such that they push the individuals operating the institution to recognize a distinction between the experiential pattern of the already-out-there-now and the reality of what is occurring, and such that they help the individuals operating the institution assess that reality. Third, those trusted institutions must be operated by intellectually converted individuals who understand why intellectually converted institutions' operations are ordered in the way that they are, can follow through on those operations, and can maintain and update the operations of the institution as necessary to maintain the commitment to institutional intellectual conversion.

The community must be making this commitment consciously. That means that each person must evaluate for themselves whether most people have the necessary expertise to evaluate a question of fact, and if not, which more specialized community does. The broader community must, in other words, decide who to believe, and the question will usually be framed in just such terms. This means, among other things, that the community will need to make such determinations with respect to a wide variety of fields. Intellectual conversion is demonstrated in the dominant segment of the community asking themselves as their first question when encountering a new kind of problem or inquiry whether or not

most people are competent to answer a given kind of question of fact and, when the answer is “no”, who the governing authority ought to be.

But, as we said, communities must have competent institutions to whom to refer their questions, and intellectual conversion does not mean a blind trust in institutions that nominally have competence in a given area. Sometimes, institutions that *should* be able to answer questions of fact of a given kind are not actually able to for whatever reason. In some cases, this may be because the institution has not been appropriately resourced for the task entrusted to it, as we saw above with the FAA’s failure to properly evaluate the impact of the MCAS system on the overall performance of the Boeing 737 MAX 8 and 9 and the knowledge base necessary to fly those planes. In other cases, the institutions may have become corrupted, as we saw in Chapter 1 with the Roman Republic’s rampant bribery problem in the 1st century BC and in Chapter 2 with the problem of indulgences. In still other cases, the institution may simply not recognize its own limits and begin offering pronouncements on questions of fact outside its purview and competence, a case we’ll discuss in the next chapter. And in still further cases, the questions of fact posed may be of kinds for which the community has not previously set up institutions with appropriate competences, or the institutions which the community has tasked to answer them have required changes to their structure in order to do so and have resisted making those changes, another instance we’ll discuss in the next chapter as part of the biases of tradition and inertia.

When available institutions are insufficient or untrustworthy, the community must be able to recognize that and take the appropriate action. This is part of intellectual conversion for the community. But what it means for a given institution to be insufficient

or untrustworthy will change from case to case, as we've just outlined, and what steps the community will need to take to correct a given institutional deficiency will vary with the particulars of the question of fact being posed, the particulars of the institutional deficiency, and the particular resources available within the community, so we will not opine on that question further here.

We said, in discussing the general bias of common sense, that it distorts the development of the community in two ways: with respect to its institutions and with respect to its horizon of feelings. Neither is fully corrected by the intellectual conversion of the community. Why this is should be clear in the case of the horizon of feelings, but perhaps not in the case of the institutions called forth by the systematizing exigence communities experience. These institutions are the outworking of practical intelligence, but as we have mentioned already and will discuss further in the next chapter, institutions are committed to realizing and maintaining a value or a set thereof. Particularly with respect to formal institutions, the community will create the institution it *thinks* it needs, which is not necessarily the institution actually needed. The institution the community thinks it needs will be constructed around a value judgment the community makes concerning the value the institution ought to realize or maintain, which will itself be informed, conditioned, and structured by the community's horizon of feelings, distorted as it is by the group, developmental, and general biases.

Aquinas captured the situation well in his discussion of the effects of law. He asked “whether an effect of law is to make men good”.⁷⁴¹ And his answer, typically, is yes, but

⁷⁴¹ Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province (Claremont: Coyote Canyon Press, 2010), I-II.92.1. Kindle edition. Hereafter cited as Aquinas, *Summa Theologica*.

good what? Making people “good simply” is not the same as making them good *at something* specific, and all too often, law is aimed at things that are not simply good. “In this way good is found even in things that are bad of themselves: thus a man is called a good robber, because he works in a way that is adapted to his end.”⁷⁴² Aquinas’ principle can be adapted to the way the developmental biases have skewed institutions: We can make competent institutions; the question is, competent for what? Is the value orientation we have given a particular institution the one we ought to have given it, or just the one we *think* we ought to have given it? This is not a question that intellectual conversion alone will allow a community to answer. Intellectual conversion is important and indispensable, but affective conversion of the community is required to fully correct the communal biases.

4.2 Affective Conversion

As with the individual, affective conversion in the community is a reconstruction of the operative scale of values of the community. Much as did the individual, the community faces the problem that even if the decision-making criteria are values rather than the particular satisfactions of particular desires, decision-making is still relative to the community’s operative scale of value preference rather than the normative scale. Each community operates with an implicit and usually unconsidered scale of value preference that structures and is structured by its shared horizons of feelings and so conditions the ways we feel values as a community.

But the operative scales of values do not demonstrate such diversity among different communities as among different individuals, particularly when we reach the scale

⁷⁴² Aquinas, *Summa Theologica*, I-II.92.1, resp.

of political communities. Much of this is down to the law of large numbers: individuals organized into communities will have a distribution of value scales which, over time, will tend to bunch at the middle due to the pressures of the community on individual scales we described above. At the convergence of this middle is the generally operative communal scale of values, and while the extremes of individual scales of values within a community may be radically different, the medians will not be nearly so far distributed.

But another major factor is the way the community's horizons of knowing and feeling is structured by common sense and its general, developmental bias. As we said, the general bias emphasizes vital and social values over cultural, personal, and religious, and we have explored some of the consequences of this. Communities will tend to have their horizons of feeling structured relatively similarly in this respect, though the way this plays out will vary with each community's different histories and situations. Appeals to the stability of the social order as reasons to do or not do a given thing are always appeals to social values, even if dressed up as cultural values and even if distorted, and these appeals see remarkably broad cross-cultural use.

Affective conversion is the realization by the community that there are higher values that should be ordering the existing value structure and are, as yet, largely ignored. This plays out differently in different cultures. In communities that control behavior by fear of injury and death, similar to what Hobbes described, this is the realization that there are more efficient ways to structure behavioral regulation.⁷⁴³ In communities operating on the guilt/innocence paradigm that grows from that, this is the realization that we lack a

⁷⁴³ Michel Foucault describes this transition well in his book *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, New York: Knopf Doubleday Publishing Group, 2012.

consistent, coherent, or generally acceptable rubric for who should bear which burdens for the good of society. In communities operating with a strong honor/shame dynamic (one of several possible outgrowths of this second realization), this is the realization that available schemes of communal burden-sharing are not all created equal and can, in many cases, do grave damage to the people they ought to be protecting and inhibit the full development of persons which ought instead to be pursued and nurtured. In communities that structure themselves around the recognition of the dignity of each individual human person, this is the realization that human dignity is not *sui generis* but has a source.

Once such a realization is achieved, the community is faced with a choice: it can affirm the higher value and commit to the difficult work of shifting its systems and reorienting its institutions to pursue a different kind of value than had been pursued previously, or it can ignore the existence of the higher values and continue on as it was before. To be clear, affirming the higher value does not mean abandoning those below it; quite the contrary. Affirming the higher value leads to a re-ordering of the value structure and so will present novel ways of realizing those values (and in some cases, they will be now recognized as disvalues). But they do not cease to be worthwhile or worth pursuing just because they are no longer the highest value (or quite so close to it, as the case may be). In some cases, a third option is also available: backsliding to emphasize a lower level of value than previously. This last usually happens only when a community has gone through a crisis to which the existing communal value commitments have ruled out certain effective solutions without supplying other effective solutions.

And this points us to a further feature of communal affective conversion: it usually requires a cultural cataclysm to make enough people sufficiently open to the change to

actually effect the conversion. Communities build up momentum over time, and their structures and institutions are developed to preserve and propagate their scales of values. But “when survival requires a system that does not exist, then the need for creating is manifest.”⁷⁴⁴ The necessary cataclysm has to show those structures to be significantly flawed in some way and unable to be corrected within the existing communal horizon of feelings. We mentioned above the Civil War and the civil rights movement as such moments of cataclysm. To this we could add the transition of Rome from Republic to Empire and the advent of majesty as a legitimating force, the beginning of the Protestant Reformation and the distribution of majesty, the French, Bolshevik, and Chinese Communist Revolutions, the lapse of the monarchic paradigm in Europe after the First World War, and the death camps of the Second World War that led to the abrogation of the Westphalian world order at the Nuremberg trials. Each of these have been inflection points of communal affective conversion, and we can correlate them well to shifts in the meaning of legitimacy within each culture.

But not all such shifts result in a change in legitimation schemes. What all the above instances have in common is that they shifted the value by which their communities structure their horizons of feelings from one level to another, e.g. cultural to social and religious in Rome’s transition to Empire, religious to cultural at the end of the medieval epoch, cultural to personal after the Second World War, etc. I will go so far as to say that this is a necessary condition for changing the legitimation scheme insofar as each

⁷⁴⁴ Bernard Lonergan, “Healing and Creating in History”, in *A Third Collection*, ed. Robert Doran and John Damosky, 2nd ed. (Toronto: University of Toronto Press, 2017), 97; hereafter cited as Lonergan, “Healing and Creating in History”. He specifically credits Arnold Toynbee for pointing to this as the challenge-and-response dynamic of history in his *Study of History*, vol. 3: *The Growth of Civilizations* (New York: Oxford University Press, 1934).

legitimation scheme is dictated by the kind of values being realized by a legitimate ruler. But I say this with two caveats.

First, communal affective conversion from one level of the scale of values to another is not a sufficient condition for a change in legitimation. We saw an instance of this at the beginning of Chapter 2. Diocletian re-emphasized the role of religion in both personal and public life—he attributed Rome’s extreme difficulties during the 3rd century AD to its remarkably lax approach to serving the gods who protected Rome and ensured its success, and he sought to correct that. The problem, as he saw it, was that previous emperors had not had divine approbation even when they did have military success and were personally virtuous because they had not placed sufficient emphasis on the communal service of Rome’s patron gods. What made Diocletian legitimate was that he was able to restore the social order in a way emphasizing obedience to the will of the gods. And because he made things better at the social level, the people followed him in recommitting at the religious level. The conversion here was from an emphasis on social values, on the perceived personal virtue and demonstrated military prowess, to a new understanding of the Roman gods and their role in Roman life. The majesty Diocletian’s predecessors had held for a century was a withered thing carrying on mostly on inertia because they had emphasized social values over religious values. But majesty remained the legitimation scheme, and even Diocletian’s predecessors tried to present themselves to the *nobiles* and the people as men in the mold of Augustine, Trajan, and Marcus Aurelius. Diocletian, in his re-emphasis of religious values, did effect an affective conversion in Rome, but the nature of his claim to legitimacy was the same as that of his predecessors. His was just remarkably more credible.

Second, affective conversion means replacing the prime value, but that does not necessarily mean moving from one level of value to another. Communities can also have an affective conversion from one prime value to another within the same level in the scale of values. Constantine converted the Empire from Diocletian's emphasis on serving the Roman pantheon to Christianity. This was a greater shift in religious values than Diocletian had effected, but still a shift from one religious value to another. As we emphasized in Chapter 2, this was a major part of why he did not change the basic legitimation scheme of majesty that had been in force since Augustine, even if he did change the conditions on who could be said to have majesty.

The example of Diocletian serves to emphasize another point: affective conversion no less than intellectual conversion requires a sustained commitment, and backsliding is possible. In communities, because of the developmental biases at work, the natural resting point is common sense's emphasis on social values. What has been achieved can be lost, and when it is lost, it is usually lost in this way, absent countervailing factors. Emperors in the 3rd century AD were much more concerned with the economic and social order of the Empire than its religious observance. In tying these things together, Diocletian doesn't represent a shift in legitimation, but he does emphasize the slippage of his predecessors from the religious values he sought to re-emphasize to the social values of the functioning of the Empire.

But where in the individual, the defense against backsliding is habituation, in the community, the defense against backsliding on affective conversion is institutions. The role of institutions here is to reinforce the existing value commitments of the community and enculturate those value commitments in new generations, and the two form a feedback

loop. Any affective conversion in the community must be mirrored by an affective conversion in the community's institutions or that affective conversion will be comparatively short-lived—a decade or two is not actually that long a time in the life of most communities of size. Without competent institutions to transmit the existing value commitments to new generations, a community's affective conversion will prove unsustainable in the long run.

One further thing the above examples emphasize: it is unusual for an affective conversion to shift the prime value *up* the normative scale of values by more than one level. Many of those examples are declines, actually, and of those that are not, only Rome's shift from the cultural values of the Republic to the religious values of the Empire went up more than one level. The progression, when progress occurs, is more usually up one level at a time along the lines we gave above. And as with the individual, affective perversion is also possible. These shifts do not tend to occur more than once per generation either way, meaning that one championing a progressive affective conversion within one's community can often be quite frustrated by the glacial pace of change.

Even so, affective conversion, when it elevates the community's prime value from a lower level to a higher, is the final answer to the general bias of common sense and some parts of the group bias. It answers general bias when it elevates the prime value of the community above the level of social values. “[U]nless common sense can learn to overcome its bias by acknowledging and submitting to a higher principle, unless common sense can be taught to resist its perpetual temptation to adopt the easy, obvious, practical compromise, then one must expect the succession of ever less comprehensive viewpoints,

and in the limit the destruction of all that has been achieved.”⁷⁴⁵ Herein lies the possibility of hope for the reversal of the longer cycle of decline: affective conversion can supply that higher principle and engender the higher viewpoint. Without significant institutional support, this conversion is not stable, as we will discuss in the next chapter.

The affective conversion of the community also begins to undo the group bias in many cases. As we said, group bias has four available affective components, and each group within the community is operating on at least one with respect to every group within the community. But it is often the case that the problems of group bias are rooted in an emphasis on a value lower in the normative scale. When that is true, affective conversion can provide the group a new viewpoint from which their previous affective bias no longer makes sense. This is particularly true of an affective conversion from social or cultural to personal or religious values within a given group.

4.3 *Psychic Conversion*

But more often, this isn't the problem. We mentioned the Civil War and the civil rights movement as moments where the shorter cycle of decline was reversed and the developmental bias of the began to be undone. But the group biases at issue in each case, at least with respect to the white slave holders in the 1860 and the white (and black) supremacists in the 1960s, didn't result from a lower value in the normative scale having been set as a prime value for their sub-community. Rather, particularly for the white slaveholders, there was a basic question of fact that had been answered incorrectly: are black people human? When the question was referred to institutions, the institutions were

⁷⁴⁵ Lonergan, *Insight*, 259

incompetent to answer or otherwise corrupted to give the answer the white slave owner wanted to hear. Hitler took this to an extreme with his pseudoscience programs trying to prove that Jews were a lesser form of life as a justification for his treatment of them, up to and including his extermination program. Because the institutions gave erroneous answers to those questions of fact, because the construct that was the meaning-as-object of their formal act of meaning was erroneous in a serious way, an affective conversion could not have corrected the issue because no felt response to those erroneous constructs could disclose an actual value. Progress meant first returning to that basic question for intelligence and getting the answer right, and when the community has constructed its institutions so as to avoid the right answers to those questions for intelligence, neither intellectual nor affective conversion has the tools necessary to correct the problem.

Correcting such problems is instead the role of psychic conversion in the community. As the individual, no less does the community tell itself a story about itself, as we've discussed above. This is the narrative that structures the community's identity, and as we said in our discussion of group bias, this narrative can go badly wrong when, among other things, it tells each group why it's better (or worse) than others or discusses the problems of a given group. And as with the individual, the community has a censorship function to keep members from uncomfortable realizations and to keep those who do have those realizations from spreading them.

It may strike the reader as rather odd to be talking about the psychic conversion of a community inasmuch as psyches are individual. We have elected to preserve the language of psychic conversion for the sake of continuity with the individual conversions. We might also call this a *geistic* conversion, a conversion of the spirit of the community in

the sense that the *Zeitgeist* is the spirit of the times. This is really what's at issue in psychic conversion in the community: the spirit of the community needs to be reformed and recreated to become willing to have the communal realizations needed to correct group bias.

As with the individual, the function of psychic conversion is to flip its censorship function so that it encourages rather than represses the phantasms the community needs to reconsider its previous judgments of fact. But unlike the individual, the reverse of the censorship is a demand by some members of the group that others consider new things in new lights. When we discussed the dramatic bias of the individual, we said that the psychic censor operates at the threshold of consciousness and likened its function to that of the 'parts' in parts therapy, which posits that the unconscious can be treated as having many parts to it, each of which plays a different role in our psychic life. There are several common constructs about which roles are available to be played, but all versions assert that when they are not well balanced, the result is psychiatric difficulty of some description, even if it's not clinical.

We said that the psychic censor uses these different functions in its effort to both repress phantasms from coming to individual consciousness and justify that repression. In the community, these are no longer parts of the consciousness but individual members of the community, each fulfilling different roles of obstruction, diversion, active repression, and justification. Where in the individual, the goal was to bring the person to a place where the obstruction could be resolved and the needed phantasms could enter consciousness, in the community, the goal is to switch those roles to promote rather than obstruct, advert rather than divert, express rather than repress, and justify the new order rather than the old.

Multiple psychic conversions may be necessary insofar as the community is likely obstructing necessary realizations of several different varieties. It quickly becomes a question of whether an instance of psychic conversion has shifted the community to encourage all realizations and be open to all possibilities or whether the instance of conversion is more limited. And the answer is almost always that a more limited conversion has taken place and that a further psychic conversion is needed.

As with the individual, and indeed as with all conversions, psychic conversion in the community is not a one-and-done thing. It's a continuing commitment. But in the community, again, the commitment must be sustained across generations. It can take generations for the needed realizations to properly permeate the community. The continuing commitment to psychic conversion requires that the community continue pursuing questions of the relevant type, that the spirit of the community remain open to both the questions and their answers.

As with affective conversion in the community, this will require the participation of competent institutions which, because of their mutually reinforcing relationship with the operation of a community, fill the same role for the community as did habituation for the individual. The example that opened this section, that of white slave owners who had failed to notice that black people are *people*, demonstrates that not all the problems of group bias happen at the level of responsibility; many can occur at the level of intelligence. And when the intellectually converted community has been newly opened to questions of fact, it will set up new institutions or repurpose existing ones to begin answering those questions. In turn, those institutions will resist attempts by the community to backslide and become closed again to those questions—when an institution has been set up to do something and

has been operating in such a way as to actually do it, it's unusual for the institution to wish to stop doing that, and the institutions set up pursuant to a psychic conversion will resist attempts to dissolve and repurpose them on that basis if no others.

5 A Functional Triad

In conclusion, we note a couple of different things. First, we note that Lonergan's vision of the authentic community is no less utopian than was his vision of the authentic individual. Few communities will operate in the way we've outlined above, but as with the individual, this is not a reason not to try. If we are to improve not just as people but as communities of authentic individuals, we must have a standard by which to judge our progress, and Lonergan's thought is extremely helpful in that vein.

Second, the reader will have noticed the heavy interplay between communities and institutions. Communities create institutions to serve their needs and structure their interactions, then refine, redirect, or reconstruct those institutions as necessary, but then must also co-operate with those institutions to be themselves authentically operating. There are two substantial lacunae in the authentic operation of communities as we've outlined above: answering questions of fact and, in most instances, taking action. With the exception of the operative group bias, the biases of community occur when the community does not operate in tandem with its institutions in the way one might want. And every conversion the community must undertake requires institutions to sustain it.

Institutions mediate meaning to their communities and are motivated by the values of their communities, as we will discuss in detail in the next chapter. This means that they also play a large role in mediating meaning to the individual. Likewise, the community acquires its own value orientations from the tandem operation of the majority of its

members, be that operation authentic or unauthentic. So while the community has important authentic or unauthentic operations of its own, it is structured by its institutions and driven by its individual members. It forms an odd sort of half-way house between the two. In such a way, intersubjective and, later, political communities form the place where all roads meet. This is why the community can be the common carrier of meanings and values and the carrier of power, even if the source of power, cooperation, requires the structure provided by institutions.

This is why Lonergan said that “[a]uthenticity and unauthenticity are found in three different carriers: (1) in the community, (2) in the individuals that are authorities, and (3) in the individuals that are subject to authority”, and all three must be operating authentically together in order for power to become authority and so to become legitimate.⁷⁴⁶ Each conditions the others and is itself conditioned by the others.

So we turn our attention now to the third part of this functional triad: the institution.

⁷⁴⁶ Lonergan, “Dialectic of Authority”, 6

Chapter 6: Institutional Authenticity

We said at the beginning of Chapter 3 that legitimate authority relies on the authentic operation of individuals, communities, and institutions. Everything we have done to this point is to ask how power, especially the coercive power of governments, can be made legitimate through authenticity, and institutions are the capstone—the word of authority is vested in institutions, of which government is one kind. We needed to deal in Chapter 4 with authenticity in individuals both to understand authenticity in the setting in which Lonergan most commonly discussed it and because power is wielded by individuals in authority. We had to address communities in Chapter 5 because communities are the genesis and ground of institutions. We can now at last turn to authenticity in institutions. As we said a number of times in the last chapter, the authenticity of communities depends in many ways on their construction of and appropriate interaction with their institutions. Communities create for themselves various agencies vested with authority to make pronouncements about questions of fact and authority to govern the lives of those within the community and regulate how the community will interact with other communities.

But we are concerned with authority, not government as such, and not all those wielding authority are governments. “To a great extent the word of authority resides in the sum total of current institutions”, of which the government is only one kind.⁷⁴⁷ Therefore, while we will take governments as our point of greatest concern and may say some things applicable only to governments, our overall characterization of authenticity (and thereby, legitimation) should apply equally well to any authoritative institution, e.g. corporations, churches, or families.

As with Chapters 4 and 5, we will consider first the nature of an institution. Institutions, for Lonergan, will turn out to be organizational constructs ordered and oriented to values to which the sub-communities operating each institution commit themselves. The communities committing to them may be co-extensive with the community at large, as with the state, and institutions may in fact define the community’s limits in certain ways (as happens with, for instance, national borders and citizenship rolls controlled by governments). But far more often, the community committed to the values ordering the institution will be a subset of the larger community.

We will then consider the processes by which institutions bring about meanings and values, and how these can go wrong. We said in the last chapter that institutions have two primary roles in the process of operating in tandem with the entire community. Institutions are first responsible for issuing authoritative pronouncements in answer to questions of fact that the larger community is not competent to answer for itself; these we characterized as the constructs that come as the objects of formal acts of meaning and become proper answers, rather than probable answers, in full acts of meaning, judgments

⁷⁴⁷ Lonergan, “Dialectic of Authority”, 4

of fact. These constructs are the answers to questions of fact concerning both the situation at hand and available options for responding to it. Once the community has valued those constructs, a decision is made collaboratively between the community and the institution on which option to take, and the institution is charged with seeing it done—with maintaining an existing value or realizing a new value in a constitutive or effective act of meaning.

As with individuals and communities, these processes can go badly wrong, and the institution will present us with a novel articulation of bias. And as with individuals and communities, the correctives available will be conversions. But, because institutions are operated by sub-communities that put individuals into specific institutionally-defined social roles, these conversions will be rather more complicated than with either individuals or communities.

Once we have understood the nature of institutions, their authentic operation, how they can go wrong, and the conversions that correct those biased procedures, we will be in a position to talk in the Conclusion about how to evaluate legitimacy on Lonergan's account of authority as authenticity.

1 The Nature of Institutions

Though our concern has been to say what constitutes legitimate government for Lonergan, he never discussed that point directly, preferring instead to speak more broadly of institutions, of which government is one variety, so we must begin there. Institutions, especially governmental authority, are vested with authority. Lonergan's explicit concern

in “Dialectic of Authority” was to differentiate “between authority and authorities.”⁷⁴⁸ “Authority is legitimate power”, but Lonergan is conscious that the exercise of power in an institutional setting is not always legitimate; he is often at pains to say which way he is using the word ‘authority’.⁷⁴⁹ The *authority* residing in institutions makes those who hold office in those institutions ‘the *authorities*’. But it seems clear enough that much of what he says in “Dialectic of Authority” could apply equally as well to non-governmental institutions that are nonetheless authoritative in some respect—that is to say, they exercise power in coordinating a group to an end, both with respect to achieving that end and with respect to controlling in some measure the lives of those under authority within the group. This could include NGOs in certain contexts but can also include companies (employer/employee), classrooms (teacher/student). But Lonergan never presented a sustained analysis of institutions in the way he did for the individual or the community, so we will begin by offering one of our own.

In *Insight* (1957), institutions are explicitly *goods of order*. “On an elementary level, the good is the object of desire”, but a good of order, such as “the polity, the economy, the family as an institution”, is a “scheme of recurrence that supervenes upon the materials of desire and the efforts to meet them and, at the price of limited restrictions, through the fertility of intelligent control, secures an otherwise unattainable abundance of satisfactions.”⁷⁵⁰ These second tier goods are dynamic in two ways. First, they order the desires and aversions to be satisfied (and their satisfactions). Second, goods of order develop as new insights into the possibilities of order—despite or because of changes in

⁷⁴⁸ Lonergan, “Dialectic of Authority”, 5

⁷⁴⁹ Lonergan, “Dialectic of Authority”, 3

⁷⁵⁰ Lonergan, *Insight*, 619-20

the concrete situation—leading to the proposal and eventual execution of changes in the organizational structure of the institution, which changes the concrete situations and prompts new insights in a recursive cycle.

Two years later in 1959, in a series of lectures on education at Xavier University (published as *Topics in Education*), he expands on his statements in *Insight* about goods of order. He distinguishes first between natural goods of order (e.g. the hydrologic cycle) and human goods of order, then sets out four common features of all human goods of order. All human goods of order involve “a regular recurrence of particular goods, coordinated human operations, the triple condition of those coordinated human operations—habits, institutions, and material equipment—and finally, the personal status which results from the relations constituted by the cooperation.”⁷⁵¹ The regular recurrence of particular goods does not warrant further explanation here, but the other three do.

Coordinated human actions are what produce particular goods. That recurrence is possible only because multiple humans work together over a period of time. The coordination of their actions has three conditions: habits, institutions, and the material equipment/technology necessary both to the coordinating function of institutions and to the coordinated action itself. Habits are of three kinds here: “cognitive habits, volitional habits, and skills; not having to learn, not having to be persuaded, and not having to acquire

⁷⁵¹ Lonergan, *Topics* 35

There is, perhaps, a third kind of good of order, a hybrid good of order where humanity has co-opted a pre-existing natural good of order, as in farming. When this happens, it is possible to distinguish the underlying natural good of order and the human supervention on it, but neither is a sufficient condition to explain the hybrid good of order. It is no longer natural, but neither is it a purely human good of order in the way social institutions are. A good of order, at bottom, “works according to sets of probabilities”; considered in this light, humanity has intervened to adjust the probabilities in a natural good of order to make it more than it was. (Lonergan, *Topics*, 35)

the skill.”⁷⁵² Without these habits, if extensive time must be taken to teach, persuade, and train every time you need something done, effective coordinated human operation is impossible. An institution is a “mechanism set up for making decisions.”⁷⁵³ In doing so, institutions “facilitate the flow of coordinated operations”, and “through these institutions individuals are socialized”, inculcated with the necessary habits and taught the rules of action, which are the limited restrictions Lonergan mentioned in *Insight*.⁷⁵⁴ Any sustained coordination will lead organically to the creation of an institution if one was not created purposively at the outset, or that sustained coordination will not be sustained long.

“The final element in the good of order is personal status.”⁷⁵⁵ This personal status arises from the roles assigned to a person by and often within an institution because those roles put a person in a determinate set of relations with others (e.g. the relationship of the CEO to the chairman of the board, or the relationship of the customer service agent to the customer). Many of the most significant challenges to the orderly functioning of an institution arise when the roles or the relations between roles are indistinct or insufficiently defined. These roles contribute to the conditions that constitute the scope of a person’s effective (rather than essential) freedom.⁷⁵⁶ They thereby help inform who a person is—

⁷⁵² Lonergan, *Topics*, 35. The distinction between skills and cognitional habits is not clear within the lectures. Cognitional habits are observed when a person “does not have to learn,” “already knows,” and “can operate on his own.” (35) Skills are “habits of dexterity” observed “when a person does not have to learn how to do something.” (35) The similarity in language is striking. The obvious distinction to draw is between mind and body, but that doesn’t work here: Lonergan’s example of a skill is driving a car, at least as much a habit of the mind as of the body. I will hazard a guess that the distinction is founded in the difference between knowing what to do and why and knowing how to do it, but the language Lonergan employs here does not allow the question to be fully or properly determined.

⁷⁵³ Lonergan, *Topics*, 35-36

⁷⁵⁴ Lonergan, *Topics*, 36

⁷⁵⁵ Lonergan, *Topics*, 36

⁷⁵⁶ On the difference, see *Insight* 18.3.1

they help create the value of that person as an originator of values and condition the set of values he or she will be able to actualize or effectively choose within any given situation. This is true of all of us. We each have a role in at least one institution inasmuch as our lives are lived in rhythms of habit and ordered by cooperation with one another, and most of us participate in multiple institutions, be they formal or informal.

In *Topics*, the institution has become intelligibly distinguished from the good of order in general because the institution is involved in only the third element (conditioning the coordination of human operations) and the fourth element (the relations constituted by cooperation) of the good of order. It is the coordination of human action, a “mechanism set up for making decisions.”⁷⁵⁷ The remaining two pieces of the third element, the habits and the materiel, are themselves conditioned by institutions which determine which habits need to be instilled in whom and decide what materiel is necessary and how it is to be acquired. The fourth element is how we see ourselves and how others see us as a result of the roles we take within institutions. These roles help define our relationship with others in the institutions of which we are a part. Those relationships define our status within the institutions, and this personal status is what Lonergan recognizes as the final common aspect of the human goods of order.⁷⁵⁸

We have discussed goods of order in such detail not only to distinguish institutions as frameworks of cooperation from the goods of order they structure but because near the end of “Dialectic of Authority”, Lonergan notes that “[i]nquiry into the legitimacy of authority or authorities is complex, lengthy, tedious, and often inconclusive.”⁷⁵⁹ As a

⁷⁵⁷ Lonergan, *Topics*, 35-36

⁷⁵⁸ Lonergan, *Topics*, 36

⁷⁵⁹ Lonergan, “Dialectic of Authority”, 6

result, he suggests that one consider as a proxy the extant progress or decline of a given individual-communal-institutional matrix, the increasing cooperation of the community or the breakdown of that cooperation and community. The goods of order created and endorsed by authoritative institutions and the way people are conditioned and changed by the roles into which institutions place them will be critical to that consideration.

By 1963, Lonergan's thinking about institutions had shifted again, this time to explain how an institution can function as a condition of human cooperation. As we saw in the previous chapter, communities come in a number of different kinds but are constituted by their common meanings, and an institution is a special kind of community. In a lecture on "The Analogy of Meaning", he called institutions "communities of commitment" to common value, though he doesn't use the word 'value' here.⁷⁶⁰ But examples of institutions he gives (family, state, and church) are all tied to values as their objects of commitment (love, loyalty, God). "These commitments give meaning an objectivity that realizes the meaning, realizes the institution".⁷⁶¹ The commitment to value *is* the meaning that constitutes the institution, and the participation of individuals in that commitment is what reifies that meaning, that institution, as concrete. "To change those meanings is to change the reality" of any particular institution, to make it a different institution.⁷⁶² This commitment to common meaning is what allows for a common project and for the coordination of action in forwarding that project. In his lecture "Time and

⁷⁶⁰ Lonergan, "Analogy of Meaning", 202. We will discuss this further below in the section on Institutions and Values.

⁷⁶¹ Lonergan, "Analogy of Meaning", 202

⁷⁶² Lonergan, "Analogy of Meaning", 203

Meaning” from the previous year, he put things rather more bluntly: “To eliminate meaning is to eliminate all human institutions.”⁷⁶³

This line of thinking continues in a lecture given at Marquette University in 1965, “Dimensions of Meaning”.⁷⁶⁴ There, though, he states it rather more succinctly: Institutions like

family, the state, the law, the economy, are not fixed and immutable entities. They adapt to changing circumstance; they can be reconceived in the light of new ideas; they can be subjected to revolutionary change. Moreover...all such change is in its essence a change of meaning: a change of idea or concept, a change of judgment or evaluation, a change of the order or the request.⁷⁶⁵

Much of this lecture concerned the control of meaning and how meaning changes. Shifts in how meaning is controlled (and who controls it) “mark off the great epochs of human history.”⁷⁶⁶ The most recent shift, from the classical to the modern mediation of meaning, proliferated alternative understandings of previously settled meanings-as-objects. But where institutions of the classical era gave authoritative interpretations and controlled meaning, no final interpretive authority is left and meaning has now been set adrift: “judging and deciding are left to the individual, and he finds his plight desperate.”⁷⁶⁷ No authority can exclude space to disagree. Any institution is still constituted by meaning, but it can no longer control meaning as strongly or as consistently because its own

⁷⁶³ Lonergan, “Time and Meaning”, 104

⁷⁶⁴ Bernard Lonergan, “Dimensions of Meaning”, in *Collection*, 2nd ed., ed. Frederick E. Crowe (Toronto: University of Toronto Press, 1993), 232-45; hereafter cited as Lonergan, “Dimensions of Meaning”.

⁷⁶⁵ Lonergan, “Dimensions of Meaning”, 234

⁷⁶⁶ Lonergan, “Dimensions of Meaning”, 235

⁷⁶⁷ Lonergan, “Dimensions of Meaning”, 244

constitutive meaning is now subject to interpretation and critique, and so institutional authority is diminished (but not destroyed).⁷⁶⁸

Method in Theology (1972) refines and synthesizes Lonergan's thoughts on the function and constitution of the institution. Institutions are a product of meaning's constitutive function: "social institutions...have meanings as intrinsic components."⁷⁶⁹ Such institutions as the "family, the state, the law, the economy are not fixed and immutable entities. They adapt to changing circumstances; they can be reconceived in the light of new ideas; they can be subjected to revolutionary change. But all such change involves change of meaning..."⁷⁷⁰ As before, to change the constitutive meaning of an institution is to change that institution's reality. In the chapter on the human good, Lonergan says that "community develops its institutions to facilitate cooperation", and institutions "constitute the commonly understood and already accepted basis and mode of cooperation."⁷⁷¹ To change them is to change that common understanding and requires one to obtain fresh consent for the new common understanding, and that tends to happen slowly. These modes of cooperation define "a role to be fulfilled or a task to be performed" for each individual involved.⁷⁷² The institution is why individual operations coming together to produce recurrent particular goods (or evils) can be cooperation rather than a lengthy series of happy (or unhappy) accidents.

⁷⁶⁸ Lonergan, "Dimensions of Meaning", 243-44. This is, more or less, the genesis of the problem Habermas identified for us in Chapter 2.

⁷⁶⁹ Lonergan, *Method in Theology*, 76

⁷⁷⁰ Lonergan, *Method in Theology*, 76

⁷⁷¹ Lonergan, *Method in Theology*, 51, 48

⁷⁷² Lonergan, *Method in Theology*, 48

As with his discussion in *Topics*, in *Method* the good of order includes the institution as its condition and basis, and the institution conditions and facilitates the development of skills within those participating in it. The good of order in *Method* is a “recurrent manifold” of particular goods, the ordering of human “operations so that they are cooperations [which] ensure the recurrence of all effectively desired instances of the particular good”, and the alignment of desires and decisions “with the appropriate performance by cooperating individuals.”⁷⁷³ As in *Topics*, the institution in *Method* is a necessary condition for a good of order, but the good of order is more than the institutions that form its basis, a point on which he is now much more explicit: the good of order “has a basis in institutions but it is a product of much more”.⁷⁷⁴ The role of the institution in the good of order in *Method* is to structure cooperation, but it is not the cooperation itself. “To a notable extent their operating is cooperating. It follows some settled pattern, and this pattern is fixed by a role to be fulfilled or a task to be performed within an institutional frame-work. ... [Institutions] constitute the commonly understood and already accepted basis and mode of cooperation.”⁷⁷⁵ In *Method* as in *Topics*, then, the institution is the framework of the good of order, but not the good of order itself.

Moreover, and perhaps more importantly, where personal status was the fourth constituent element of the good of order in *Topics*, in *Method* it has been replaced by personal relations and is now related instead to terminal values.⁷⁷⁶ These personal

⁷⁷³ Lonergan, *Method in Theology*, 48-49

⁷⁷⁴ Lonergan, *Method in Theology*, 49

⁷⁷⁵ Lonergan, *Method in Theology*, 47

⁷⁷⁶ Lonergan, *Method in Theology*, 47, 49

relations, the manifestation of human intersubjectivity, “bind a community together, or divide it into factions, or tear it apart.”⁷⁷⁷ Personal relations are the matrix within which our liberty is exercised and therefore also a contributing factor to individual authenticity because these personal relations are constituted by institutions and condition the possibilities of choice and action for individuals. In fact, we might say as a first approximation that the authentic institution is one that regulates common understandings and judgments (common sense) so as to keep the community bound together and defines personal roles and tasks in such a way as to facilitate rather than obstruct authenticity in the individual. In doing so, among its other value commitments, the authentic institution pursues the terminal value of the individuals themselves as originators of value. Not every institution does this in the same way, but all institutions do this insofar as they are authentic.

But in *Method*, Lonergan also introduces two additional examples of the institution: the economy and the law, and this introduces two potential points of complication. As we saw with our consideration of Habermas in Chapter 2, law certainly stands as an intentionally constructed, codified, and expressed commitment to values. But it is not clear that the law in particular is readily defined as a community of commitment to value; we usually think of it as the set of regulations and expectations that are enforceable by communal power. But is the law, then, what is written or what is practiced? If the law is what is written, then whether there is a community or not, each code of law persists as an institution. If the law is what is practiced, then what is written is just a set of guidelines and the enforcement activity defines the law as it really exists, and when the community ceases to follow it, the law as an institution ceases to be. Lonergan is not entirely clear on

⁷⁷⁷ Lonergan, *Method in Theology*, 50

this point, but seems to lean towards the law being what is written: “The same constitutional and legal arrangements admit wide differences in political life and in the administration of justice.”⁷⁷⁸ The legal arrangements are what is written, but they allow for significant variances in how the law is practiced or implemented.

The economy stands as the opposite: economies are always concrete, but at a national level they are very rarely intentionally constructed or codified (and tend not to function as well when they are), and the only value to which economies consistently seem committed is the creation and maintenance of vital and social values within the community while reciprocally shaping and being guided by the community’s cultural values.⁷⁷⁹ Up to now, all the examples of institutions we’ve seen have been formal constructs built consciously as such, and the institution has itself been presented as a product of human intelligence. Economies are regulated by such formal institutions, minimally insofar as they are regulated by laws, but economies are the organic agglomeration of other subsidiary goods of order and so of the subsidiary institutions structuring those goods of order. This is less problematic than the question of the concreteness of the law, but it does require that we broaden our consideration of institutions somewhat to include those that are informal, not just those that are purpose-built.

In “Dialectic of Authority” (1974), he “employ[s] the word ‘institutions’ in its broadest sense. It is the product of use and wont. It is the sum of the ways of cooperating that are commonly understood and accepted.”⁷⁸⁰ As “Dialectic of Authority” has been our

⁷⁷⁸ Lonergan, *Method in Theology*, 48

⁷⁷⁹ In an authentically operating economy, it will also seek to create and maintain the personal values of those involved, but this is not always (or even often) the case.

⁷⁸⁰ Lonergan, “Dialectic of Authority”, 5

organizing guide since Chapter 3, and as the word of authority is vested in these institutions, this is the most important definition for us. But it also raises a new problem: previously, Lonergan's focus seems to have been on the intentionally built institutional structure, a formal institution, but this definition does not have that focus. This confronts us more directly with the challenge of informal and customary institutions, which we will address below in §1.2.

But before we do, we should summarize this overview of the development of Lonergan's thought on institutions in a single definition. An institution is a framework for ordering and coordinating collective human actions towards the realization or maintenance of a value as their end which becomes concrete when a community committed to the value to which the institution is ordered cooperates in the ways the institution dictates. It is not the good of order itself but it structures the good of order. It exists as a formal meaning-as-object even when not concretized by a community.

The good of order, then, is that collective human action, the actual cooperation in motion as structured by the institution. It exists as a value on the level of social values, creating and sustaining particular goods and individual outcomes at the levels of vital, cultural, and personal values. The good of order is the actual operation of the institutional sub-community according to the framework provided by the institution. If the institution is the schematic of the machine, the institutional sub-community is the machine itself and the good of order, it's operation. This is why, when Lonergan charts out the structure of the human good in *Method in Theology*, he does not place it as either an individual or a cooperating group but as an end with "a basis in institutions" that is nonetheless "the product of so much more, of all the skill and know-how, all the industry and

resourcefulness, all the ambition and fellow-feeling of a whole people, adapting to each change of circumstance, meeting each new emergency, struggling against every tendency to disorder.”⁷⁸¹ It is the operation of the cooperating group operating under the institutional framework, be that framework formal or informal. In what we say about authentic process below, then, we will often be talking not just about the institution but the good of order it engenders, though for simplicity’s sake, we will not often use the term.

1.1 Institutions and Values

But we must now address the caveat we gave above: Lonergan never talks about institutions as connected to values in any specific way. The closest he gets is in “Dialectic of Authority”: “As exercised within the world mediated by meaning and motivated by values, power resides in the word of authority. ... To a great extent the word of authority resides in the sum total of current institutions.”⁷⁸² This draws a connection between values as motivating the world in which power is exercised and institutions as holding that power, but the connection is implicit and tenuous at best and must be made explicit. We must, then, demonstrate some stronger connection between institutions and values such that commitment to values orders institutions. Institutions and values are connected in two different ways: values are the end to which the institution is ordered and values are the means selected to achieve that end. We will discuss each connection in turn.

⁷⁸¹ Lonergan, *Method in Theology*, 47, 49

⁷⁸² Lonergan, “Dialectic of Authority”, 4

1.1.1 Institutions Ordered to Values

As the framework of human cooperation, the institution orders human actions towards an end. That end will be the production of a set of goods, be they tangible particular goods like food or medicine, intangible particular goods like answers to pertinent questions the community has, or the regulation of subsidiary goods of order, as a government or a parent corporation might do. In all cases, though, these institutions order human actions towards formal objects of meaning with the goal of actualizing those meanings-as-objects, so that a thing that previously was not now comes to be, so that the full act of meaning, the act of judgment, will flip from false to true. Institutions exist, in other words, to enable effective acts of meaning that direct human actions to change some things through additional effective acts of meaning and ensure that other things stay the same through constitutive acts of meaning, as we discussed in Chapter 3. But no community is committed to the actualization of a meaning-as-object except insofar as the necessary effective act of meaning by which it will be actualized or the constitutive act of meaning by which it will be maintained is also an instrumental act of meaning intended to realize or maintain a certain value or set of values, so value is what the institution orders human actions towards.⁷⁸³

But the institution must first be brought into existence by the community. As we noted above, for Lonergan, “community develops its institutions to facilitate cooperation”.⁷⁸⁴ This, the community does by an effective act of meaning, often through

⁷⁸³ This is not to say that effective and instrumental acts of meaning are identical—there are certainly instrumental acts of meaning that are not effective acts of meaning, e.g. a hortatory speech intended to encourage people towards constitutive acts of meaning (which are themselves instrumental). But it is to say that all effective acts of meaning properly undertaken by a community ordered by an institution are also instrumental acts of meaning.

⁷⁸⁴ Lonergan, *Method in Theology*, 51

other pre-existing institutions (as when the government creates a new agency), but the institutional framework created by that effective act of meaning is not immediately tasked to realize certain formal objects of meaning. As we noted in the last chapter, communities are not generally competent to undertake the formal acts of meaning necessary to determine the meanings-as-objects institutions are to actualize without the assistance of institutions. As such, when the community is creating an institution *de novo*, it cannot be committed to actualizing goods as specific formal meanings as objects (at least not right away). Moreover, institutions are rarely if ever created to actualize only one (or one kind) of formal object of meaning.

Rather, institutions are committed to the values the community wishes to see realized. In the first place, if the institution cannot be created to actualize a specific set of formal objects of meaning as its goal, it must be committed to something else. The available option, for Lonergan, is value, such that the institution is created and ordered to a value, then the relevant institutional sub-community is left to discover for itself which formal objects of meaning and their associated values need to be actualized in order to realize or maintain that value.

In the second place, every meaning-as-object can be valued, which is to say, every meaning-as-object has an affectible value predicated of it. We said in the last chapter that when the community makes a decision about which course of action to take, which meanings-as-objects to actualize, it does so on the basis of value, so that the effective and constitutive acts of meaning an institution undertakes are at the same time instrumental acts of meaning intended to realize a value or set of values. Lonergan acknowledges this straight out: “if the good of order conforms to judgments of value, there are being produced

terminal values.”⁷⁸⁵ Given that institutions have of necessity a considerable degree of operational autonomy from the community they serve, so that the community does not dictate the day-to-day operations of the institution nor scrutinize those operations in any detail unless something has gone badly wrong, the institution must itself be ordered to that value if it is to function properly.

Beyond these operational claims, on which we will expand somewhat below, consider that we have discussed institutions as frameworks of operations operated by sub-communities of commitment that are subsidiary parts of the larger community the institution serves. As we have noted in the past several chapters, for Lonergan, the proper criterion of decision-making for an individual and a community is not practical intelligence but values. “The inventiveness of practical intelligence can issue in practical results only if [one can select] some possibilities from the manifold” made available by the practical intelligence of institutions, and those selections are made on the basis of the values one wants to achieve or maintain.⁷⁸⁶ Since the institution is operated by a community of commitment, the community’s commitment will be to value, and so also will be that of the institution.

This is clear from the examples of institutions Lonergan gives. In “The Analogy of Meaning”, as we saw above, he gives three: family, state, and church.⁷⁸⁷ The family is a recurrent example.⁷⁸⁸ Lonergan discusses it as “a commitment in love”, mutual, by each

⁷⁸⁵ Lonergan, “Judgments of Value”, 149

⁷⁸⁶ Lonergan, *Insight*, 621

⁷⁸⁷ Lonergan, “Analogy of Meaning”, 202

⁷⁸⁸ See, for instance, *Insight*, 619; *Topics*, 36, 41; “Time and Meaning”, 104; “Natural Right”, 173; *Method in Theology*, 76.

to the other person, “entered upon when two people marry to live together”, and it expands through childbirth.⁷⁸⁹ This commitment in love is to the value that the other person is, to reinforcing and improving that value (particularly where one’s children are concerned), and it operates by creating a new good of order. This good of order certainly does create additional meanings-as-objects, but doing so was never its primary goal. Even where the marriage has been entered into not for love but for economic or political advantage, it is committed to values generally on the level of social and cultural values, and sometimes vital values, though we might question whether it is committed to the right values.

The Church is likewise constituted by a commitment in love, but rather than a commitment to the love of another person, its commitment is to religious value, which is to say, to God as its ordering principle. This is “the love of God with one’s whole heart and whole soul, with all one’s mind and all one’s strength” that characterizes affective conversion in its religious valence, as we discussed in Chapter 4.⁷⁹⁰ But rather than being focused on the edification of God, the Church is focused on the edification of his flock. It is peopled by a community of commitment, but their commitment is to creating and sustaining affective conversion to the proper religious value in individuals and in the community. Because of that value orientation, its structure can be quite flexible. The precise activities undertaken by the Church can be adjusted to fit different pre-existing contexts of meaning and value in different times and places with different peoples. What matters is wholly and only the realization and maintenance of the value of an affective

⁷⁸⁹ Lonergan, “Analogy of Meaning”, 202

⁷⁹⁰ Lonergan, *Method in Theology*, 101

conversion to God as the religious value by which the operative scale of values is ordered in individual members of the community and in the community as a whole.

The state, likewise, is constituted by “the overarching commitment of members of the state to one another and to the state...a commitment in loyalty” and is also a commitment in love, this time “love of one’s fellow men with its fruit in the achievement of human welfare.”⁷⁹¹ It is created by commitment to certain values expressed in its constitution. By re-writing or re-interpreting the objects of meaning structuring that constitution, one can “change the objects [i.e. values] that command [members’] respect, hold their allegiance, fire their loyalty.” Those values are expressed most obviously in the enumerated rights, freedoms, and prohibitions included, but more subtly (if no less powerfully) also in the structure of the state itself. And even if the government is there to actualize certain meanings-as-objects, it is through the regulation of other institutions to ensure they remain in line with certain communal value commitments—there is no other available rationale to structure its statutory and regulatory schemes.

The above three are examples of “*absolute* commitment”.⁷⁹² More limited commitment characterizes partnerships, corporations, law firms, hospitals, and schools, and such limited commitments are made in the context of and regulated and limited by absolute commitments.⁷⁹³ These first three, though, are absolute because their commitments are in some sense total. The family is a commitment in love to the value of each family member as a whole person, not just as a being that needs to eat. The state, in

⁷⁹¹ Lonergan, “Analogy of Meaning”, 202; *Method in Theology*, 101

⁷⁹² Lonergan, “Analogy of Meaning”, 202, emphasis mine.

⁷⁹³ Lonergan, “Analogy of Meaning”, 202, fn. 44

loyalty, is “the overarching commitment of members of the state to one another and to the state.”⁷⁹⁴ The community commits through the state to the value that is the community as a whole. “Finally, there is the commitment in faith to the eschatological community of the church.”⁷⁹⁵ The Church is committed to God as the final end of mankind, both individually and collectively.

More limited commitments are commitments to rather less encompassing values. A pharmaceutical manufacturer, ideally, has a commitment to vital values of the physical and mental health of patients. The activist organization has a commitment to cultural values about how the resources of the community will be divided. Professional governing bodies have commitments to the social values of professional good practice. Educational institutions, ideally, have commitments to the personal values of students.

Moreover, institutions are not often created to realize particular values only but usually to realize a class of values in a recurrent way. The justice system does not exist to deliver justice in one particular case but to deliver justice in all cases to the degree possible. The restaurant does not exist to serve one special meal but to serve meals on an ongoing basis. One could think of exceptions to this general rule, e.g. the assembly brought together to draft a new constitution for a state, but such exceptions are really quite exceptional—they’re few and far between. In the main, institutions exist to produce terminal values in a reliable, recurrent fashion.

As a corollary to all this, notice that the framework is set up to serve a purpose *before* it is operated by an institutional sub-community. This means that the institution, *de*

⁷⁹⁴ Lonergan, “Analogy of Meaning”, 202

⁷⁹⁵ Lonergan, “Analogy of Meaning”, 202

novo, is incapable of choosing its own primary value orientation. Moreover, because institutions are set up to serve the purposes of the community, once the institutional sub-community is in place, institutional sub-communities are not competent to change their institutions' primary value orientations. These things remain in the control of the community, and while the institutional sub-community can make suggestions and give expert opinion on the point, the final say still rests with the community. We will touch on this again below in our discussion of informal institutions and later in the section on institutional biases.

1.1.2: Institutional Sub-Communities Selecting Values

The second connection we mentioned between institutions and values was values as the means selected to achieve the primary value goal to which the institution is ordered. This relationship is rather different from the first because where the institutional sub-community is ordered to the institution's primary value goals, institutional sub-communities are often left to determine them on their own secondary, tertiary, etc. value goals. These are secondary value goals rather than only secondary meanings-as-objects needed to achieve or maintain the principle meaning-as-object (and so the primary value goal) for the same reason the primary orientation of institutions is to values rather than to meanings-as-objects: practical intelligence furnishes the institutional sub-community with many options; an appeal to values is needed to choose between them.

Some secondary value goals will usually be specified when the institution is set up—it would be exceptionally unusual to give someone enough power to accomplish a primary value goal with *no* instruction on how to do it—but invariably, not every possibility and permutation can be thought through before the institution begins operating,

and some subsidiary value goals have to be specified later by the institutional sub-community. Institutions are not *sui generis*, as we have said, but communities rarely flesh a new institution's framework out in sufficient detail for it to hit the ground running towards its goal. Quite often, the community simply doesn't know what secondary objectives the institutional sub-community will need to accomplish to then achieve its primary value goal—quite often, figuring that out is part of why the institution is set up in the first place.

This is the situation of the Law of Moses, for instance. We often think of the 613 laws as a complete set, but in reality, the civil laws in particular would need significant expansion and exposition to be a sufficient code to govern society. Effecting that expansion is one of the roles of first the Judges, then the Kings, and finally the rabbis. Under the primary value orientation of the Shema, “You shall love the Lord your God with all your heart, and with all your soul, and with all your might,” the rabbinic interpretations comprising the Talmud and Mishna expand on the Law of Moses, adducing principles from it by which to construct a legal framework concerning the bounds of acceptable behavior.⁷⁹⁶ It is not a Western law code, but this is nonetheless what they have accomplished.

The appropriate secondary value goals may also shift over time as technology changes, populations shift, and resources change character or become more or less plentiful, and we will discuss how institutional sub-communities change their institutions to pursue these new secondary value goals. But this is precisely as it should be: as an academic philosopher, I may be aware that the power grid of Puerto Rico required

⁷⁹⁶ Deuteronomy 6:5, NRSV. The Apostle Paul also frequently engages in this practice in his epistles.

extensive repair and restructuring following Hurricane Maria in 2017 with the goal of creating a far more robust grid, but I would have little idea of what would be necessary to actually do that. It's simply not my area of expertise. So, having charged PREPA, Puerto Rico's government-owned electric utility, with first rebuilding and then maintaining the power grid, I leave it to the relevant institutional sub-communities (the power utility, the territorial government, and various branches of the federal government) to determine their own subsidiary value goals in pursuit of that guiding value goal. And if they fail to produce results, I'll want to know why.

An institutional sub-community's choices of subsidiary value goals are constrained in two ways. First, there must be an intelligible connection between the primary value goal of the institution and the proposed subsidiary value goal such that one might reasonably expect the proposed subsidiary value goal to contribute to achieving or maintaining the primary value goal. A well-ordered institution will not require of its agents activities that are known not to contribute to reaching its goal. This, I think, is part of why we generally have an aversion to high government officials using their office staff to run personal errands or play nanny despite job descriptions that do not include such work when the community has given the official resources to maintain that office staff for a value goal to which picking up the official's dry cleaning is not intelligibly connected.

Second, we must remember that institutions are called into existence to accomplish a primary value goal *within a certain context*, which is to say, within the community's horizon of feeling. This means that the choices of subsidiary value goals open to the community of institutional agents will be constrained by the other existing value commitments of the wider community. This is how the problem of the government's

competence competence (the competence of a government to decide the range of its own competence) is resolved for Lonergan. The government has its core mission from the community, variously understood at various times and places, and it decides how to structure itself and what it is competent to do both with respect to how best to accomplish that primary value goal and with respect to the other value-strictures in the community's horizon of feelings. If it does not do this, it tends not to remain in power long.

As a more concrete example, consider the measures taken to halt the spread of the COVID-19 pandemic. The way different states and countries conducted lockdowns and contact tracing during the pandemic reflected, among other things, the value commitments of each larger community imposing constraints on what the government of each state or country was able to do. In S. Korea, for instance, the commitment to the value of public health overrode privacy concerns in the community to a remarkable degree. Consider the account of Patient 15:

Patient No. 15...traveled from Wuhan, China, in January. Soon after that, he tested positive for the virus. While under self-quarantine, he shared a meal with his sister-in-law, who also became infected. Speculation erupted on Korean social media that the two were having an extramarital affair. ... We know about patient 15 because South Korean health authorities legally use cellphone data, credit card histories and surveillance cameras to trace infection routes. The government posts data, including patients' age, gender, nationality and occupation, online and sends it to residents via cellphone alerts. Residents who think that they may have been near an infected person are supposed to self-isolate or get tested for COVID-19.⁷⁹⁷

This is a fairly thoroughgoing system of contact tracing, but it also leaves major concerns domestically around privacy, as the story goes on to discuss. Nonetheless, there seems to be general agreement within the S. Korean community that this is a necessary step for government to take under the circumstances to protect the value of public health.

⁷⁹⁷ Anthony Kuhn, "South Korea's Tracking of COVID-19 Patients Raises Privacy Concerns", *Weekend Edition Saturday*, May 2, 2020, <https://www.npr.org/2020/05/02/849535944/>.

The government put the system in place with public approval following their experience with the MERS virus in 2015.

By contrast, such a system would be impossible in the United States under existing interpretations of the Constitution. To get cellphone location data, critical to the S. Korean system, an American agency would require a warrant or an exigent situation (e.g. a kidnapping).⁷⁹⁸ It is not clear under what legal theory a government agent might ask a judge for a warrant to contact-trace someone newly diagnosed—having COVID-19 is not a crime—nor is it at all clear that such warrants would survive appellate review under existing precedent, so unless the patient willingly gives permission for authorities to obtain the data, the system is not available in the United States. Similar strictures apply to bank transactions and credit card histories.

This distinction between the practices available in S. Korea and the United States reflects different value commitments in each community. While the overall value of public health remains a core part of the value goal of both countries' governments, the communities' other value commitments concerning privacy and its relative importance restricted the available tools for tracing contacts differently in each country, narrowing the tools available in the United States relative to S. Korea. Similar value strictures will be operative any time an institution needs to act in a new way, towards a new value goal, or reform itself to accomplish its primary value goal more efficiently.

⁷⁹⁸ See *Carpenter v. United States*, 585 U.S. ____ (2018). The defendant, Carpenter, had been convicted after his cell phone location data, obtained by citing requirements of an investigation rather than warrant, placed him at the scene of several robberies in Michigan and Ohio. The case concerned whether location data is properly among one's "person, houses, papers, and effects," in which one is entitled to be secure under the Fourth Amendment. The 5-member majority ruled that they are; the four dissents revolved in different ways around the theme "that individuals have no Fourth Amendment interests in business records which are possessed, owned, and controlled by a third party", consistent with the Court's precedent. (Kennedy, J., dissenting, slip op., at 1)

In sum, institutions, as frameworks, are not able to choose their primary value orientation and institutional sub-communities are not competent to adjust their institution's primary value orientation. But institutional sub-communities can select the means to that end and are usually expected to do so to at least some degree. The degree of freedom available to the institutional sub-community will vary with the will of the community and how thoroughly and competently the community articulated the institutional framework to begin with. In all cases, however, the institutional sub-community makes their choices under two constraints: (1) secondary value goals must be intelligibly related to primary value goal as means to that end; (2) secondary value goals may not violate the constraints of the broader value commitments of the wider community.

1.2 Informal Institutions

In Chapter 3, we said that communities are structured by both customary and formal schemes of cooperation. We did not make much of this in Chapter 5, preferring to say only that communities are structured by institutions. But now we should return to the question of informal institutions and the role they play given that institutions are “the product of use and wont... the sum of the ways of cooperating that are commonly understood and accepted.”⁷⁹⁹ Informal institutions come in two flavors, institutions structured by custom and tradition and agglomerations of other institutions. As we noted above, institutions are why individual operations coming together to produce recurrent particular goods (or evils) can be cooperation rather than a lengthy series of happy (or unhappy) accidents. Wherever there is patterned recurrent cooperation, therefore, we find also an institution. When there

⁷⁹⁹ Lonergan, “Dialectic of Authority”, 5

is a deliberate plan involved, communities are structured by formal institutions. When a deliberate plan is not involved, *custom* steps in to fill the void.

The difference is most evident in the construction of the institution itself, in its genesis. A formal institution, as we've said, will be directed purposively towards the realization of a value and ordered to that end, so that it will actualize just the meanings-as-objects of which the relevant values are predicated and do just what is necessary to actualize those meanings-as-objects. The purposive effort results in an intelligible reason for all or most of the roles and skills currently demanded by the institution. Informal institutions, by contrast, are built with a specific orientation to value but not ordered to it in the same way a formal institution might be. When an institution has accreted through custom, however, there *is not now* but *used to be* an intelligible reason for a remarkably high proportion of those roles and skills. There are many meanings-as-objects that constitute and are produced by the informal institution that one attempting to formalize the institution might regard as superfluous. As time passes, these become things done for the sake of tradition to such a degree that even members of the institutional sub-community most steeped in its lore and history could not explain their original purpose with any degree of confidence.

We have already seen one example of an informal institution of the agglomerative kind, the market economy. This, Lonergan explicitly acknowledges as an institution, but as we said above, it remains also as an agglomeration of the operations of other, far more purposively constructed institutions. The economy's orienting value goal is the creation and maintenance of vital and social values in the community, but the community does not itself direct the economy past that primary value goal. An individual or institutional sub-

community discovers a need, a market, and one supplies it, creating a new set of needs and altering conditions in the economy, though not usually in any drastic way. As times change, needs change, and so new institutions spring up or are repurposed to fill them. There is not generally a grand design, nor is there usually a definite leader with the power to order the economy. As an institution, it emerges from the market entirely informally and responds ficklely to attempts at manipulating it, but it nonetheless structures our commonly understood ways of cooperating under market capitalism.

Sometimes, of course, the alteration *is* drastic and more recognizable as a result. The introduction of the smartphone, beginning with Apple's iPhone in 2007, has created *tremendous* additional needs in the economy, and a plethora of institutions have sprung up or been substantially repurposed to supply those needs for components and assembly (albeit with varying degrees of adherence to even basic standards of ethical business practices). This did not occur overnight, but within the space of five years, Apple had increased production to meet a global demand of 125 million iPhones, and annual sales since 2015 have averaged around 215 million iPhones. Toss in the rest of the smartphone market and global production exceeds 1.5 *billion* annually, with a concomitant impact on the economy. These new and repurposed institutions were not instructed to come into existence or alter themselves by a central planner. They responded instead to market needs and offered what they could to fill those needs. There was no purposive structure to this; it was informal.

But informal institutions do not need to be agglomerations of formal constructed institutions; they can instead be structured by tradition and custom. Consider, for instance, the process of cotillion. As one rather acerbic character put it in *The Big Bang Theory*, "In

the South, pre-adolescent children are forced through a process called cotillion, which indoctrinates them with all the social graces and dance skills needed to function in 18th-century Vienna.”⁸⁰⁰ While this is not entirely accurate—cotillion has its roots more in Regency England than Vienna in the Hapsburgs’ heyday—one takes the point. This is not to say that cotillion has no value as a means of providing the background behavioral framework against which many in the South judge proper manners, but it is to say that many of the rituals no longer serve their original purpose. The formal ball is no longer the staple of high society it was in the Regency period, so many of the skills taught as part of cotillion are no longer necessary to function in high society, and the formal introduction of young women into society as debutantes has lost the meaning attached to it in the 19th century, so a core purpose of the debutante ball (the crowning event of the cotillion process) has been lost.⁸⁰¹ Nonetheless, these rituals are held onto for the sake of tradition.

The same is true when institutions initially constructed purposively are not properly maintained and subjected to a regular process of pruning to make sure the roles and skills they demand still meet a present need. When that happens, what began as a purposive application of practical intelligence is sustained by custom and tradition. This is not always, in itself, a bad thing, but it does sometimes have frustrating outcomes felt as a serious disvalue. This is typical of the evolution of bureaucracy, where everything that happens once made sense to someone in some situation but often not to you in your situation and is done now for no better reason than that it was done then. As we will discuss

⁸⁰⁰ *The Big Bang Theory*, “The Agreement Dissection”, episode 4.21, directed by Mark Cendrowski, written by Chuck Lorre, Steven Molaro, & Eric Kaplan, aired April 28, 2011, on CBS.

⁸⁰¹ And this meaning has been lost long-since. The ceremonial presentation of debutants at court in the United Kingdom was discontinued by Elizabeth II in 1958.

below in §2.3, all institutions need as part of their authentic operation a process for revising themselves, for initiating and shepherding changes to trim away outdated practices and institute new and needed ones. Where such a system of change management is not in place, formal institutions can become remarkably *informal* and in the process lose their authenticity and so their legitimacy.

In this connection, we might consider England's High Court of Chancery, which was eventually dissolved in 1875.⁸⁰² This court is remarkable for seeming quite informal in its inception and extremely formal by the time of its dissolution, but the opposite is the case. The High Court of Chancery has its origins in an ordinance of Edward I in 1280. Before this point, if a person wished to appeal a decision of the common-law courts because the common law had produced, in their particular case, an unequitable or unjust result, they could appeal the decision to the King as the source of judicial authority. These were called cases-at-equity, rather than cases-at-law. By the reign of Edward I, though, the volume of such appeals was becoming unmanageable, so he ordered that his chief ministers, first among them the Lord Chancellor, should hear equity cases on his behalf within their areas of competence and render judgment in his place in what came to be known as the Court of

⁸⁰² The Court of Chancery was an equity court, deciding cases and remedies on the grounds of conscience and fairness, rather than a common law court, exercising original and appellate jurisdiction where the common law courts produced or would produce an unequitable or unjust result in deciding the question strictly, as they were bound to do, on the basis of the law itself. It was headed, at least nominally, by the Lord Chancellor, who was sometimes styled "the Keeper of the King's Conscience", a separate office before *Magna Carta* and generally occupied by a bishop.

In the United States, this is not usually dealt with by a parallel court system (though a few states, e.g. Delaware, do preserve the distinction) and all courts are competent to hear cases and provide relief on both legal and equitable grounds. For a recent case concerned almost entirely with equity, see the US Supreme Court's recent decision in *Rotkiske v. Klemm*, [589 U.S. ____ \(2019\)](#), [which we will discuss below](#).

Chancery.⁸⁰³ There was no right of appeal from the Chancellor; it was up to the Chancellor to decide if he needed the King to rule personally on the matter with the expectation that this would rarely be the case. In such cases, the Chancellor was to “bring them with their own hands before the King, to know his pleasure; so that no Petitions shall come before the King, and his Council, but by the hands of his said Chancellor, and other chief ministers” who exercised parallel jurisdiction in their own areas of competence.⁸⁰⁴

The backlog of petitions referred to the Chancellor was, of course, significant, and authority was further delegated to his staff to decide certain of the simpler cases; the Master of the Rolls, originally the chief clerk responsible for recording the acts of the Chancellor, is to this day the second-highest ranking official in the English judiciary. To limit both the competence of the court and the volume of business it would need to handle, petitioners were required to show why a suitable remedy was not available to them under common law. Partly out of a need of common law expertise on the questions of standing this created,⁸⁰⁵ common law judges were quickly enlisted to hear equity cases in the Court of Chancery as well. This arrangement was regularized no later than 1320, and by the end of the 14th century, the Lord Chancellor had all the powers regularly associated with the judiciary.⁸⁰⁶

⁸⁰³ The word “chancery” is an early medieval contraction of “chancellery”, the office/staff of the Lord Chancellor.

⁸⁰⁴ Joseph Parkes, *A History of the Court of Chancery* (London: Longman, Rees, Orme, Brown, and Green, 1828), 29; hereafter cited as Parkes, *Chancery*.

⁸⁰⁵ To have standing in a given court is to be able to bring suit in a case in that court. It is circumscribed by the court’s jurisdiction and the plaintiff’s relationship to the case and may be circumscribed or expanded further by statute, but as a rule, it will minimally include being able to demonstrate a connection to the case and actual or anticipated harm from the defendants’ actions. If one does not have standing in a given case, one cannot file suit in that court over that case. As a result, one common way for defendants to try to win a case has long been to deny that the plaintiff has standing to bring the suit to begin with.

⁸⁰⁶ Parkes, *Chancery*, 35

I say that this is a formal start because a formal institution is one in which the value commitment is purposively selected and coupled with a considered, definite scheme of cooperation to achieve that end. The value commitment of the Court of Chancery is initially quite clear: they are to render justice when the common law cannot or does not. So also, the means is clear: the Chancellor and the King's other high ministers are to exercise the King's conscience on his behalf by intervening in cases where the common law either has not or cannot produce a just outcome. The scheme of cooperation entailed was flexible but was not and should not have been all that complicated—simple schemes of cooperation usually work best, and in this case, the problem to be addressed was precisely the inflexibility of the existing common law courts.

But it became more informal in two ways, one appearing quickly and the other more slowly. The first was the addition of judges below the Lord Chancellor. While understandable, there does not seem to have been a great deal of forethought or planning that went into the investiture of judicial authority in Lord Chancellor's chief clerk. It seems instead likely that as the Lord Chancellor's appointment book began to fill with cases to the exclusion and detriment of his other duties, he took the same route of expedient delegation that Edward I did. Likewise, there does not seem to have been a purposive introduction of the common law judges to the chancery judiciary. This meant that there were additional schemes of cooperation being introduced into the institution of the Court of Chancery that were not originally intended and did not necessarily contribute to realizing the value commitment to which the Chancery was to have been dedicated.

The second informality stems from the first in many respects. In the common law courts, a judge had to rule according to the law, and this meant that any number of judges

were likely to be deciding the same way on the same case. But in the Court of Chancery, judges were asked to exercise their conscience, and when you have enough judges deciding cases in such a way, you will invariably find a noticeable discontinuity among the judges in approach and outcome in similar cases. This led in the 17th and 18th centuries to attempts to reform the Chancery to provide consistency between judges in their decisions. But these reforms focused on making the Chancery more like the common law courts by setting down rules and precedents to be followed in an inflexible manner, the very thing that had required the Court of Chancery to begin in the first place. As a result, the Court of Chancery became procedurally arcane and its equity functions, mired in a remarkably tangled web of precedent.

Closely related to this, the Court of Chancery had no independent funding stream. Edward I does not seem to have been especially concerned on the point; his goal seems to have been to get the cases off his plate and onto that of someone he trusted, and this he accomplished. When it was just the Lord Chancellor hearing cases in his office, in addition to his other duties, there was no need to pay for additional staff or premises. As such, as it grew, the Chancery was forced to place its financial burdens on litigants. The court charged fees to those seeking orders to lower courts to relinquish jurisdiction to the Court of Chancery (writs of certiorari), fees to hear cases, and fees to have clerks record the judgments, and those fees could be (and were) raised arbitrarily high.⁸⁰⁷ In court costs alone, bringing a case before the Court of Chancery could run well above £1,000 in today's

⁸⁰⁷ Additionally, the Lord Chancellor sold offices (which was, at the time, perfectly legal) to support himself. The offices sold were often sinecure offices, title and salary with little real work, which exacerbated the overall financial issues of the Chancery. This situation was not remedied until the Chancellor and his officers were (finally) given salaries in 1852.

currency, to say nothing of the fees solicitors charged to argue them,⁸⁰⁸ putting an equity solution out of reach for many of England's poor. This in particular seems to have stuck in Parliament's craw; there are appeals as early as 1335 from Parliament to the King to please lower the fees.⁸⁰⁹

This was an informal development process creating an informal institution because there was no control over the changes that took place. Some of them, like the funding problems, were eventually resolved in a reasonable manner, but not until the 19th century.⁸¹⁰ The serious backlog of cases shortened considerably following these reforms, but it was no longer clear why two separate court systems were needed—the remedies remained different, but presumably the same judges could provide common law and equity remedies as the situation warranted. The line of development of the entire English judiciary, not just the Court of Chancery, was clear but clearly not related to its value commitment. So the court systems were reorganized and fused in 1875 and the English judiciary became a formal institution again, though one that needed to re-earn its legitimacy through long authenticity.

⁸⁰⁸ We will discuss the difference below, but solicitors did not argue before common law courts, only the Court of Chancery; barristers likewise argued before the common law courts and not the Court of Chancery. This is part of the reason for two distinct systems of licensure through the Inns of Court and Chancery. This is also the distinction of which “attorney-at-law” is the vestigial remnant. The alternative was that one might be an “attorney-at-equity”.

⁸⁰⁹ Parkes, *Chancery*, 37. Frequently they cite the principle *Nulli vendemus justicam*, we never sell justice, a statement, in context, that justice from the Court of Chancery was for those who could afford it because access to the courts was being denied to those who could not afford the fees.

⁸¹⁰ In particular, the Chancery Sinecures Act 1832 and Chancery Regulation Act 1833 provided a pension and pay rise to the Lord Chancellor, wages for Chancery judges, and provided that the clerks responsible for issuing writs of certiorari, the Masters of Chancery, would be appointed by the Crown rather than by the Lord Chancellor and also given a wage. All court officials were salaried and forbidden from accepting gratuities by the Suitors in Chancery Relief Act 1852, and that same year, the Masters of Chancery were abolished, allowing judges to grant writs of certiorari directly, significantly reducing the paperwork burden of the court. Likewise, the office of the Six Clerks, theretofore responsible for recording judgments and remedies, was abolished in 1842, removing one of the principle sources of the remarkably high fees.

And sometimes, the institutions that appear the most formal can, in fact, be informal. Such is the case with the English constitution and the nature of common law. Informal institutions often, though not always, begin or develop because “Something happened” and the response is an *ad hoc*, common sense affair without serious consideration of the values intended or how they and their production will shape future events or the development of the institution.⁸¹¹ Common law has just such roots. At the beginning of Chapter 2, we told in brief the story of the murder of Archbishop Thomas Becket on his altar at Canterbury Cathedral just after Christmas 1170 and the very public penance undertaken by Henry II—flogging on the steps of that same cathedral—for the drunken outburst that prompted the murder. Ironically, this event is why we know Henry sometimes by another name, Justinian. The legal principle articulated here, that there is not one law for the nobility and another for the people but a single law for all people, is the foundation of common law and would inform the demands of the peerage on Henry’s son John when they drafted *Magna Carta*.

But though it is the first principle of English common law, it does not formally structure that law. It is held to be of constitutional significance, but not even *Magna Carta* is regarded as a proper written constitution for the England (to say nothing of the rest of the UK). Likewise, the specific limits of sovereign authority following the Restoration of Charles II to his throne in 1660 were never properly spelled out in the way they might be today, but are nonetheless held as having great constitutional significance. And this is the

⁸¹¹ Lonergan, *Insight*, 621. Informal institutions can also properly intend values and be refined through an attentive, intelligent, reasonable, and responsible self-correcting cycle of recursive refinements, in the way we will discuss below. But that is not often the case, and that should give us pause about the structure and use of informal institutions.

way common law works. Blackstone distinguishes common law from code law by form and history rather than function:

The *lex non scripta*, or unwritten law, includes not only *general customs*, or the common law properly so called; but also the *particular customs* of certain parts of the kingdom; and likewise those *particular laws*, that are by custom observed only in certain courts and jurisdictions.

...I therefore style these parts of our law *leges non scriptae*, because their original institution and authority are not set down in writing, as acts of parliament are, but they receive their binding power, and the force of law, by long and immemorial usage, and by their universal reception throughout the kingdom.⁸¹²

English law is not structured by a written constitution but by a series of customs (like having a single, common law for all), statutes, and judicial precedents which are understood to have constitutional significance. Sometimes it's obvious that a statute is intended to have constitutional significance (e.g. the Constitutional Reform Act 2005), but more often, especially with judicial precedent, it's much less clear.

Some attempts have been made to achieve a systematic understanding of the power relationships within the British government, most notably by Walter Bagehot in his 1867 work, *The English Constitution*.⁸¹³ Bagehot was a journalist and cultural commentator, and initially published the book as a series of magazine articles between 1865 and 1867 before gathering them into a book. Even so, his work is held to have constitutional significance: when there are serious questions concerning the power relationship of the Parliament and the Crown, for instance, Bagehot is the authority. But the institutional lines remain fuzzy: the precise limits on the power of the sovereign, her ministers in government,

⁸¹² William Blackstone, *Commentaries on the Laws of England* (Philadelphia, PA: J. B. Lippincott Company, 1893), 1:63-64; hereafter Blackstone, *Commentaries*.

⁸¹³ Walter Bagehot, *The English Constitution* (London: Chapman and Hall, 1867). For a more modern edition, see Walter Bagehot, *The English Constitution*, ed. Miles Taylor (Oxford: Oxford University Press, 2001).

and on the Parliament are not defined. Rather, when a custom, statute, or judicial precedent is understood to have constitutional significance, it is simply treated as controlling other law, and appeals to custom in particular remain persuasive arguments concerning how the law is or ought to be applied by English courts.⁸¹⁴

Then there are institutions that begin informally and become formal over time. These institutions will tend to play a critical role such that communities find the investment of time and frustration necessary to reform them to cost less than leaving them as they are. We will discuss this further below, but institutions must have a change management plan in place if they are to avoid becoming informal. Reform requires effort, and in many cases, that effort is not worth putting forth—the informal institution is already committed to realizing and maintaining the values the community needs it to be committed to and is already accomplishing its value commitment well enough with acceptable kinds and levels of additional meanings and values produced.

One such set of institutions is the London Inns of Court, which form the English and Welsh equivalent of the state bar associations in the United States and control who may or may not practice law before the courts, though they also retain post-graduate legal

⁸¹⁴ This is, coincidentally, the way pornographers got around the UK's remarkably strict anti-pornography regulations. Under the Obscene Publications Act 1959, which governs the market to this day, it is illegal to produce or distribute (but not possess) material that "depraves and corrupts", initially taken to mean any depiction of the pubic region showing pubic hair. During the so-called "Pubic Wars" of the 1960s between *Playboy* and *Penthouse*, it became commercially important for the UK-based *Penthouse* to keep up with its American competitor by producing and distributing ever-more graphic material. They did this by gradually increasing what was shown in an effort to slip something by the censors. When, in early 1969, they were taken to court for having shown significant pubic hair for the first time, their defense was that the previous month's issue had shown a few hairs and the censors hadn't objected, so enforcement of the statute should follow the now-established custom. This argument was accepted, and the rest of the story is now a rather graphic history.

education as a primary focus.⁸¹⁵ In the English system, solicitors represent clients outside of court; barristers are engaged to advocate before a court, and to be a barrister, to be admitted before the bar, one must be a member of one of the Inns of Court and be called to the bar by that Inn. For most of their existence, the Inns of Court have been governed by custom rather than law while their prerogative in whom they shall call to the bar became and has remained all but absolute. But they have become more formalized as time has passed, and it may help us to understand how they came to occupy the odd position they do.

For about 250 years following the Norman Conquest, the royal courts followed the king on his circuit of the nation as he rode “about the country settling the affairs of the realm, which was his estate, and administering justice. The great Court of Justice, therefore, naturally accompanied the King on all his progresses, and suitors were obliged to follow and to find him” to seek his justice at London, Exeter, or York, depending on the season.⁸¹⁶ The Court of Justice was, by the advent of the 13th century, divided into the Court of Common Pleas, where most commoners were heard; the King’s Bench, where

⁸¹⁵ I speak of England and Wales rather than Britain as a whole because the other domains of the United Kingdom retain distinct systems of law. In Scotland, there is a Faculty of Advocates that functions much as the state bar associations do in the US, primarily regulating those who have already been admitted to the bar. The Inn of Court of Northern Ireland fills the same general functions as the London Inns of Court, but it is of relative recent provenance (f. 1926) and has always been a formal institution. In Ireland, there is only one Inn of Court, the Honorable Society of King’s Inns, but it too is modeled on the London Inns of Court following their first steps towards formalization, so I am hesitant to say that it was ever an informal institution.

⁸¹⁶ Cecil Headlam, *The Inns of Court* (London: Adam and Charles Black, 1909), 3; hereafter cited as Headlam, *Inns of Court*.

Curiously, no book specifically on the history of the London Inns of Court seems to have been published since, though legal historians have continued to publish small pieces on the subject. As such, we will rely on the history as compiled by Headlam and another slightly earlier legal history by Alexander Pulling (*The Order of the Coif* (Boston, MA: The Boston Book Co., 1897); hereafter cited as Pulling, *Order of the Coif*) with updates from more recent work as necessary. Pulling was himself one of the last Serjeants-at-law, whom we will discuss briefly below.

nobles brought their cases and appeals from the Court of Common Pleas were heard; and the “Exchequer, where a Chief Baron presided to try all causes relating to the royal revenue.”⁸¹⁷

The first of the three changes came with *Magna Carta* (1215), which included a provision that the Court of Common Pleas should stop following the king. It came to sit at Westminster (as, eventually, did the King’s Bench, the Exchequer, and the Court of Chancery). If you had a case to bring before that Court, you would likely have to travel some distance to be heard, and you might not always make it to where the king was in a timely fashion, so that he may have moved on before you got there. Understandably, this created significant economic risk for commoners seeking justice not mirrored in the nobility, who still had the means to follow the King’s Bench. Keeping the commoner’s court in a fixed place alleviated a lot of the economic risk one took simply to bring one’s case to the court’s attention.

The second change concerned who practiced before those courts. At first, it was all but exclusively clergy. “This was natural enough, seeing that they formed the only educated class of the day. *Nullus clericus nisi causidicus*”: no cleric who is not also a lawyer.⁸¹⁸ But Cannon 16 of the Fourth Council of the Lateran (1215) forbade clerics from engaging in secular pursuits, and under a papal bull issued by Pope Honorius III in 1219, among other things, clergy were forbidden the study of the civil law. Whether the Pope intended this to apply also to the common law is a matter of speculation, but the clergy

⁸¹⁷ Hedlam, *Inns of Court*, 3

⁸¹⁸ Hedlam, *Inns of Court*, 4

were forced out of English courts by degrees over the course of the 13th century, making space for lay lawyers.⁸¹⁹

Lacking the formal structure of the church, these lay lawyers and law students congregated in a comparatively *ad hoc* manner, taking rooms at inns in the vicinity of the courts, and there are mentions of an Inn by 1344.⁸²⁰ This was a common way for schools to be structured during this period, and we find similar occurrences at Oxford and Cambridge in the 13th and 14th centuries ahead of the establishment of their various colleges. The only fixed place for the practice of law was London, and while there were eventually law schools elsewhere (indeed, under edicts from Henry II and Henry III, none were allowed in the City of London proper), the only fixed setting for post-academic training was, thus, London. These Inns were in a relatively consolidated district as a result so as to be as close as possible to the courts themselves.

The third change, made in 1292, was an edict from Edward I giving the Chief Justice of the Court of Common Pleas the right to choose who would and would not appear before that court. This was part of a set of reforms at the end of the reign of Henry III and the beginning of the reign of his son (Edward I) during which the office of the Grand Justicer was dissolved and his powers parceled out to others. Partly on this basis, all three courts of common law eventually restricted who could and could not practice before them, but only senior barristers specially appointed under the King's seal on the recommendation

⁸¹⁹ Pulling claims that the prohibition on clergy practicing law in secular courts was formally enacted in 1164, but I can find no evidence of this, and Pulling admits that the secular courts continued to receive clergy as advocates until at least the middle of the 13th century. Pulling, *Order of the Coif*, 11.

⁸²⁰ Hedlam, *Inns of Court*, 5

of the Chief Justice of the Court of Common Pleas (Serjeants-at-Law) could practice in the Court of Common Pleas.

The documents are not entirely clear, but one suspects that there was a problem of regulating the quality and credentialing of those who were to appear before the court. The real proliferation of attorneys of all stripes began a few years prior, in 1285, thanks to an earlier edict from Edward I. Until that point, it had been the law that one must appear in person in all legal proceedings whatsoever to which one was a party unless one (a) paid a fee or (b) had a special writ from the king. In those two cases, an attorney could represent you. After Edward I's 1285 edict, though, one could choose to be represented by an attorney in all civil cases without such fees or dispensation. Edward I's 1292 edict seems to be recognizing a problem in the character of those who were practicing before the bar as a result.

The precise origins of the Inns are difficult to trace. Their beginnings were quite informal, so there was never an inaugural ceremony or anything official to commemorate their inception. Each of the four Inns of Court have traditions on the point, but these are unreliable.⁸²¹ Inner Temple and Middle Temple can be reliably dated to the 14th century, but there is little evidence for Gray's Inn and Lincoln's Inn until the end of the 15th.⁸²² What we can reliably say is that of the 15 or so Inns of Court and Inns of Chancery known

⁸²¹ See Pulling, *Order of the Coif*, 151-54, for a discussion of the contradictions between history and tradition at Gray's Inn and Lincoln's Inn.

⁸²² The origin of the names of Lincoln's Inn and Gray's Inn are easy enough to puzzle out, but the Temples less so. They are named for the precincts they occupy, the former English headquarters of the Knights Templar, and so a Temple. When the Knights Templar were forcibly dissolved in the early 14th century (1315 and following), their holdings were given into the care of the Knights Hospitaller, who had quite enough space in their existing holdings for their needs and so leased and eventually sold the London property to the newly-congregated barristers. One group occupied the innermost sacred precincts (Inner Temple), while the other occupied those areas formerly open to the public (Middle Temple).

to history, most were established by the end of the 15th century and owned their own lands and buildings by the end of the 16th century, that they were initially all on equal footing with respect to admission to the bar, and that by the end of the 15th century, a relatively uniform system of governance had developed. Each Inn was governed by a committee of Benchers and Governors, with Treasurers to handle most day-to-day affairs, including many matters of admissions. These Benchers functioned as geritocracies, with the most senior barristers taking their seats on the Bench of each Inn.

Precisely when and why the division between the Inns of Court and the Inns of Chancery occurred is lost to history, but it must have occurred sometime during the reigns of Henry VI or Edward IV. In a 1448 court pleading, two lawyers—one from Inner Temple and one from Outer Temple—both gave their membership in their respective institutions as their credentials to practice before the Court of Common Pleas, and the court accepted both on that basis.⁸²³ But by 1485, Sir John Fortescue (then Chief Justice of the Court of Common Pleas) spoke of four Great Inns attended by many lesser, and thereafter, Serjeants-at-Law were not called from the Inns of Chancery, nor was membership in an Inn of Chancery a qualification to practice before the bar in a common law court.

Likewise, precisely when and why the authority to call lawyers to the bar was delegated from the courts to the Inns is lost to history, but it occurred no later than the mid-15th century. That 1448 pleading is also the earliest known recorded instance of a lawyer citing his membership in an Inn as qualification to practice before the bar.⁸²⁴ But the likely

⁸²³ John Baker, “The Inn of the Outer Temple”, *Law Quarterly Review* 124 (July 2008): 386; hereafter cited as Baker, “Outer Temple”. One of the lawyers presents himself as a member of the society of the Inn of the Outer Temple, according it in his introduction the same status as another lawyer involved who was of the Inner Temple: “an ‘inn of men of court and of counsellors of the law’.” As Outer Temple is not and never was one of the four Inns of Court, it can only have been an Inn of Chancery.

⁸²⁴ Baker, “Outer Temple”, 386

course is that judges recognized that their former Inns were good at training lawyers, that the Benchers of those Inns were astute at choosing who was ready to practice before the bar, and that there were too many lawyers running around to individually evaluate while keeping the courts in any semblance of functioning order, so the judges decided to take the word of the Benchers as to who should be appearing before them.⁸²⁵

Even so, despite the enormous power this gave the Inns, the Crown seems to have taken no official cognizance of them until the reign of Mary I (1553-58) where they appear in edicts concerning their governance and regulation, likely connected with the Counter-Reformation. Nor did Parliament address them at all until the Supremacy of the Crown Act 1562, part of England's return to the Reformation under Elizabeth I. So the first official regulation of the Inns by the English government was to require that persons "taking any degree of learning in or at the common laws of this realm, as well Utter Barristers as Benchers, Readers, or Ancients in any house or houses of Court" take the Oath of Supremacy prescribed on Elizabeth's accession in 1558.⁸²⁶

From this time, the Inns of Chancery became dependents of the Inns of Court and were, at least nominally, subjected to their governance, though "there is little trace of any exercise of the Benchers' power over the Inns of Chancery, even with reference to the

⁸²⁵ The usual course of professional advancement was that one was a lawyer, then a barrister, then a Serjeant, then a judge, and each level formed the exclusive candidate pool for the next. As a result, all judges were former members of one of the Inns and would have known their benchers professionally and personally.

Also, to further emphasize the informality of the Inns' beginnings, though we will discuss the 1780 decision affirming this delegation of authority below, there is no extant case law from the period establishing the delegation of authority, which is what one might usually expect to find in a common law system, especially in the absence of an act of Parliament or royal edict amending the 1292 edict delegating authority from the king to the judges.

⁸²⁶ 5 Eliz. 1 c. 1

ancient moots and exercises.”⁸²⁷ The Inns of Chancery trained solicitors, who would argue before the Court of Chancery, but sent promising students to the Inns of Court. While the Inns of Chancery were closed successively over the course of the 19th century as their functions were taken over by the Law Society of England and Wales and the equity and common law courts were fused, each of the Inns of Court persists.

The exclusive authority of the Inns of Court to call lawyers to the bar was conclusively upheld by the Lord Chief Justice of the King’s Bench, Baron Mansfield, in 1780, albeit with some slight reservations.⁸²⁸ The court had been asked to issue a writ of mandamus to the Benchers of Gray’s Inn to force them to call one William Hart to the bar after they had refused to do so in light of a recent bankruptcy, and further to issue a rule that Inns refusing a call to someone otherwise qualified could be compelled to appear in court to show cause for their refusal. Lord Mansfield’s opinion in the case is short but with several remarkable passages: The Inns “are voluntary societies” whose Benchers’ authority “concerning the admission to the bar is delegated to them from the Judges, and in every instance, their conduct is subject to their control as visitors.”⁸²⁹ A visitor, in this context, is one not generally involved in the day-to-day affairs of an independent institution who exercises a supervisory role and can intervene in the affairs of the institution when he or she feels it necessary.

This ruling affirmed three things about the Inns of Court as institutions by the end of the 18th century. First, their structure and governance remained left to them, having been formalized by them with specific procedures that accomplished appropriately their value

⁸²⁷ Pulling, *Order of the Coif*, 180

⁸²⁸ [*Rex v. the Benchers of Gray’s Inn*, 1 Douglas, 354](#) (Hart’s Case); hereafter cited as Hart’s Case.

⁸²⁹ Hart’s Case, 354

goals concerning the training and credentialing of barristers. Second, their authority derived from the court, but was to be exercised on their prerogative alone, all but free from the control of the court. Lord Mansfield ends his opinion refusing writ and rule by saying that should grounds exist for overturning a decision of the Benchers, “the party must take the ancient course of applying to the twelve Judges”, the common law judges who sat in Westminster on the Courts of the King’s Bench, Common Pleas, and the Exchequer of Pleas, so that judicial control is retained but without a regular oversight procedure.⁸³⁰

But third and most interesting is what was asked for and refused: a writ of mandamus. This is a very uncommon writ and is an order from a court to a lower government official to properly carry out their duties or to correct an abuse of their discretion. Such writs are not issued to private entities; GE, Amazon, and AT&T will never receive one. That Hart asked for a writ of mandamus against the Benchers of Gray’s Inn says he understood the Inns as governmental institutions. Lord Mansfield, in denying it and referring future requests to the twelve common law Judges denies that a mandamus is possible but leaves open other remedies explicitly because the Benchers were recognized as being purposively allowed to fulfill a significant role of government—they had become formal institutions with dedicated value commitments concerning barristers and their regulation and education—and Lord Mansfield’s decision, never overturned, recognizes that they perform these functions in a way not needing special oversight or reform.

This remains the state of play today: the Inns of Court are the only institutions that can call one to the bar, and one may not practice law before a court without that call. Though the courts on which sat the judges to whom Edward I directed his 1292 edict have

⁸³⁰ Hart’s Case, 356.

been dissolved, the Inns hold this authority as delegated from the English and Welsh judiciary. Though initially constituted in a thoroughly *ad hoc* and informal manner, they have become formal institutions. Though parts of their regulatory authority have been shaved away in more recent years (e.g. in licensing barristers to operate as solicitors as well without the oversight of the Inns), they retain the lion's share of their traditional remit.

We have spent such time in discussing informal institutions to make clear to the reader that not all institutions are intentionally created and that there can be a real danger in informality. Sometimes, as with the Inns of Court, everything comes out alright because the institutional structures of cooperation become progressively more closely tailored to their value commitments. This is generally the product of institutional authenticity, which we will discuss below. Sometimes, as with the Court of Chancery, uncontrolled changes progressively make the institution informal, bleeding off its productive energy to goals unaligned with its value commitments and destroying its effective function to the point that a new institution has to be created to replace it. And sometimes, as with the common law of England, institutions that look quite formal can be quite informal. The question of importance below will be whether appropriate care is being taken in the regular operation of the institutional structure to ensure that the institution continues to pursue its value commitments with a minimum of unnecessary operations, roles, and skills required.⁸³¹

2 Authentic Process

Authenticity, as we stressed in the previous two chapters, is not something we *have* but something we *do*—it concerns operations first and foremost. But as we have also been

⁸³¹ Whether the common law of England could be considered an authentic institution in this regard is an involved discussion that we will reserve for another time.

at pains to argue above, the institution is first and foremost a framework of human action, not the actions themselves. It structures a good of order but is not identical to it. So what does it mean for an institution to be authentic?

In discussing intellectual conversion in the previous chapter, we noted that institutions, to be authentic, must be operated by intellectually converted individuals who understand why institutions' operations are ordered in the way that they are, can follow through on those operations, and can maintain and update the operations of the institution as necessary to maintain the commitment to institutional intellectual conversion. This follows on a thought inchoate in our discussion of the nature of institutions above that "within the matrix of [the institution] power comes to be entrusted to individuals within community."⁸³² Those individuals are the authorities, "the officials to whom certain offices have been entrusted and certain powers delegated."⁸³³ And while the community is a carrier of authenticity, the institution is not; in their stead, authenticity is carried by "the individuals that are authorities."⁸³⁴ So authentic processes for institutions will be similar in some respects to those for individuals.

But similar is not identical. We must also bear in mind that these individuals are operating not just as themselves when operating as authorities. They are operating on behalf of an institution, and insofar as this is true, they must pay attention to different things, give a somewhat different consideration to their analysis of things, situations, and possible courses of action, assess values from within a different horizon of feelings, and be more careful in their actions. Different further questions will be pertinent for them than

⁸³² Lonergan, "Dialectic of Authority", 5

⁸³³ Lonergan, "Dialectic of Authority", 5

⁸³⁴ Lonergan, "Dialectic of Authority", 6

would be pertinent outside the execution of their role as authorities operating on behalf of the institution. When operating as agents of an institution, individuals operate in different *personae* than when operating on their own behalf.⁸³⁵ As agents of the institution and the communities represented by that institution, they are constrained by their institutional roles, and the authentic institution will be operated by individuals who recognize and respect this distinction.

This relationship is reciprocal, though: individuals are changed by the institutions they are part of. The good of order, recall, “involves four aspects”, the last of which is “the personal status which results from the relations constituted by the cooperation.”⁸³⁶ Individuals are constituted in part by the values they choose, so that every choice one makes realizes both terminal and originating values, as we said in Chapters 3 and 4. That includes choices made and actions taken as agents of an institution. Authentic institutions must be structured so as to not degrade the personal value of their agents or others outside the institutions through actions demanded by the institution’s structure of operations.

So in discussing the authenticity of institutions, we will be obliged to discuss both the institutional framework itself and the sub-community responsible for operating it, both as a sub-community and as individuals. Likewise, the reader will recall from the previous chapter that communities and institutions operate in tandem and hand questions off to one another. We identified three cycles of authentic operation in communities (identifying and referring questions of fact to appropriate institutions, deciding who to believe in translating the answers, and deciding on a course of action). Institutions exist to fill two lacunae in

⁸³⁵ My use of *persona* here follows Hobbes characterization of a person as a stage mask, of which one individual might have several and switch between them fluidly. See *Leviathan* XVI.

⁸³⁶ Lonergan, *Topics*, 36

the authentic process of communal knowing and doing: First, the whole community is generally not competent to answer questions of fact, so institutions are created to coordinate the activities of those with the appropriate specialized skills. Second, to do anything of consequence, communities need institutions to coordinate their activities towards an end, so actions are likewise generally referred to institutions. And lastly, separate from the communal process of knowing and doing, authentic institutions require an established process to initiate and shepherd necessary changes to the institution's structure of operations, as our discussion of formal and informal institutions has emphasized. Our discussion, then, will be divided into four parts concerning, in order, institutional knowing, institutional doing, changing institutions, and respecting the personal values of institutional agents.

2.1 Institutional Knowing

As we have observed, intersubjective communities are bad at knowing things in the absence of institutions, and we said in the previous chapter that they lack (1) a common set of phantasms on any issue, except insofar as each has received a communicative act of meaning and so is aware of the issue only second-hand; (2) a common set of conditions, or at least a commonly *sufficient* set of conditions; (3) reasonable choices about whom to believe. Correcting these defects is part of why institutions are established in the first place, either formally or *ad hoc*, and an authentic institution will do this both structurally and performatively. We will consider each in turn.

2.1.1 *Common Phantasms*

In the first place, this means that the institution should be set up so as to align the phantasms at issue into a common set, either by resolving the differences between phantasms, by procedurally selecting one over another, or by producing additional phantasms if existing ones are, for whatever reason, insufficient to determine the question. Remember that the phantasm is what is presented to consciousness as intelligent for consideration and analysis or what feelings respond to in valuation. The phantasm at issue here is a multi-modal image given in experience, and the goal of the institution is to ensure that a common set of relevant multi-modal images are available for consideration as phantasms for consciousness as intelligent.⁸³⁷ What will constitute an appropriate structure for doing this will change, subtly or substantially, for every field of inquiry. We would not, for instance, expect the clinical trial of a drug and the investigation of a murder to consider the same kinds of phantasms as relevant or to select which are relevant in the same ways. Because of the extremely wide variety of fields in which we ask questions of fact and the commensurately wide array of structures appropriate for compiling a common set of phantasms in each, discussion of the precise structures at issue goes beyond the scope of our project here. But every institution charged with answering questions of fact should have as part of its structure procedures for determining which phantasms, as meanings-as-objects, have been properly produced (or not) and which are likely to be relevant (or not) to answering the question at hand.

In doing so, all authentically operating institutional sub-communities will operate under two strictures. First, institutions engaged in answering questions of fact must have

⁸³⁷ In the process of valuation, the phantasm is not a multi-modal image but a meaning-as-object. “Phantasm” describes the role the image or meaning-as-object plays in the process of knowing and valuing.

structures in place to prevent flawed or slipshod work leading to the creation or approval of phantasms that will not be of help in correctly answering the question of fact at issue. Because there is no perfect structure, these will not always be successful, and when a pattern of errors emerges, the institution will need to consider how it might change. We will consider the need for a change management scheme below, but the challenge for modern and post-modern political philosophy writ large has been the desire to find one static solution in situations where knowledge of new institutionally-generated errors is a frequently-emergent phenomenon. But for Lonergan, the question of authenticity hinges not on whether the institution is perfect but whether the institutional sub-community is “liv[ing] on the level of their times.”⁸³⁸ If they are, and if the institutional sub-community is open to needed changes, then being imperfect is not a barrier to being authentic.

The second principle stricture with respect to phantasms is that institutional sub-communities should not opine outside their area of institutional competence. Every institutional sub-community engaged in answering questions of fact is geared to do so in a certain way, to produce or evaluate certain kinds of phantasms, and its tools and methods will not suffice to produce or evaluate other kinds of phantasms. Scientists, as members of a loose institutional sub-community, for instance, are not competent to evaluate phantasms, meanings-as-objects, concerning the existence of God as institutional agents (though they may do so considered in their personal guises). We would therefore hope that scientists as institutional agents would refrain from opining on the point. This is not to say that institutional agents should live in intellectual silos; far from it. But it is to say that

⁸³⁸ Lonergan, “Dialectic of Authority”, 6

there are limits to the kinds of questions of fact a given institution can answer, and its agents must recognize and respect those limits.

As an example, during the recent COVID-19 pandemic, many governments exercised their authority to shutter businesses and quarantine large segments of the population. In doing so, when they were being authentic, they relied on data and recommendations from various health authorities and economic agencies, who in turn relied on data on transmissibility, vectors of transmission, epidemiology, and modeling of the impact on both the health system and the economy as a whole under various scenarios from various members of the scientific institutional sub-community. In some cases, the health and economic agencies were producing the data themselves; in other cases, they were funding research by outside agents; in yet other cases, they were relying on publically available data they had no hand in creating. We will not go into how the data was produced, but in all cases, when they were being authentic, the health and economic agencies vetted and collated the data and conclusions on behalf of the government without favor or prejudice. The health agencies (generally) did not presume to speak for the economic agencies, and vice versa, when each was operating authentically. And, when they were being authentic, the governments for whom they vetted and collated these data and conclusions accepted them without undue criticism as the best data *available in the moment*, even if not perfect, and so arrived at a common set of phantasms concerning how the virus spread, how sick it made people, what was necessary to fight it, how quickly that could be obtained, and which measures could be employed at what cost in collateral damage to slow the spread and buy more time to secure testing and treatment capacity.

Of course, not every health and economic agency operated authentically during this period for one reason or another. There have been substantial allegations that China's government repressed and withheld critical information about transmission vectors, for instance, for a month at the beginning of the outbreak and distributed this information to other world health authorities (including the WHO) only when it was discovered by other health agencies directly. Insofar as China's health authorities were the only ones with significant data on transmission at that time because the virus had yet not spread significantly in other countries, world governments had to rely on those agencies for the data and conclusions needed to inform their own public health decisions. China did, of course, release other critical information in a timely fashion, e.g. the genome mapping for the virus, which significantly aided work on a vaccine. But in choosing to withhold certain critical information in this way, Chinese health authorities failed to act authentically and instead approved a deeply flawed set of phantasms that was not of help in the way it should have been to the world's health authorities (and so the world's governments) in correctly answering the questions of fact at issue (and, in fact, encouraged incorrect answers). We will discuss such occurrences further below in the section on biases.

For another instance, consider again what happens during a jury trial. Rather than having one person consider a limited set of phantasms and arrive at a conclusion of guilt or innocence, the adversarial process is engineered to (ideally) ensure that all available phantasms about the case are considered. During initial evidentiary hearings, the lawyers argue and the judge determines under set rules of evidence which kinds of phantasms will be considered pertinent to a case and under what conditions. Those rules of evidence are the structural constraints on the process, in place to encourage consistency between the

admissibility of evidence in similar cases, which is to say, interrater reliability. Structurally, the institution is set up to do so in a way that is favorable to, i.e. respects the personal value of, the defendant. The problem of *Monty Python's* Witch Village was that some of the evidence, e.g. the way the woman was dressed, should not have been considered as part of the common set of phantasms. These were phantasms, yes, but they were produced to fit and reinforce a particular narrative and conclusion, meaning the institution (Sir Bedevere) could not consider them as part of the common set of phantasms needed to reach a conclusion about whether she was a witch.

Certainly, the system does not always work to advantage the defendant, and we will discuss some of the reasons for that below in discussing institutional biases. That's part of why the appeals process exists, though that system too is not always as sensitive to problems as it ought to be. This is also the reason that the discovery of new evidence exculpating someone previously convicted can often trigger a new trial or an appellate finding of innocence, depending on the strength of the evidence. This is part of why converted individuals are needed to operate institutions, in this instance, from the advent of the investigation to the exhaustion of the final appeal, which is the part Rawls, Habermas, and others have missed: as we have said from the beginning, no institution can be engineered in such a way that errors in judgment are not possible. The key is setting them up as well as we can within certain strictures and training those who will operate the institutions to be authentic both in their personal and professional lives. The consideration of structures Rawls and Habermas engage in is a necessary piece, but it's not sufficient by itself to ensure authentically operating institutional sub-communities.

Once the available evidence set has been presented, a further winnowing process takes place during the trial itself. Eyewitnesses present testimony about what they saw. Expert witnesses present testimony about physical evidence. Prosecuting and defense attorneys each have the opportunity to question every witness. The evidence they present, the phantasms made available for the jury's consideration, is often contradictory or at least in tension. The jury's job is, in part, to wade through all that evidence, all those phantasms, and determine which are, in fact, relevant or, in some cases, which have been properly produced. While the pre-screening process of the evidentiary hearings will have weeded out a fair amount of the problematic phantasms, some will often still remain. In the Witch Village, this was, for instance, the testimony of the man who claimed he'd been turned into a newt, then gotten better. Bedevere was skeptical because such a thing is not generally known to be possible and, even under the assumed mechanisms of magic, one does not just "get better" from such a transfiguration.

The jury and officers of the court, then, are operating as an institutional sub-community within a judicial structure that includes the strictures we mentioned above. Part of its operation is explicitly to winnow out shoddily-produced evidence and irrelevant data to arrive at a common set of phantasms useful and helpful in correctly answering the question of fact at issue. When operating authentically, moreover, the courts restrict themselves to answering questions of how the law is to be interpreted and whether a given set of facts is actionable under the law as it exists (and in common law countries, it exists

as it has been interpreted, not necessarily as it has been written). They do not try to answer questions of science or religion, for instance, when operating authentically.⁸³⁹

2.1.2 Sufficient Conditions

Again, we will not opine on what will count as a sufficient set of conditions on each kind of question for institutions; rather, we will note that part of the strength of the process of referring questions of fact to institutions is that they very rarely face such questions *de novo*. They will in general have dealt with questions of the same kind in other instances. Such repetitive questions of fact will generally have parallel sets of sufficient conditions on their answering judgments of fact such that one can generalize. This will, of course, lead to a wider range of available sufficient conditions in some cases than in others; what counts as a sufficient condition for the judgment that the young man at the bar is old enough to legally be served alcohol will usually be simpler than the sufficient conditions for the judgment that he is using a fake ID, assuming the forger was competent.

We expect, of course, that what counts as a sufficient condition will change over time as new technologies are developed and new kinds of questions are posed. We will discuss this further in the section on institutional changes, but this is part of the strength of the British common law: in attempting to decide new questions, it looks very explicitly to the conditions that are sufficient for other sorts of questions to see if an analogous case can be adduced and, if not, proposes a new standard. It is also (usually) very good at updating outmoded standards to “live on the level of [its] times.”⁸⁴⁰

⁸³⁹ See the majority opinion in *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014) for an instance of a court explicitly operating within these strictures.

⁸⁴⁰ Lonergan, “Dialectic of Authority”, 6

If we remember back to the Witch Village scene from *Monty Python and the Holy Grail*, this is what Sir Bedevere was doing when he took control of the situation as an institution in himself. The first part of what he did was to determine, in detail, that the phantasms of the mob were insufficient and that he would need to produce his own. But the second part of what he did was establish the conditions on the question of whether or not she was a witch. He concluded that her clothes, parsnip-enhanced nose, and the testimony of the man who claimed to have been turned into a newt were not appropriate conditions on which to judge whether she was a witch. So he instead availed himself of new conditions in deciding the question. But he did so *poorly*.

We expect that institutional sub-communities (including Bedevere's sub-community of one) will operate under three strictures. First, they will subject newly suggested kinds of conditions to appropriately rigorous scrutiny before applying them or suggesting their application to the community. Second, they will develop, over time, standards and settled rules for when a certain kind of condition should be understood as relevant to a certain kind of question. In other words, the institutional sub-community should develop a kind of common sense concerning the questions it is competent to deal with. And third, it should not blindly apply those standards but be open enough to recognize when a different standard should apply and give fair consideration to arguments in edge cases. We will consider an instance of each in turn.

First, new kinds of conditions should be subjected to appropriately rigorous scrutiny before being applied. Sir Bedevere did this poorly in that he assumed that all things that burn must share other important properties, so that witches are enough like wood that they shouldn't sink in water. For a more current example of this problem in action,

when forensic odontology (bite mark analysis) was introduced as admissible evidence in criminal cases, it was not subjected to such scrutiny. Until 1974, it was inadmissible in criminal trials as identifying evidence.⁸⁴¹ That year, it was admitted for the first time in *People v. Marx*, a California murder case where the victim had a bite mark on her nose. Because of the very unusual character of the bite mark, both well-defined and three dimensional thanks to the unusual properties of nasal tissue, and the defendant's very unusual dentition, three dentists testified for the prosecution that this was the very unusual exception to an otherwise good rule about admissibility. From there, forensic odontology was off to the races, so to speak, and was a leading form of evidence for 40 years.

But it has only recently been subjected to interrater reliability tests because of how many convictions obtained on odontological evidence have been overturned since DNA evidence, which *was* subjected to substantial and rigorous scrutiny, has become available. And it turns out that if you ask three forensic odontologists whether a given bite mark was made by a given defendant, quite often one will say yes, one will say no, and the third will say that the bite mark is not human.⁸⁴² As a result, forensic odontology has gone into a steep decline in the legal community and is returning to its more traditional role of identifying victims rather than perpetrators. This presents a serious problem for the

⁸⁴¹ See Michael J. Saks, et al, "Forensic Bitemark Identification: Weak Foundations, Exaggerated Claims", *Journal of Law and the Biosciences* 3, no. 3 (Dec. 2016): 538-575, doi.org/10.1093/jlb/lsw045. What we say about the legal history of forensic odontology here relies heavily on their work.

⁸⁴² See, for instance, the May 1992 murder of Christine Jackson and the subsequent prosecution of her mother's boyfriend, Kennedy Brewer, in Mississippi. Brewer was convicted of capital murder and sexual assault in March 1995 on the basis of bite mark analysis. The prosecution's forensic odontologist testified that the bite marks were without question made by Brewer, despite there being no marks from the bottom teeth. The defense's forensic odontologist testified instead that multiple bite marks from the top teeth only were virtually impossible and that the marks were bites from insects and crayfish caused while Jackson's body was in a creek for several days after her murder. For further information on this case and the related prosecution of Levon Books, see The Innocence Project, "Kennedy Brewer", <https://www.innocenceproject.org/cases/kennedy-brewer/>, accessed 22 June 2020.

institutional sub-community of criminal justice in the United States because it suggests that many convictions will need to be re-examined, especially when obtained on the basis of forensic odontology alone. In other words, the institution has, in this case, done a very bad job structurally of establishing a new kind of condition as relevant to certain cases, and this is now being corrected.

Second, what counts as a sufficient condition will be the same in different particular questions of the same kind, so that in many instances, the sufficient condition on the primary judgment of fact will come down to a judgment of fact about what kind of question has been presented. In the United States, for instance, trial courts are responsible for overseeing the initial presentation of claims and evidence, so all kinds of questions can be presented, but one may not generally raise new questions before appellate courts. Appeals courts can only consider questions presented to them, and those questions must have been raised in the last court to review the case as well—otherwise the appellate court quickly transforms into a court of the first instance. This is not just legalistic caprice or a random or lazy policy but actually makes sense to avoid the incursion of personal opinion into judicial/legal pronouncements. This good of order, even if it is *good*, can cause further problems if the wrong kind of question is raised in a given case, but there are remedies for this as well (further appeals, or even broader reform).

This is not an insurmountable problem, just a complication that comes with having an institution in the first place. If a lawyer has a more adequate legal common sense, such a mistake would not be made. If a certain pleading in case is an argument aimed at a broader legal problem that would require systemic change, if there is a different argument that aims more precisely at a specific injury to be remedied, then that is the proper question to put

before the institutional sub-community of the court. Without the proper question, that court is less likely to produce the particular good (remedying a specific injustice) because of a tragic lack of specialized common sense that led to a mistake because the question of systemic adjustment is a distinct question that should only be considered if an easier particular remedy is not available. A necessary condition for getting the right answer from an institution is asking the right question of the institution, regardless of whether the question is posed from outside or from within the institution.

The US Supreme Court's recent decision in *Rotkiske v. Klemm* illustrates this well.⁸⁴³ In 2009, Klemm & Associates, a collections agency, took Rotkiske to court over an unpaid \$1,200 credit card bill but knowingly sent the process server to an old address so that notice of the suit never reached Rotkiske. They subsequently filed a false affidavit of service, saying that Rotkiske had in fact been informed of the suit. As a result, Rotkiske did not turn up for the court date and the judge, not knowing that the documents had been fraudulently misdirected, granted Klemm's motion for summary judgment. Rotkiske had no idea a suit had been filed against him until he applied for a mortgage in 2014 and was denied.

The statute of limitations under the Fair Debt Collection Practices Act is one year, leaving those defrauded in the way Rotkiske was without recourse. He asked the trial court for an equitable solution, since a straight application of the law would reward the fraudster for his fraud, and sought to have the clock begin when the fraud was discovered, not when it was committed. At trial, he raised two possibilities: a general discovery rule and a fraud-specific discovery rule. The general discovery rule would be a substantial departure from

⁸⁴³ *Rotkiske v. Klemm*, [589 U.S. ____ \(2019\)](#)

the previously settled construction of statutes of limitation with far-reaching consequences likely to produce many other injustices, but the fraud-specific discovery rule would provide relief to those in his situation without invoking most of the negative consequences of the general discovery rule.

Unfortunately, *Rotkiske* does not seem to have retained the best appellate attorneys he could have, and they did not raise the fraud-specific discovery rule before the Third Circuit, so it was not “preserved”, nor was it mentioned in the petition for certiorari to the Supreme Court. Justice Ginsburg, in her dissent, goes so far as to say that the petition is “hardly a model of the deft pleader’s art”, a critique on style and substance all the more pointed for its rarity.⁸⁴⁴ Because the fraud-specific rule was not preserved before the Third Circuit, it could not be raised at the Supreme Court, and *Rotkiske* was left with only the general discovery rule to argue for. The Court refused him 8-1. Had he preserved the fraud-specific discovery rule request, the Court would likely have ruled unanimously in his favor. But he did not ask the right question of them.

But, to be clear, it will not always be the case that whether a question of fact has been explicitly referred to the institution is a condition on the answer the institution gives. It is important that it be so for the courts, but in other circumstances, it is just as important that the institution have the freedom to seek questions of fact to answer (e.g. the CDC). No two institutions will have the same set of standards and settled rules for which conditions will apply to which questions because no two institutional sub-communities are likely to have identical sets of questions referred to them.

⁸⁴⁴ *Rotkiske v. Klemm*, [589 U.S. \(2019\)](#) slip op., at 5. Whatever the justices may say about the case, the performance of the lawyers in their filings and arguments before the high court is almost never discussed in published opinions.

For formal institutions, though, those standards and rules should always include, at a minimum, (1) standard conditions for judging that a question is of one kind rather than another; (2) standard conditions for judging each kind of question regularly presented to the institutional sub-community one way rather than the other; and (3) standard conditions for the insight that there are no further pertinent questions or, when judgments are time-sensitive in some respect, that answering further pertinent questions is not likely to alter the existing meaning-as-object being judged. When informal institutions undergo reforms, the presence or absence of these three sets of standards should be examined and, if necessary, remedied.

Third, institutions should have the flexibility to abrogate their standards and rules for which conditions may apply to which questions when appropriate. We have seen this already in the difference between judgments at law (the judge must follow the word of the law exactly) and judgments at equity (the judge can implement alternative solutions to achieve a just result), but this distinction applies more to institutional *doing* than institutional *knowing*. For example, in the wake of the 2008 financial collapse and to prevent the issuance of additional toxic mortgages, banks were severely restrained in detailed ways about what they could and could not consider as income in deciding whether to grant a loan. This created situations in which, despite steady income and good credit, even if one was already reliably paying more in rent than the proposed mortgage payment, the mortgage still might not be issued. The solution in such a case would have required an institutional agent to understand that the law constrained what conditions those institutional sub-communities could consider in ways that led to an incorrect conclusion about what an applicant can and cannot afford, in which case an *ad hoc* abrogation of standards and rules

would be necessary to secure a loan. When institutional sub-communities adhere to their established standards, protocols, and procedures rigidly, they manifest the general bias of institutional common sense, which we will discuss below.

So in establishing commonly sufficient conditions, institutional sub-communities must first properly vet the available conditions for their applicability and reliability in answering a given kind of question. They must also establish standards and rules about when each kind of condition may be applied to each kind of question—they must develop a common sense about when to consider what conditions as relevant to which questions. And lastly, because it *is* a kind of common sense, they must recognize that it's only mostly right most of the time and that sometimes, the right thing to do is ignore the standards and rules in service of the institution's value-goal. This means that the standards and rules should not be constructed so rigidly that there is no room for judgment calls, even if that's better than constructing them so loosely that everything is a judgment call. Agents of the institutional sub-communities who make those judgment calls must also be fully converted so that they can properly evaluate whether the standards and rules should apply in each recurrence of each question over which they exercise such judgment.

2.1.3 Reasons to Believe Institutions

The attentive reader will have noticed that what we've said above about ensuring common phantasms for presentation to the intellect and commonly sufficient conditions on the judgments of fact leaves a few important gaps from what we said about cognitive process in individuals. That deficit is intentional—institutional sub-communities don't have a cognitive process as separated from the individuals who constitute those sub-communities. What they do have, separating them from the wider community on this point,

is a way to structure the components and conclusions of the cognitive processes of many individuals into a useful whole. Institutional knowing is identical or closely analogous in structure in many respects to individual knowing. Individuals within the institutional sub-community, acting as institutional agents, will still need to recognize the questions being referred to them,⁸⁴⁵ attend to their experiences and collect the images produced thereby, present them to the intellect for processing, evaluate conditions and whether they apply to the question at hand, and arrive at a virtually unconditioned judgment of fact concerning the question presented (or say that no responsible judgment of fact is yet possible).

What we have highlighted above are the important ways institutional knowing differs from individual knowing. Specific procedures are specified in the institutional framework by which the institutional sub-community is to be gathering and pruning the phantasms relevant to a given question. Specific standards and rules are specified in the institutional framework by which possible pertinent conditions are vetted and then applied to given kinds of questions. These are still things individuals do in their cognitive processes, but in institutions, these processes are made explicit and coordinated. The ability to examine these roles, duties, and standards of conduct, the procedures and rules for generating phantasms and applying conditions to judgments of fact, makes it easier to

⁸⁴⁵ We have not gone into this above and will not do so here for reasons of brevity, but sorting out just what the question really at issue might be is often the first step an institutional sub-community must take in resolving a question of fact. Institutional sub-communities, no less than individuals, must be at pains to recognize the difference between questions as pre-linguistic tensions of inquiry and questions as formulated, and communities no less than individuals must take care to form their communicative acts of meaning so as to convey the tension of inquiry rather than a flawed formulation only. But this is not always done perfectly, as it is not always perfect between individuals, and institutions will need to include mechanisms for sorting through potentially flawed formulations to arrive at the question really being asked. That may be anything from a formal and structured interpretive process, as a court of law might engage in, to the simple and often implicit rule that determining what question is being asked is down to the best judgment of the person in a given role.

trust the institution over the individual because we can understand not just what is being concluded, the meaning-as-object, but how that result is arrived at, the collective meaning-as-act, in a way simply not possible with an individual in most circumstances. It is also generally going to be easier to understand and value institutional motives and their impact on the judgments of fact being produced by the institutional sub-communities than it will be to understand the motives of any individual and their impacts.⁸⁴⁶ And most importantly, it means that one can evaluate whether or not the institutional sub-community is operating authentically in answering questions of fact.

So institutions address the community's problem about whom to believe in two ways. First, institutions provide demonstrated expertise in answering certain kinds of questions. I would not be able to answer particular questions about epidemiology and disease control without significant additional training, for instance, but the CDC as an institutional sub-community is well-equipped to answer such questions. As long as they are answering questions within their domains of expertise, they are credible because they have the tools, both physically and intellectually, to answer those questions. We said above and reiterate here, though, that institutions should not be believed outside their domains of expertise without further corroboration. Each institution provides a solution to the community's problem about whom to believe, but only within its areas of competence, its domains of expertise.

Second, institutions make explicit their common sense, opening it to examination by the community. The common sense of all formal institutions (and many informal

⁸⁴⁶ In Plato's *Republic* (368c-369a), this is the basic insight behind Socrates' constructing a city to understand the proper function of a soul.

institutions), not just the law, is an artificial construct, which means both that it will be constructed up front to be as consistent and complete as possible and that the explicit framework is open to revision on similarly explicit lines. When changes are needed, the institutional sub-community and/or the wider community, depending, can agree that changes are needed, agree on how to make those changes, and make them collectively. It also means that there are standards and procedures institutional agents are expected to follow in acting on the institutional sub-community's behalf, and those agents' actions can be open to examination and critique after the fact.

This comes out especially in the contexts of institutional change management. We will discuss this further below in the section on changing institutions, but when you ask what how someone does something, there are three answers: what they *actually do*, what they *think* they do, and what they *say* they do. All three are equally important for this discussion because there can a lack of understanding, and that becomes a problem for accuracy when it means the institution does not understand its own processes properly, but if the conceptualization isn't accurate and communicative, it impossible for the public to have access needed to support their belief. These are rarely the same answer, and no nefarious intent is needed for these three to be different. Most of us do not conceptualize our processes of getting ready to leave for work, for instance, break them down into steps, and develop a flow chart. We just... do it. The same holds true for our routine activities once we get to work, despite the fact we are there acting as institutional agents rather than just as individuals.

It is possible to document what someone is actually doing, rather than what they say they do or what they think they do, and this is the first step in a responsible change

management process, as we will discuss below. Likewise, when transitioning a position from one institutional agent to another, it becomes necessary to think through what the previous agent had been doing to understand the processes and procedures she had contributed to and the nature of those contributions so that the new agent will be able to take up her mantle with minimal interruptions. Because this does not have life-and-death consequences for the most part, few institutional sub-communities map out the roles, duties, and standards of conduct of their agents in the same level of detail as the legal system or the military. But these maps of roles, duties, and standards will exist in more or less detail in any formal institution (and creating them where they do not already exist is part of the process of formalizing an informal institution).

In addition to all this, though, and bearing specifically on belief, institutional sub-communities must also be careful to distinguish between answers that are certain and answers that are merely probable. Institutional sub-communities will often be called on to give a best guess initially with certainty to follow, especially in emergency situations, and the authentic institutional sub-community will be very clear which kind of answer they are giving. Authentic communities will likewise be attentive and intelligent in understanding just what kind of answers they are getting, “for sure” or “best guess”, and value those answers and available courses of action they suggest accordingly. We saw above with forensic odontology what happens when a community, in this case the law’s institutional sub-community, is not properly attentive to and intelligent about the limits of the answers they receive. We have also recently been treated to an extended exercise, in the guise of the COVID pandemic, in what happens when the institutional sub-community answering the question does not exercise care in expressing the limits of their knowledge. In all cases,

the result is a degree of confusion, misdirection, and mistrust. “It is an objective surd, the realization of the irrational” because the institutions one ought to be able to believe have suddenly lost that community’s trust and the community at large, along with most individuals, are set back adrift in a sea of uncertainty.⁸⁴⁷

Because institutional frameworks are created by people, institutional sub-communities are made up of people, and people are imperfect, the procedures and standards will not be perfect and will not be adhered to perfectly. Because institutions are operating on common sense writ large, their answers will be correct only most of the time. The institutional sub-community may err with respect to either their effective acts of meaning or their communicative acts of meaning. But when the institutional sub-community errs, either with respect to procedures and standards or in just getting the wrong answer, the community (be it the institutional sub-community or the wider community) can engage in a process of reflection and correction in a more concrete and explicit way and with more voices than an individual will likely be capable of, producing results more quickly and more publicly.

When there are doubts as to whether an institution has erred, it is often the case that the community can check one institutional sub-community’s answers against another’s. It is unusual that an institution will be the only one occupying a given knowledge domain or that it will occupy only one knowledge domain. Rather, each institutional sub-community usually operates in one or two primary knowledge domains, defined both by the primary and secondary value goals of the institutional framework and by the expertise available within the sub-community. Because no knowledge domain is wholly isolated, an island

⁸⁴⁷ Lonergan, “Dialectic of Authority”, 7

unto itself, each institutional sub-community answering questions of fact will have things to say about questions outside its primary knowledge domain(s). When two or three institutional sub-communities are giving different answers, this is a clear signal that something has gone wrong for at least one of them. Institutional sub-communities should therefore take care to ensure that they all give the same answer on a given issue or that the differences can be explained without one or more being wrong.

When this happens, there is often a reason beyond simple error in the process, though. Apart from the simple fact of getting things wrong, the biggest threat to institutional credibility is the potential for partiality. We observed in the last chapter that though authentic institutions are created to serve the whole community, there is consistently great pressure on institutional sub-communities to pick a side, so to speak, and adopt the perspective of one or another group within the community, using their authority and expertise to pursue the interests of one group to the exclusion of the interests of other groups. Doing so biases the operations of that institution, and when it becomes known that the institution has picked a side in that way, the institution loses credibility with the other side.

The authentic institution will remain impartial despite these extreme pressures. For the institution to remain impartial will sometimes seem like the inertial bias at work, which we will discuss below, especially to those operating within a group bias. But instead, a commitment to serving the whole community, rather than exclusively the interests of one or another of the groups within the whole community, is part of the primary value goal of every authentic institution authentically created by the community. Remaining impartial is not a refusal to do difficult things and make difficult changes because the changes would

challenge the institutional sub-community's narrative self-identity or because of outright laziness; it is a refusal to make the wrong changes made difficult by the need to resist the pressure of the developmental and group biases. To remain impartial in this way suggests that sometimes the answers an authentic institutional sub-community gives to questions of fact will be to the taste of some groups and not others and that each group is likely to seize on some answers in support of their cause while rejecting others. The "courageous" judgment of fact (or, for that matter, judgment of value and decision/action) is not always the right one, and an institutional sub-community operating authentically and composed of intellectually, morally, and affectively converted individuals will ignore the partiality they are pushed to embrace in favor of pursuing truth through the cooperation with the cognitional structure immanent within them.

As long as the institutional sub-community is operating authentically, it will restrict itself to considering questions properly within its purview and arrive at the right answer to questions of fact *far* more often than not. Wrong answers, while unavoidable, will be an aberration and reacted to with serious reflection and, if needed, changes to the institutional framework. In the degree that this occurs, the institutional sub-community is worth believing and so answers the wider community's problem about whom to believe.

2.2 *Institutional Doing*

As with institutional knowing, institutional doing will be very similar to individual doing in many respects. The institutional sub-community actually doing the action does not cease to be composed of individuals when they come into concert under the institutional framework, so their procedures of doing will be basically human. But "[t]he source of power is cooperation. Cooperation is twofold. There is cooperation down the ages. There

is cooperation at any given place and time.”⁸⁴⁸ Since institutions exist to structure the cooperation of their sub-communities, the degree of power they wield will vary according to the quality and consistency of the cooperation. Assuming quality cooperation, there are two major advantages over individual doing as a result, and in these two major advantages we find the principle differences from individual doing.

But this is not limited to cooperation between individuals in institutional sub-communities. This extends also to the cooperation between sub-communities (and, in the limit, between larger (national) communities when their cooperation is governed by their (national, i.e., governmental) institutions, e.g. the Allies in World War II). We see this most frequently in the interactions of corporate institutional sub-communities. In some cases, fully independent businesses contract with one another to coordinate their actions in specific ways to produce something that neither business could have produced on its own under its existing institutional framework (which, of course, can get out of hand). In other cases, related businesses will provide services to each other in an institutionally structured way under the auspices of a parent corporation—this is what happens, for instance, in vertically integrated businesses.

With every action, every institutional sub-community makes itself into a collective originating value that perdures and changes, and that value shifts over time and is the product of the collective effort of many people *over* time. On the one hand, institutions will often outlast their creators, which is often a hope of the community creating them. On the other hand, with generational shift comes institutional shift—institutional frameworks will be altered over time, often by the institutional sub-communities operating them, as new

⁸⁴⁸ Lonergan, “Dialectic of Authority”, 3

situations demand new solutions. And the terminal values created by institutional sub-communities can also require generations to realize and maintain. Major construction projects can have such a nature—consider, for instance, the Sagrada Familia in Barcelona.

This kind of cooperation characterizes the dialectic between communities and institutions.⁸⁴⁹ Each pushes on the other: the community insists on what is to be done as primary while the institution insists on primacy for how it is to be done. Each makes arguments to the other, appealing to both meanings and values, in an attempt to force one to align with the other. Neither ceases to exist (except when they both do) and their interactions create (in part) the lifeworld of each individual. And their interactions create and alter not only terminal but originating values in not just individuals but in communities and institutional sub-communities.

Institutional doing is, then, different from individual doing on at least two counts. First, the cooperation and so the effective, constitutive, instrumental, and communicative acts of meaning are structured by an institutional framework, choreographed in a way not common for individuals. One of Marx's concerns about the impact of capitalism on the individual was precisely that it required individuals to turn themselves into such choreographed cogs in their own machines. In putting the commodity of labor between two individuals, the worker was made to lose himself by absorption into the institutional order, in the process of selling his labor. However, while institutions do structure an individual's actions, when it is being authentic, it will not require the individual to *become*

⁸⁴⁹ In *Insight*, Lonergan calls this the “dialectic of community. Social events can be traced to the two principles of human intersubjectivity and practical common sense.” (243) As we discussed above, Lonergan's understanding of institutions evolved considerably after *Insight*, and the institutional framework is the outworking of practical common sense or practical intelligence while, as we saw in the last chapter, the community arises from human intersubjectivity.

the role and nothing more. We will say more about this below in the section on institutional agents.

Second, individuals can act on their own initiative, but institutional sub-communities often cannot. The degree of initiative available to the institutional agent will depend strongly on the institutional framework and runs the gamut from businesses, which are free to act however they will within the constraints of the law, to the courts, which are given responsibility for interpreting and enforcing that law but can do so only when a conflict brought before them for resolution—a court cannot generally initiate a case, only hear it. Like individuals, institutional sub-communities can be prompted to action, as with the presentation of a case to the judiciary, the demand for new laws to address existing problems or novel situations, or requests for a new kind of product from a given company. These requests will be more or less detailed and in some cases will require the institutional sub-community to check back in with the wider community before final action is taken, as with requests for feedback on legislation, comments on regulation, and market research on new products. Given the wide variability of institutional initiative, we will not discuss this further here; it is enough to observe that institutions can be subject to many more restrictions on their initiative than individuals generally are.

Third, institutional sub-communities are accountable in ways individuals generally are not. This is not to say that individuals are *not* held accountable by the community—criminal law exists for a reason—but it is to say that institutional sub-communities are generally held to a tighter accounting than individuals are. This makes good sense in general, in the first place, as institutional sub-communities will generally have a magnified ability to cause harm to the community and individuals in the community (including

individuals in the institutional sub-community) by their actions. In the second place, as we noted above, institutional procedures are open to inspection no less in acting than in knowing, it will generally be easier to determine why and how the institutional sub-community has acted and criticize and ensure accountability accordingly.

Beyond these things and one more, authentic institutional doing is very much like authentic individual doing: it comes as the conclusion of a process of valuation that determines in a judgment of value that a certain value should be achieved or maintained. And as with individual doing, every action the institution takes creates the value of the institution as both terminal and originating value. The one final difference is that, as we said above, institutional sub-communities are not competent to choose their primary value goals, whereas individuals are. The authentic institutional sub-community will, however, always be able to choose some secondary and tertiary value goals since the institutional framework will not contain the totality of the second- and third-order value goals necessary to achieve or maintain the specified primary value goal. Like individuals, institutional sub-communities will be free, within limits created by values higher than social values in the wider community's operative scale of values, to choose the meaning-as-object to achieve that primary value goal—indeed, the institutional sub-community will often be explicitly tasked with exploring different possible meanings-as-objects for their viability and suitability for achieving and/or maintaining the primary value goal. And, finally, like the individual, the institutional sub-community will then *act*, albeit in a coordinated fashion and subject to oversight and restraints on initiative that will usually not be applicable to the individual.

2.3 Changing Institutions

*“Reasonableness is open to change.”*⁸⁵⁰

Lonergan observed in “Dialectic of Authority” that “what is authentic for a lesser differentiation of consciousness will be found unauthentic by the standards of a greater differentiation. So there is a sin of backwardness, of the cultures, the authorities, the individuals that fail to live on the level of their times.”⁸⁵¹ This is certainly true of communities as they persist through time, but it is also an acute danger for institutions. As we observed above, many persist intergenerationally, especially government institutions. But where communities are reshaped more-or-less automatically by each new generation, institutions are not. Their institutional frameworks persist through changing times, making institutional sub-communities (e.g. the authorities) uniquely susceptible to the sin of backwardness Lonergan spoke of.

That sin, in the context of institutions, we will discuss below as a one available affective component of the inertial bias, the valuation of the institution’s traditional operational imperatives in such a way that institutional effort is bled off to support them and options for achieving or maintaining the institution’s primary value goal are foreclosed on for no other reason. In some cases, that means that the value of the traditional operation of the institutional sub-community will *displace* the primary value goal of the institutional framework, so that the primary value goal of the institutional sub-community becomes its own preservation in (roughly) its current form.

⁸⁵⁰ Lonergan, “Dialectic of Authority”, 7

⁸⁵¹ Lonergan, “Dialectic of Authority”, 6

We will spend a fair bit of time with the issue of institutions changing because, as is hopefully clear from our discussion of informal institutions, legitimate and authentic institutions and their sub-communities can lose that authenticity and so that legitimacy if they do not carefully manage their changes over time, if they adapt to new circumstances based on common sense and what is convenient in the moment. Every authentic institution and institutional sub-community will have a pruning and planning function to it. As the trichotomy between the institution, its sub-community, and its agents may suggest, this function works in three related ways: the institutional framework must enable change, the institutional sub-community must be open to that change in certain ways, and the institutional agents must discern and execute the needed change authentically. We will discuss each in turn.

2.3.1 Authentic Change Agents

We have said repeatedly that it is not enough for institutions to be authentic meanings-as-objects and dedicated to authentic values; they must also be operated by fully converted, which is to say, authentic individuals, now in the guise of institutional agents. In *Method in Theology*, Lonergan says that one “may be authentic or unauthentic, and this may occur in two different ways. There is the minor authenticity or unauthenticity of the subject with respect to the tradition that nourishes him. There is the major authenticity that justifies or condemns the tradition itself.”⁸⁵² He spoke here of an individual in the context of her culture and community, as the individual subject to authority who participates in the structures of the community and its institutions without having much to say about their

⁸⁵² Lonergan, *Method in Theology*, 77

governance. But this can be readily extended to individuals in authority as well, and here we find part of what it means for an institutional agent to be an authentic member of an authentic institutional sub-community.

When institutional agents are demonstrating minor authenticity, they will be open to change. They will seek it out and attempt to implement it as needed. They will not be closed to the possibility of change. They will recognize that the system, the institutional framework, is not perfect and that it can be made better. While carrying out the duties they have under the existing system, they will also be attentive to and intelligent about what's going wrong and how it can be done better. Those responsible for implementing change will be attentive to the thoughts of those on the ground, work with them to intelligently understand how things might be changed, and reasonably and responsibly select and implement the best options available for change.

When these agents are demonstrating the major authenticity, they will include among their questions whether the given change forwards the value goal of the institution, what its impact on secondary value goals will be, and whether the change will align with the operative scale of values in the wider community's collective horizon of feelings. Google, in its early years, famously implemented this under the watch phrase "Don't be evil." Engraining this maxim in their corporate culture gave them sufficient flexibility to keep up with evolving standards in the community concerning just what might be considered evil. This was especially important since the company is involved in creating and propagating new technologies the wider community has not previously had an opportunity to value. But it also forced the company as an institutional sub-community to consider these significant questions of value before arriving at the judgments of value

around whether to move forward with changes to the company, their products, or their product lineup.⁸⁵³

When an institutional sub-community's change agents are demonstrating the major authenticity and keeping the changes properly ordered to the institution's primary value goal, the institution's course of development will keep true. It will continue to be able to pursue its primary value goal in new ways and through new operations as required by a changing culture. When the institutional sub-community instead attempts to accommodate the institution's primary value goal to the culture or otherwise shifts off its primary value goal as the ordering principle of its operations, the institution's course of development becomes warped and begins to display the institutional iteration of the developmental bias we will discuss below.

2.3.2 Change Management Protocols

The authentic institutional framework, as a meaning-as-object, must either include in itself procedures for changing itself, or, at a strict minimum, not preclude changes. This does not always mean that the institutional framework includes a specific change management protocol (informal institutions almost never will), though it's often helpful if it does. The purpose of a change management protocol is to provide first opportunities for noticing when changes are needed, second, a process for identifying and articulated needed changes (question of fact), and third, a process for achieving buy-in from relevant stakeholders and executing the needed changes.

⁸⁵³ One may, of course, question how well Google has held to this maxim as it's become increasingly influential, begun to dabble in politics, and run up against the requirements of totalitarian regimes like China. But what is important here is that, at least for a time, Google did hold to that maxim and it did govern their corporate culture.

The need for explicit change management protocols depends on both the size of the institution and the nature of the institutional sub-community operating under its auspices. A small institutional sub-community that is willing to make institutional changes on an as-needed basis and is itself operating attentively with respect to changing times so as to recognize when those changes are needed may not need them. But institutional inertia becomes a progressively more significant problem as the size of the institutional sub-community grows, and the institutional framework must be (re)constructed to account for and counter that inertia with such an explicit change management protocol. Likewise, if the institutional sub-community tends to be insular and uninterested in what is happening outside itself or becomes so ossified that it resists change for no better reason than that it is change, explicit change management protocols become necessary to force them to consider what is happening in the wider community and begin considering appropriate changes.

Where such change management protocols are a necessary part of the institutional framework, they will have several features in common across institutions. They will, for obvious reasons, first designate a role or set of roles within the institutional framework as having responsibility for paying attention to external and internal circumstances and noticing when changes are needed. These will usually be management positions, but the roles at issue are not responsible for noticing directly that changes are needed. Rather, the people best aware of when changes become necessary are those actually doing the work (the line workers, be they building an auto or building a criminal case). These are the people most directly in touch with the situation on the ground, so to speak, and so will be

the ones who first notice a need for significant changes to help them better cope with that situation or produce more appropriate (authentic) meanings and values in that situation.

The role of the manager with respect to change management is to be open to the possibility that a change is needed. This is part of their authenticity as an institutional agent. The line workers noticing that a change is needed are often not best equipped to describe that change, either because the skills required of their roles do not include the skills needed to assess and articulate the changes needed or because there are parts of the bigger institutional picture of which they are unaware (and of which they have no special reason to be aware). Management is aware of the larger picture, and while this makes them ideally suited in most institutions to articulate and implement needed changes, they also have trouble seeing the trees for the forest, so they can't be regularly relied upon to see where changes are needed.

Management, then, needs to be open to hearing from line workers about where changes are needed in the various institutional processes. Change management protocols will include formalized ways for line workers to bring such things to management's attention. Line workers, by turn, must be aware of those mechanisms (or be able to become aware without much difficulty) and must willing to use them when they see a change as needed. Part of management being open and line workers being willing in these ways is management being articulately responsive to suggested changes. When this relationship breaks down, institutional development becomes biased.

The institutional framework will also designate a role as responsible for managing the change itself once the need for change is recognized.⁸⁵⁴ In smaller institutional sub-communities, this may be appended to the role of a manager with other unrelated duties; in larger institutional sub-communities, this will routinely be a dedicated project management role (or a team of them) sometimes called a process improvement or process excellence team. These roles account for the second and third common features of change management protocols in authentic institutions.

The second is articulating the needed change. As we saw, those best positioned to notice *that* a change is needed are often not best positioned to understand *what* change is needed or *where* the actual problem is. The first part of articulating the needed change, then, begins with a question of fact, “What is causing the problem to be addressed by the change?” The first part of answering that question is understanding the existing process. This may reveal multiple sources contributing to a single problem (e.g. multiple bottlenecks in the supply chain or laws leading to unequal/unjust outcomes coupled with problems in enforcement), and the needed change may turn into a set of needed changes.

Mapping the existing process will often be a challenging endeavor. As Lonergan noted, “it is much simpler to do things than to explain what you are trying to do, what the method is that you are employing in doing it, and how that method will give you the results.”⁸⁵⁵ This is part of why a specialist in a dedicated role will sometimes be required

⁸⁵⁴ In the business world, “change management” would usually refer only to the second and third items here, articulating and implementing the needed change. I have included noticing the need for change because that is no less a part of the process and it’s often a place institutions and institutional sub-communities develop significant scotoses in their self-understanding.

⁸⁵⁵ Lonergan, *Understanding and Being*, ed. Elizabeth Morelli, Mark Morelli, Frederick Crowe, Robert Doran, and Thomas Daly (Toronto: University of Toronto Press, 1990), 3; hereafter cited as Lonergan, *Understanding and Being*. Lonergan said this with regard to the process of self-appropriation in the

by change management protocols in larger institutional sub-communities—this is difficult to do well and made only moreso when it is done in an *ad hoc* fashion. Moreover, we said above that part of what makes the community inclined to rely on formal institutions is the ability to examine their frameworks with relative ease, yet often no one has formally mapped the workflows at issue. So the first step in articulating the needed change is often a lot of investigative leg work to build a formal meaning-as-object concerning the actual institutional.

Once the source(s) of the problem is understood, “[t]he inventiveness of practical intelligence can issue in practical results” to be discerned between.⁸⁵⁶ This discernment process is much like the process an individual engages in, but again, there will be a few differences. The process improvement specialists will need to account for not only the operative horizon of feelings and operative scale of values in themselves but those in the community as well, along with the primary value goal of the institutional framework as determined by the community that created the institution. This will winnow down the “possibilities in the manifold” provided by practical intelligence and allow the institutional sub-community to agree on the changes to be made in concert.⁸⁵⁷

Once the need for a change is recognized and the needed change, articulated, the third common feature in change management protocols is the implementation process. This will include the more detailed portion of the planning and coordination to ensure a smooth transition from the old framework to the new framework with a minimum of

individual, but it does not seem to become easier just because one is trying to understand the immanent processes of an institutional sub-community rather than the immanent processes of an individual.

⁸⁵⁶ Lonergan, *Insight*, 621

⁸⁵⁷ Lonergan, *Insight*, 621

disruption. An authentically operating institutional sub-community will work to not only ensure that the right change is made but that it is implemented in the right way, which is to say, the way the rest of the institutional sub-community can accept and hopefully embrace. This means not only planning but achieving buy-in from relevant stakeholders by communicating to them why the change is needed in terms of the primary and secondary value goals, how the change will impact them, attending to feedback they give on both the change itself and the way it's made, and altering the planned change where possible to account for that feedback. The relevant stakeholders will often be line workers who will have a very good idea of how a proposed change may muck up other parts of what they need to do, though hopefully these will have been accounted for in understanding the existing process.

Institutions operating authentically will do these things continually and more-or-less concurrently as a constant recursive operational improvement process. This is not to suggest that institutional sub-communities must be constantly re-inventing their total institutional framework. This is also not to suggest that institutional frameworks are in constant need of change, especially those governing smaller institutional sub-communities. But it is to suggest that the attentiveness to possible *needs for change* must be a constant feature of the institutional framework and the institutional sub-community alike. And in larger institutional sub-communities, that need for change will usually be more-or-less constant because of the number of moving parts in the institutional framework. That makes it all the more important that institutional agents be open to and that institutional sub-communities include agents competent to articulate and implement needed changes, as we will discuss in the next section.

2.3.3 Institutional Stability

One further point we should stress in this discussion of how and why institutions ought to be changed: “in such cases, when it is not *necessary* to change, it is necessary *not* to change”, which is to say that when changes are not needed, they should not be made.⁸⁵⁸ Part of the process of discernment the change agents need to undertake is discerning whether any change is actually needed or whether any feasible change would in fact improve the situation. Sometimes, the answer will be no, and that needs to be attended to as assiduously as when the answer is yes.

Institutional agents will often feel a need to justify their existence, their expense reports, their office space, etc. And the easiest way to make such a justification is with *action* of some kind, by being seen to *do something*. Sometimes this pressure will lead to actions taken in haste and later regretted as the process of discernment we discussed above was not engaged with; sometimes, this pressure will lead to changes being made when none were needed (and then, again, often in haste). The most succinct and illustrative expression of this I have ever found is in political satire. In a democratic culture skeptical of the value of the professional politician, where the specter of Cincinnatus yet haunts the community’s horizon of feeling, elected officials more than most seem to feel a need to justify their existence and consumption of other people’s money. The BBC sitcom *Yes, Prime Minister* spelled out the resulting thought process in the politician’s syllogism:

- ◆ Something must be done.
- ◆ This is something.
- ◆ Therefore, we must do it.⁸⁵⁹

⁸⁵⁸ Lucius Cary, Viscount Falkland, *A Discourse of Infallibility* (London: printed for William Nealand, 1660), 3.

⁸⁵⁹ *Yes, Prime Minister*, “Power to the People”, episode 2.5, directed by Sydney Lotterby, written by Antony Jay & Jonathan Lynn, aired January 7, 1988, on BBC.

There are several problems with this syllogism. For our purposes, the most important is that the major premise, “Something must be done [about X]”, is a meaning-as-object to be verified in a judgment of fact. All too often, though, the thought process begins with that judgment assumed. It may be the case that what the line worker perceives as a problem is actually not one—it may be an intended effect of the system, or it may be that the problem concerns a bias on the part of the line worker (e.g. the person who objects to working with others of a different race or religion). It may also be that there *is* a problem and that any of a proposed suite of changes could alleviate that problem, but none of the available options would alleviate problem A without creating problems B, C, D, and E, each of which would be of more serious import and more difficult to correct. In such cases, it turns out, there is no reason to do something about X. And when it is not necessary to do something, it is necessary not to do something.

And we should be clear: this applies as readily to other kinds of institutional doing as it does to institutional changes. The impulse to do something and to be seen to be doing something is not restricted to changing institutional frameworks when things are going wrong or have gone wrong as a result of the framework itself, especially when the framework is regulating people outside of the institutional sub-community (as with government). In many cases, there is no need to act (and often a need *not* to act) because the action is demanded from a place of bias or because any available action will create more serious problems. Knowing when to abstain from acting is as important as knowing when and how to act.

2.4 Institutional Agents

We should pause at this point and remind ourselves that institutions, while necessary as the framework of human cooperation, are nonetheless operated by humans. Therefore, the authenticity of the institution is the authenticity of its operators to at least some degree: “it is within the matrix of [the institution] that power comes to be entrusted to individuals within community.”⁸⁶⁰ Those individuals are the authorities, “the officials to whom certain offices have been entrusted and certain powers delegated.”⁸⁶¹ And while the community is a carrier of authenticity, the institution is not; in their stead, authenticity is carried by “the individuals that are authorities.”⁸⁶² This is why, as we have said, authentic processes for institutions are generally so similar to those for individuals and why, above, we have been at greater pains to point out the differences.

Lonergan points to this distinction of *personae* in his division of carriers of authenticity: it is carried by both “the individuals that are authorities [and] the individuals that are subject to authority.”⁸⁶³ While it has not always been the case historically, it is certainly often enough the case that one individual is both in authority and subject to authority. Near the beginning of Chapter 2, we recounted the story of Henry II of England, who was flogged on the steps of Canterbury Cathedral because he was thought to have ordered the murder of his one-time friend, Archbishop Thomas Becket. This story rests at the foundation of the core concept of common law, that there is one law applicable to all people, from those only subject to it to those also charged with making and enforcing it.

⁸⁶⁰ Lonergan, “Dialectic of Authority”, 5

⁸⁶¹ Lonergan, “Dialectic of Authority”, 5

⁸⁶² Lonergan, “Dialectic of Authority”, 6

⁸⁶³ Lonergan, “Dialectic of Authority”, 6

He was clearly in authority as king but subject to the authority of common law. We could adduce any number of examples down to the present day, but it is clear enough that one individual can occupy both positions.

As a result, the two *personae* are not readily separable. What the individual in authority does in that guise has an impact on that same individual as subject to authority, that is, the individual herself. In discussing the normative scale of values (religious, personal, cultural, social, and vital) and its application to an ethics of discernment, we pointed out that the higher level values regulate the options available for realizing and maintaining the lower level values. So social values regulate the creation of vital values, cultural values regulate the available social values *and* vital values, etc. Institutional frameworks, as “mechanism[s] set up for making decisions” that “facilitate the flow of coordinated operations”, are social values through which “individuals are socialized”—they structure our lives together.⁸⁶⁴ This means that the authentic institutional framework is regulated by personal values, and there are five distinct considerations of personal value regulating institutional frameworks.

First, the authentic institutional framework must be structured in such a way that the operation of the institutional sub-community will respect the personal value of those outside the institutional sub-community who are substantively impacted by its operation. This includes every aspect of institutional knowing and institutional doing. This is, of course, most important for the governmental institutions, where the institutional sub-communities exercise jurisdiction and authoritative regulation over many who are not in the institutional sub-community. But it applies no less to other institutions, though the

⁸⁶⁴ Lonergan, *Topics*, 35-36

ramifications are less obvious. It means, for instance, that power generation companies should be structured to account for the health and wellbeing of the population proximate to the generators. That may mean protocols to ensure that emissions from coal-fired generators are sufficiently controlled to prevent a significant increase in respiratory problems, or it may mean protocols for the adequate control of the reaction of a nuclear generator to prevent a meltdown and the release of ionizing radiation. It also means, for instance, that restaurants should include appropriate cleaning and preparation safety measures to prevent tainted or expired food from being served to patrons.

The remaining considerations of personal value, though, concern individuals who are part of the institutional sub-community. In building the institutional structure, care must be taken to respect the personal value(s) of those who are or will be agents of the institution. Where the creation of oneself as an originating value is concerned, there is not a clear line of demarcation between what one does in one's individual capacity and what one does in one's institutional capacity. As such, the second consideration of personal value is that an institution's agents should not be asked to violate their consciences.

This is not to say that, for instance, a fast-food employee could refuse to clean the restrooms just because they do not care to do so. This is the difference between what we might call unpleasant duties and odious duties. Unpleasant duties are those that are, well, unpleasant but not morally objectionable to the agent, like cleaning the restroom. Odious duties are those that the agent actually finds morally objectionable. This would be, for instance, the conscientious objector who resists conscription into military service because

he or she would need to kill people.⁸⁶⁵ Performing an odious duty is something that would be in strong tension with the given agent's existing scale of values and horizon of feelings. It is not something the value of which is felt as neutral but as significantly negative.

In considering this, we do not say that all institutions should simply scrap any procedure or duty any agent finds morally objectionable. In line with what we said at the end of Chapter 4, the fully authentic individual is a markedly unusual creature, so much so that Lonergan's account is aspirational rather than a goal ever achieved in one's life. As such, we expect that there will be some disagreement between individuals as moral agents about what duties can and cannot be required of institutional agents. What we mean here is that the structure of the authentic institution, the character of the institutional sub-community, and the disposition of its legitimate higher authorities should be such that an institutional agent can, without fault or favor, refuse certain duties they find odious in this way.

This must, though, come with some reasonable bounds on what an employee can object to. As we said, cleaning the restroom is an unpleasant duty, not an odious duty, and there is general agreement on that. Nonetheless, there exist people who would consider it an odious duty and the institution of the restaurant cannot be structured to allow its institutional agents (the employees, often hosts) to escape it on that basis.⁸⁶⁶ So part of the institution's structure must include strictures about what kinds of duties are to be mandatory and which can be objected to as odious. In identifying appropriate strictures,

⁸⁶⁵ Conscientious objectors can, of course, be accommodated in other ways than excusing them from military service altogether, e.g. posting them to the quartermaster corps or the medical corps rather than an active combat unit, so that they serve in an alternative and non-combat manner.

⁸⁶⁶ I was a fast food manager in a previous career, and I can say from personal experience that our restrooms would never have been cleaned if we allowed that duty to be avoided because of moral objections to cleaning them. And from some of my employees, that claim would have been made in absolute earnest.

the institutional sub-community may or may not need to appeal to the value judgments of the community, and each institution (or at least each kind of institutional) will include differing sets of strictures based on what kind of activity each institution is coordinating—it would be exceptionally odd, for instance, to find strictures relating to the conscientious objection to killing other human beings in the institutional framework of a restaurant.

The third consideration of personal value is that the institution must be structured to not ask its agents to risk life and health unnecessarily, and when such risks are necessary, the institutional structure should require that reasonable precautions be taken. One of the major flashpoints of concern during the early response to the COVID-19 pandemic was the availability of personal protective equipment (PPE) to “essential” employees. In some circumstances, systems were already in place to supply this (though shortages plagued the system for some while), such as in medical institutions. In others, though, such as shipping warehouses, meat packinghouses, and other agricultural processing plants, there had not previously been a need to supply employees with PPE beyond gloves and hair nets, and supplies were not readily available since hospitals (reasonably) got priority on shipments. Many employees and their advocates were entirely dissatisfied with this state of affairs, but as PPE became available, it was distributed to them for use by their employees, and as production of PPE continued to increase, the situation in those workplaces gradually improved.

In this instance, two things happened concurrently. First, commercial institutional sub-communities recognized that they needed to safeguard their employees if for no reason other than to avoid a public relations disaster. Second, at least in the United States, the government institutional sub-community responsible for overseeing such things, the

Occupational Safety and Health Administration (OSHA), began enforcement actions with these commercial institutional sub-communities, clarifying who did and did not *need* to have PPE for their employees. OSHA already had regulations on hand for what kinds of PPE (and other protective equipment) institutional sub-communities were required to supply to employees doing certain kinds of work, and from April 2020, they began reclassifying whole industries into categories requiring them to supply certain kinds of PPE to their employees. OSHA did this with the explicit understanding that employers could not be expected to instantly source PPE for their employees in the midst of a global shortage. Instead, they required employers to have plans and timelines on which to obtain the needed PPE, and if those timelines were not met, it seems usually to have been because the federal government had appropriated a shipment and redirected it to a hospital in need.⁸⁶⁷

In this instance, commercial and governmental institutional sub-communities worked in tandem, as they ought to have done, to respect the personal values of their agents to the greatest degree possible with respect to their safety and health while also ensuring that the vital values of others were maintained (especially with respect to food security). This does not always happen, and when it does not, it routinely ends in tragedy, be the scale small or large.

The fourth and final consideration concerns the personal status of institutional agents. This is rather more nebulous than the others and dependent to a considerable degree

⁸⁶⁷ Of course, this did not always work perfectly, and the Trump administration's rhetoric led to considerable suspicion about whether any federal government agency was taking appropriate actions and where and how the federal government was redirecting shipments of PPE. Unlike President Trump or members of the COVID task force, OSHA did what they did without a great deal of fanfare, such that the public perception of their action often did not match its reality.

on the character and culture of the institutional sub-community. As a result, it is also the easiest for an institutional sub-community to get wrong. Because it is so dependent on the institutional sub-community, this consideration is divided into structural and interpersonal components.

On the institutional side, the institution structures both the activities and interpersonal relationships of its agents. This brings us back to the Marxist critique we mentioned above. Individuals should not have to become institutions in their own right, and likewise, institutional frameworks should not be so structured that the institution demands that members of its sub-community live only as institutional agents, that they be never anything apart from institutional agents. No institutional agent should be made to be *only* a cog in the machine. The authentic institution will not demand, as part of the agent's participation in the institutional sub-community, that the agent give up their individual life for the good of the institution. To do so would place the social value of the institution above the personal value of the agent.

Beyond that, “[w]hen you have coordinated operations resulting in a flow of particular goods, there arise personal relations that are congruent with the structure of the good of order. Such personal relations give rise to status.”⁸⁶⁸ The initial relationships between institutional agents are structured by their institutional roles. For instance, before I can come to know my boss as a person, I know him as my boss, and the dynamics of the employer/employee relationship structure not only our working relationship but the development of our interpersonal relationship as individuals rather than institutional agents. Institutionally, controls must be in place to prevent the abuse of that relationship.

⁸⁶⁸ Lonergan, *Topics*, 36

But more than that, the institutional structure of that relationship ought not be demeaning to either party. If I am employed as a junior accountant, for instance, my job description should probably not include a stop at Starbucks on my boss' behalf on my way into work or picking up his dry cleaning on my way home (though such things might be more acceptable for a personal assistant).

On the communal side, the culture of the authentic institutional sub-community will respect the personal value of each institutional agent no matter how they are employed. My boss should come to know me as a person, if they can, even if the institutional framework does initially structure our relationship. It is a problem if, for instance, a doctor refuses to acknowledge a janitor in the hall *because* he is a janitor and therefore in a lesser position or gets upset when the bathroom is closed for cleaning because she needs to use it *right then*. There are two problems with such institutional cultures: first, there is implicit a failure to recognize that each institutional agent has a role to play in ensuring the smooth functioning of the institutional sub-community. But second, there is the failure to recognize the person in a lesser station *as a person* rather than as an inconvenient cog in the machine. This is not to say that everyone should be friends with everyone else in an institutional sub-community, especially larger ones where it is difficult to even meet everyone else. There may be other valid reasons (e.g. personal antipathy) for avoiding someone. But thinking of an individual as less (or more) of a human person because of the job they do is not the fruit of an authentic institutional culture.

It is, then, incumbent on the authentically operating institutional sub-community to both directly respect the personal value of each institutional agent and each individual outside the institutional sub-community who will be substantially impacted by the

institutional sub-community's operations and, as appropriate and through an authentic change management process, to (re)structure the institutional framework to do so as well. Where this does not happen, one or another of the biases comes into play, and legitimate authority becomes naked power as those in higher authority use those under them, be they institutional agents or individuals outside the institutional sub-community. This is part of why it is so important that the institutional sub-community be populated with people who have been not just intellectually and morally converted but affectively converted as well. They need to be able to properly value the personal value of those they deal with both within their sub-communities and outside them as being of nearly the highest import and regulating both the structure of the institutions and the nature of their interpersonal interactions. Because this is not a perfect world, the personal values at issue cannot always be balanced perfectly. But insofar as the institution is (re)structured authentically and the institutional sub-community is operating authentically, the balance will improve over time.

3 Institutional Biases

The authentic operation of institutions depends on the interlocking authentic operation of individuals subject to authority and individuals in authority, considered as institutional agents, and the institutional sub-community they are part of in relation to the wider community. When any of these operations go wrong, it can have a unique cascading effect, creating institutional biases. This is especially true of governments but is true in any other institutional setting as well. These biases are distinct from biases in individuals within institutional sub-communities or in the sub-communities collectively, though these are also operative in institutional settings. Here, though, we are considering biases that

have uniquely institutional manifestations and are not just reprises of what we have said in previous chapters.

Institutional biases themselves generally concern an institution's development (or lack thereof) and the trajectory of that development. In some cases, as with the general bias of institutional common sense, the problem created by the bias is that the orientation of the institution is off and the line of development is skewed as a result. In other cases, there is substantial resistance to change or other actions, even if many within the institution recognize it as needed and beneficial.

Of the four institutional biases we will consider here, Lonergan directly addressed the developmental bias (as distinct from group bias), the general bias of common sense, and the egoistic bias as biases, and we take them up now in their distinctly institutional manifestations. The last, the inertial bias, Lonergan also adverts to, but he does not discuss it as a bias. But it is a distinct, coherent pattern of distortion with recognizable characteristics and idiosyncrasies that persists and will sustain itself within the horizon of knowing or feeling of institutional sub-community impacted, absent outside intervention, so it satisfies the general criteria we laid out in Chapter 4.

Noticeably absent from this list is the group bias operative in communities. We have been at pains to be explicit that the institution is operated by a sub-*community*, so the reader may well wonder why we have not included the institutional manifestation of this bias. Though we will discuss the group bias at a few points below by way of differentiation, the group bias does not operate differently in institutions or have a unique institutional manifestation. To the degree that it is responsible for the skewed development of institutions, it works the same way within an institutional sub-community as from outside

of it, pushing the developmental line in a biased direction. The creation of power bases and drawing of lines characteristic of group biases still happens within institutional sub-communities, but the fact of an explicit structure to that community's operation does not really change that—when it happens, it often happens as the victory of the intersubjective over institutional attempts to restrain such group biases. That the group or sub-*community* was initially structured by an institution is incidental. It creates a developmental bias of the institutional sub-*community*, and as such, we will let what we said on the subject in Chapter 5 stand for institutional sub-communities as well as for the larger community as a whole.⁸⁶⁹ But the group bias does not by itself account for the developmental bias of the institutional framework; for that, we need the institutional biases.

As we did in Chapter 4 and 5, in discussing operational biases, we will distinguish between cognitive and affective component of biases. We will list the biases by their cognitive components, but as we have seen in previous chapters, there is not a one-to-one

⁸⁶⁹ In Chapter 5, we said that group bias has up to two of four distinct affective components: (1) love of one's group, (2) hatred of one's group, (3) love of another group, and (4) hatred of another group. Its cognitive component adds at least one and potentially two new questions to the process of winnowing the practical ideas for responding to concrete situations: What will be the impact on my group, as opposed to my community? What will be the impact on that other group, as opposed to my community? This component is cognitive insofar as it springs from a failure to answer correctly a different question: Who is my community with respect to the problem at hand?

As a result, when various courses of action are submitted for valuation to the either the actually relevant community or the assumedly relevant community, the communal horizon of feelings in which the dominant group responds is warped. This distortion is where the question about the impact of a proposed solution on my group comes from: its answer is a significant and necessary part of the construct presented for valuation, without which the distorted horizon of feelings will not be able to give a firm answer. The end result is that at least some solutions chosen by the dominant group are not those that would be selected by a community operating without the group bias and serve to reinforce the lines between groups while degrading the cohesiveness of the whole community and the status of individuals within non-dominant groups.

This can happen in an institutional sub-community no less than in the wider community. The institutional sub-community can either constitute a group itself, by contrast with the wider community, or it can develop splits between groups internal to its own sub-community. The adversarial relationship this creates either within the sub-community or between the sub-community and the wider community then creates the developmental bias of communities we likewise explored in Chapter 5.

correspondence between the two. The same affective component may function with several different cognitive components and vice versa. Each of these biases contributes to “a bias in the generative principle of a developing social order”, the developmental bias, here in its institutional manifestation.⁸⁷⁰ We will discuss that developmental bias first, then proceed to discuss the operative biases as the various different ways the developmental bias of institutions can come about.

3.1 Developmental Bias of Institutions

What results from all of the operational biases we will discuss below is a bias of the development of institutions. This parallels the developmental bias of communities we discussed in the previous chapter and we separate it out as a different bias for the same basic reason: the bias here is not in a particular operation or action but “in the generative principle of” the institution.⁸⁷¹ The institution has a proper course of development, in line with that of the community, but with that generative principle biased, so also is that course of development. This tends to be a more pervasive and systemic problem than any of the operative biases, even for institutions and their sub-communities, because it conditions more than just what’s happening in the moment and because the resultant distortions condition everything that happens within the institutional sub-community. The ongoing problems of race in the construction and development of American institutions show just how pervasive and systemic the developmental bias of institutions can be and routinely is.

⁸⁷⁰ Lonergan, *Insight*, 248-49

⁸⁷¹ Lonergan, *Insight*, 248-49

Another way of saying this is that the developmental bias results from the failure to properly orient the institution to proper ultimate concerns. As consciousness becomes progressively more differentiated, the community grows in its understanding and undergoes additional affective conversions as it becomes better acquainted with that ultimate concern and its operative scale of values becomes better aligned with the normative scale of values. In doing so, the community will also adjust and readjust the primary and secondary value goals of its institutions when they have become outdated, outmoded, or otherwise begin producing significant tension within the communal horizon of feelings.

We saw an instance of a community doing just this in Chapter 2. When Diocletian took over the Roman Empire, he had a different understanding of how to run it than did his predecessors, involving a college of emperors supporting one another. But he also understood (rightly or wrongly) the problems of the Roman state as stemming from a shift in the operative horizon of feelings that placed cultural and sometimes social values over religious values—the people were no longer dedicated in a real way to the gods that protected the state, so these gods no longer protected the state.

Part of Diocletian's reforms concerned the reorientation of the Roman community to ultimate concern, in his case, the worship of the state gods, and he did this in the many different ways we discussed, from persecutions to his efforts at reforming the coinage. When Constantine took power, he did not undo Diocletian's reforms so much as change what was understood to be of ultimate concern. This was part of why Constantine did not represent a shift in the operative legitimation theory. What Constantine changed was who was to be worshiped as the patron of the Roman state.

In each case, what they changed was the institutions' primary value goals and, in some cases, their secondary value goals as well. There were reasons things had gotten off track—biases operative in the state—and things got off track again after the reforms of Diocletian and Constantine. The sack of Rome in 410 AD, for instance, was due in large measure to humanitarian aid promised to Goths displaced by the Hunnic invasions of the late 4th century being siphoned off by various military officers until the flood of aid turned into a trickle. The developmental bias in the generative principle there was a shift in the primary value goal of the Roman military as an institution from service to the country to service to one's own pocket.⁸⁷²

Where the developmental bias is found, one or more of the three operative biases below has shifted the generative principle of the institution. Remember that the operative biases are biases of the moment, impacting particular decisions and particular actions, while the developmental biases refer to the both the aggregation of the biased decisions and the course of development conditioned by and conditioning the operative biases active in the institution's sub-community and agents. Put another way, this is the difference between major and minor unauthenticities as Lonergan describes them, as we discussed above in our discussion of change agents.⁸⁷³ The minor unauthenticity is the bias of the moment, impacting the actions of the individual, not the community as a whole. The major unauthenticity is the bias of the whole over a longer period of time. When enough members of the (sub-)community are demonstrating minor unauthenticities, this is a sign that a major unauthenticity is present. Or those minor unauthenticities can reinforce one another until

⁸⁷² This is not the only institution of Rome so twisted—Rome's taxation scheme encouraged rampant abuse along similar lines. Others, predictably, were warped in other ways.

⁸⁷³ Lonergan, *Method in Theology*, 77-78

they accumulate into a major unauthenticity. And it distorts the course of development in a way that compounds all the results of the minor unauthenticities.

Moreover, this relationship is reciprocal. As the operative biases create the developmental bias by warping the generative principle of the institution, so also the warped course of institutional development conditions the emergence of the operational biases either by failing to appropriately restrain the individuals involved or by creating perverse incentives. We discussed an instance of this in Chapter 2 with the use of indulgences. The first known plenary indulgence was granted by Pope Urban II to the first Crusaders in 1095. The precedent of exchanging something for the remission of sins was established no later than this. Eventually, this was expanded to include those who could not go on the Crusade but could fund the Church's efforts. And finally, it was expanded to anyone who would give the Church money.

When indulgences were first issued, the motivation seems to have been reasonable enough, from the Church's perspective: if the Pope has the authority of Peter to remit sins, then he can use it to further the kingdom of God. This authority was used first to solicit the men who would be needed to shore up the Byzantine Empire, and later to secure additional funding for their expeditions when the princes of Christendom became less willing to spend their treasure in that pursuit. The Church's course of institutional development was warped by this, and it in turn created a perverse incentive for bishops to seek authorization to offer indulgences for their own aggrandizement—especially when the Pope got a cut of the proceeds for reconstructing Rome. The operative institutional bias of common sense created a developmental bias in the institutional development of the

Church, and this in turn encouraged the rise of assorted egoistic biases in this institutional setting.

This is the institutional side of the longer cycle of decline we discussed in the previous chapter: as compromises are made and the society's *status quo* becomes more and more degraded, institutions are remodeled as a result of those compromises.

The breakdown of community entails the breakdown of cooperation. Different groups advocate different policies. Different policies entail different plans, and the different groups deploy all their resources for the implementation of the plans that accord with their policies. There may be a seesaw battle between them with the resultant incoherence and confusion. Or one side may gain the upper hand, and then exploitation of the other follows.⁸⁷⁴

Implementing these policies and carrying out these plans requires institutions, and where they cannot be coopted, they will be built from scratch. Those who would usually resist such changes, the authentically operating institutional sub-community, are either overruled, overmatched, or are themselves biased and contributing to the problem. The general bias of common sense creates serious issues, as we'll discuss below, about failing to find the right solutions and accepting instead most expedient solution that won't create new and significant near-term difficulties—which, coincidentally, is often not the best solution for preventing new problems in the medium- and long-term. But the course of development for institutions can be warped in other ways as well as the inertial and egoistic biases take their toll and as abuse of authority vitiates that authority. We will discuss each below in turn.

⁸⁷⁴ Lonergan, "Dialectic of Authority", 7

3.2 Inertial Bias

*“It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.”*⁸⁷⁵

-Justice Oliver Wendell Holmes

The value of institutions as the condition of goods of order is their ability to focus human effort towards a single goal or interrelated set of goals, to coordinate initiative and place responsibility for acting in a limited number of hands. But once the institutional sub-community gets moving in a given direction, it tends to resist change. This is particularly problematic with large formal institutions because the relationship between mass and inertia in physics holds true here as well and because formal institutions tend to have defined change processes as opposed to the *ad hoc* criteria for change evident in informal institutions. Bureaucracies need change processes, but when people get comfortable with the way things are, they don't tolerate actually making the changes all that well.

For such correction would have to be the work of those immediately concerned, or else it would have to be referred to those higher in authority. But to grant discretionary power to those immediately concerned would run counter to the purposes of bureaucracy... On the other hand, when the chain of command is from above downwards, any flow of information from below upwards tends to be sluggish, for it is apt to go unrewarded; unwelcome, for it adds to the work of those above; ineffective, for those above are unfamiliar with the situation below, less perceptive of the difficulties that are arising, with little insight into the solutions that are possible, and unsure of their own ability...to convince those still higher up.

... For the large establishment the line of least resistance is a judicious combination of apparent change and real stagnation. The product or service remains essentially the same, but the decor is piquantly novel and the advertising a fresh variation on the hard or soft sell.⁸⁷⁶

⁸⁷⁵ Oliver Wendell Holmes, “The Path of the Law”, *Harvard Law Review* 10, no. 8 (1897): 469

⁸⁷⁶ Lonergan, “Study of Emerging Religious Consciousness”, 58-59. The writers of *Yes, Minister* succinctly captured the spirit of this bias in the episode “Big Brother”, in which the protagonist, an enthusiastic MP holding a cabinet post for the first time, receives a lesson from his predecessor on how the Civil Service will try to block any change he wants enacted. After describing their delaying tactics, the now-Opposition MP

Inertial bias seeks to hold onto the old way of doing things because change is *hard*, and it sometimes meets resistance from those who profit from the status quo or seek to maintain it out of a misplaced sense of loyalty. This is especially true in governments, the which are generally the largest bureaucracies and have unique claims on individual loyalties. Affectively, the inertial bias may overvalue tradition, undervalue change, or both, as we will discuss. While this bias is not specific to bureaucracies, institutions involving more than a few people almost invariably evolve a bureaucratic structure, and it certainly finds its most obvious and problematic manifestations in those bureaucracies as the framework of cooperation becomes not just settled but ossified. When this ossification happens to the universal norms regulating an institution's constitutive operations, they lose the flexibility to deal with exceptional situations. To be of any use, these norms must be applicable to more than one case, and the more the better, but the broader they get, the more they tend to cover situations where they demand the wrong things, and it is rarely possible to specify all the relevant exceptions in advance.

Lonergan adverts to Aristotle's consideration in *Nicomachean Ethics* V.10 to make this point: where the law recognizes that it's good and right to do what the legislator would have done in an exceptional case had he known, bureaucratically produced policies and procedures rarely include that kind of flexibility. Governments have included judicial procedures from necessity either within their executive function or as a separate division of the institution to decide where a given law applies and where it does not, who can be

says they "will do absolutely nothing unless you chase [them]. And you've got far too much to do. You see, it's what they call 'creative inertia'." *Yes, Minister*, episode 1.4, written by Anthony Jay & Jonathan Lynn, BBC, aired March 17, 1980. The new minister later quips to his wife that the Opposition MP was willing to advise him well because "he's just the Opposition-in-Waiting. The Civil Service are the Opposition in residence."

held accountable under it and who cannot, and who should be given a special dispensation. In the American context, we see this in the court system as a separate branch of government, in the rules of standing and cannons of construction, in prosecutorial discretion and jury nullification, and in the continued application of doctrines of equity to produce a just result when the law's text would produce an unjust result.⁸⁷⁷

But the bureaucrat is not constrained by principle of justice or fairness in the way the judge is. Judicial processes exist, but those judging the cases in a bureaucracy are not charged to be impartial—they are charged to do what is best for the institution and its value goals. This restrains the ability of institutional agents to be reasonable and responsible even when they're being attentive and intelligent and encourages them not to be attentive or intelligent but simply blindly apply the policy. This makes it difficult to know when policies and procedures need changing. Those closest to the situation, those line workers above, have the discretion to make exceptions in individual cases but will be punished if they do so too often and don't have the discretion to make a wholesale change in policy—that would frustrate the goal of bureaucracy to coordinate action by increasing the number of those responsible for coordinating that action to an unmanageable number. The line workers dealing with application of policy on a day-to-day basis do always have the option of informing their superiors about problems they see with the application of policy, and as we discussed above, that is exactly what they will do when they are being authentic.

⁸⁷⁷ We should note that in the American context, we also have a government bureaucracy bound by the 5th and 14th Amendment demands for due process. This is not the typical case, historically, and as a result, actual power over citizens is often concentrated in the hands of petty functionaries. Moreover, this expectation of due process saturates American culture to the point that many non-governmental bureaucracies include a formal appeals process as a matter of course. Insurance companies are perhaps the most pervasive example of this.

The inertial bias moves to see to it that they are not heard and to discourage them from making such reports in the first place. The cognitive component of the inertial bias deals with the refusal of images and insights for various reasons. But as Lonergan describes it in that short passage from the “Study of Emerging Religious Consciousness”, the inertial bias also contains affective components that would more usually be associated with some of the individual biases. Not every reason that solving problems and making needed changes are resisted necessarily involves the same affective components.

The refusal of images and insights, though, is the bias concerning the change management protocols and change agents we discussed in §2. It impacts every level of the change process from the initial recognition of the problem to the implementation of solutions. The reasons for this refusal may be diverse, but in all cases where the inertial bias is active, it is characterized by a change management process that refuses to face facts (and the images that support those facts) and to make necessary changes to systems or personnel. The change management process may be thusly biased because the institutional sub-community refuses to recognize any evidence of a problem (refusal of images), because it refuses some insights necessary to understand the problem properly, because it refuses some insights suggesting solutions to practical intelligence, and/or because it refuses to implement these solutions.

The cognitive component of the inertial bias is distinct from the group bias we discussed in the previous chapter. The reader may reasonably ask why, if the institutional sub-community is nevertheless a community, the group bias does not account for this. To this, we answer that group bias can certainly obstruct the change management process and can also account for the refusal of images or insights into problems and solutions. But the

distinguishing mark of the cognitive component of the group bias was the addition of a question: “What has been or will be the impact on group X?” This is not a refusal of insights but seeks instead for additional insights not pertinent to the judgments of fact and value to nevertheless add to its consideration of the problem and possible solutions.

We said above that the dramatic bias of individuals is included under the inertial bias of institutions but deferred discussion of why. The dramatic bias in individuals manifests cognitively when the psychic censor refuses to allow certain images into consciousness because, affectively, the insights triggered by those images would cast doubt on the individual’s false narrative self-image. Something parallel certainly can happen in institutions as a higher-up refuses images as presented by those in his employ that challenge the communal narrative self-identity (and, sometimes, that higher-up is operating with their own individual dramatic bias on the point), but the connection between the affective and cognitive components of the individual is neither clear nor strong nor consistent in the institutional setting. There are three possible affective components for the inertial bias; defending the narrative self-image of the institutional agent or sub-community is only the first. When the images themselves are refused, the line workers’ reports of problems are simply ignored, but as we made clear above, it more often results from a desire to avoid the hard work needed to address the problem. Inasmuch as this is true, the inertial bias both includes and goes beyond the dramatic bias.

The cognitive component of the inertial bias manifests in distinct ways, depending on the affective component at play. All such manifestations are failures of receptivity of insights, but the cognitive component responds differently to the different affective components. The dramatic affective component ensures those who bring such issues to

light are rarely rewarded and may actually be punished for exposing abusive or exploitative practices and costing the institution in prestige or material resources. There is, on top of this, the nature of power dynamics that conditions any interaction between senior and junior agents of an institution. For the institutional sub-community to operate authentically, the juniors need to respect their seniors as institutional agents, if not as people. When that respect, that trust, is not there, problems will not be reported in a timely fashion and change will not be managed as it should.

Moreover, those to whom such issues are brought may not actually want to deal with them. Authorities often do not want to recognize problems because then they would have to do something about those problems, and that would interfere with their tee time. In most bureaucracies, the vernacular synonym for ‘whistle-blower’ is ‘trouble-maker’, and that not only discourages line workers from passing on information on problems but also conditions the receipt of that information by their superior authorities in the institutional sub-community in a way that makes them less likely to take it seriously. In the dominant majority of cases, this is also a problem of responsible parties lacking the bandwidth to deal with all the problems they should be addressing. Problems are given a lower priority than they ought to have because something else seems more urgent (or one is informed that it’s more urgent by those above them), and the end result is an accumulation of problems which are important but not urgent. By the time they become urgent, it’s often too late to manage the needed changes well. When that happens, common sense solutions are implemented, which can lead into the institutional manifestation of the general bias of common sense.

We saw an instance of this in Chapter 1 with the end of the Roman Republic, where the demands of the *mos maiorum*, the storied ideals of older days, were shielded from substantive critique because their value was felt as outweighing the problems being experienced and needed changes were rejected on the grounds that the Republic was the received form of government and that the continued expansion of Rome demonstrated that the gods remained pleased with the institutional arrangements by which Rome was managed her affairs. The resultant military expansion of Rome overtaxed her existing institutional arrangements under the Republic—the constitutive meaning of the Republic’s institutions was no longer sufficient to produce the values intended because the situation had changed and, because of the commitments to the value of that institutional arrangement and the *mos maiorum* together, the needed insights were refused. The Republic became an unauthentic institution as a result, something its dedicated defenders like Cicero refused to understand. Inertial bias also stood at the foundation of the problems that led to the Social War, and so to Sulla’s dictatorship and the beginning of the end for the Republic.

The second available affective component is close to the first but concerns the value of the institutional framework. The horizon of feelings, individually and/or communally, may be distorted to over-emphasize the value of the institutional framework as it presently exists or as it was originally created. In the extreme, this affective component manifests when the institutional sub-community replaces the institution’s primary value goal with the preservation and longevity of the institutional framework and sub-community in its present form, or something as close to that form as possible. This affective component may be present (though it is not always present) in attempts to avoid institutional changes by a distorted, unauthentic appeal to the wisdom of those who first created the framework,

which most often occurs in a governmental setting. This is not restricted to governments, of course; such an affective bias may be evident in appeals to aspects of existing corporate culture or proud points of collective history that rely on the institutional framework being the way it is. The unwillingness to reorganize underlies the collapse of many corporate structures.

In Chapter 3, we discussed the constitutive acts of meaning around a crown and the way the British crown functions as a symbol of authority as a result, even in just its representation above the chairs of the Speakers of various Commonwealth Parliaments. Another such constitutive act of meaning is the State Opening of Parliament in the UK, the first act of which has the Yeoman of the Guard searching of the cellars at the Palace of Westminster. The Yeoman are themselves a ceremonial military unit of royal bodyguards; the average age is well past 50 and their captain is always the government Deputy Chief Whip in the House of Lords. Their search of the cellars is to prevent a repeat of the Gunpowder Plot of 1605.⁸⁷⁸ The traditional recompense for their services is a glass of port. It is unclear what is to be gained from a critique of this tradition—a change in the Yeomans’ Tudor-era uniforms, perhaps, or in their manner of remuneration? But a critique of the State Opening itself, the pageantry and overtly monarchist overtones in the celebration of British history that it has become, could be profitable. While few will find themselves so attached to the search of Westminster’s cellars as to demonstrate this affective component, far more will be inclined to uncritically accept the value of the State Opening and the tradition of pride in the monarchy and in England it represents.

⁸⁷⁸ This was an attempted assassination of James I by Roman Catholics who resented the marked reduction in religious toleration under his reign. Near midnight on 4 November 1605, Guy Fawkes was found in the cellars of Westminster standing guard over enough gunpowder to reduce the House of Lords chamber to rubble during the State Opening the following day, likely intended to blow during the King’s Speech.

The cognitive component here does not always refuse insights into the problem and potential solutions that would require institutional changes, e.g. to maintain the authenticity and legitimacy of the English monarchy, but this affective component creates a heightened bar for those insights. The high valuation of the institutional framework as it exists suggests to the community instead that the problem is with the community or certain individuals in position of authority: the system is perfect, we have just failed to live up to its vision and so have not realized its promise. When the necessary work has been done to establish that any workable solution must involve change to the institutional framework, the affective component will lead to insistence that the changes be small and not impact the core of the institutional framework, especially its primary value goal and usually its principle secondary value goals. This affective component can allow for change, but it will insist on the smallest change possible and will resist tooth and nail major systemic changes.

And sometimes, this affective component will inhibit changes. Saying that a change will resolve a problem is not the same as saying that value of the proposed change and its results outweighs the disvalue of the change to the institutional framework, both in itself and with respect to additional follow-on effects. This dedication to tradition means that the primary value goal of the institution can become shifted to the preservation of the institution, complete with all the restrictions that imposes on available courses of action. But unlike other values that can replace an institution's primary value goal, this one tends not to destroy the institution—at least not quickly. If the goal of the institution is to survive at all costs, then its community will do just that and will make the accommodations necessary to stave off its own demise. That will usually mean that the institution *does*

change, but only ever slowly, and significant changes will almost always be motivated by a clear and present danger to the continued existence of the institutional sub-community.

The third available affective component is the affective void characteristic of the individual egoistic bias. This is the desire to avoid the hard work of fixing problems when rooted in absent or significantly attenuated feelings as intentional responses to people impacted by those problems and the suffering (of whatever variety) created by those problems. When this affective component is in play, the cognitive component leans heavily towards the refusal of insights with attendant obfuscation and misdirection: I know there's a problem, I just don't know why it should be *my* problem. As a result, I do whatever I can to *not* have to deal with it. This egoistic affective component does not often manifest communally, though one might rationalize it as a desire to spare one's subordinates unnecessary work. Most often, it manifests in a single individual and will create problems in scope relative to the importance of that individual to the change management process and the number of individuals so affected.

But this is distinct from the individual egoistic bias because its cognitive component is not the same. In the individual egoistic bias, “[w]ith remarkable acumen one solves one's own problems. With startling modesty one does not venture to raise the relevant further questions” about the generalizability or applicability of one's solutions to other similar problems within the social or institutional order.⁸⁷⁹ But in the inertial bias, these questions are raised and the egoist is forced to answer them, at least to some extent, by the change management process. The inertial bias instead avoids their proper answers. We will consider the egoistic bias in its institutional manifestation in more detail below.

⁸⁷⁹ Lonergan, *Insight*, 245

When this affective component of the inertial bias is active, the cognitional component refuses insights into actual solutions *as long as* one can be seen to be acting and can plausibly deny responsibility for one's failure to correct the problem. The egoist still feels his or her own value keenly and can be motivated to implement actual and effective changes if avenues that rely on obfuscation and misdirection can be closed off. When those avenues are closed off, the egoist can become a marvel of efficiency, ensuring an effective change that solves the problem for the least possible amount effort—at least, the least possible amount of the egoist's own effort. But this is difficult and not a reliable solution to the problem the egoist presents in the inertial bias. And even then, the cognitional component of the inertial bias continues refusing insights into potentially better solutions that would require a more serious effort from the egoist.

In each of these manifestations, the inertial bias sets up a dialectic between and the overall health of the institutional sub-community on the one hand and the interests of the individuals operating the institution on the other. The aggregate of events concerns how the institutional sub-community responds to external pressures from competitors, writ large, push for efficiency, doing more faster with less, to maintain a competitive edge or spend less taxpayer money to accomplish the same result. Internal pressures from institutional agents who are more or less committed to the institution push for greater compensation, more respect for the personal value of the agent, and the time and resources to do the job right. How the institutional sub-community reacts can be traced to one of these two principles, and they are quite often opposed to one another. But they are nonetheless bound together insofar as the health of the institution is intimately tied up with the personal interests of the individuals involved—without the institution, many would lose

their livelihood or sense of self, and without the institutional agents, the institutional sub-community would be incapable of reacting to events, responding to those external pressures, and so, surviving. How the institutional sub-community reacts to the external and internal pressures alters both the overall health of the institutional sub-community and the personal interests of those involved.

This dialectic concerns not only the higher authorities within an institutional sub-community, though most of the responsibility for seeing to needed changes rests with them. It also concerns the line workers. An institutional sub-community functioning authentically is one that trains all its participants both to pay attention to potential problems and to communicate what they observe to those (usually in management) with institutional authority to address them. In other words, reporting issues with the way the institutional sub-community is functioning is part of the responsibilities of line workers, just as listening to and appropriately dealing with those issues is part of the responsibilities of their superiors.⁸⁸⁰ But because so often, there is no incentive to report and little incentive to address problems, the personal interests of those involved tend to assert themselves more forcefully than they otherwise ought to. Problems are not reported for fear of embarrassment or retaliation, even when those fears are not justified. Authorities do not understand problems or do not want to deal with them because it would inconvenience them at least and significantly damage them or the goals of the institution at worst.

⁸⁸⁰ When I have been in management, one of the consistent problems we had was the expectation of subordinates that we could mind-read. Our mantra became “We cannot fix problems we don’t know about.” There are some things that can be done to make employees less reluctant, but the power dynamics at play in the employer/employee relationship are difficult to overcome because they are so fundamental to the functioning of the bureaucracy.

On the other side, problems threatening the institutional sub-community's health do not go away just because reporting and addressing them is inconvenient. If it becomes common knowledge that problems are being ignored, significant problems of public relations can arise. We have a recent and ongoing example of this in the wake of the #metoo movement. In some cases, even if knowledge of the refusal to address problems never becomes public, it can cause a loss of confidence in institutional leadership if disseminated widely enough within the institutional sub-community. There is, therefore, a pressure to demonstrate real change.

But as we said at the outset, real change is *hard*. The easier road is often to fiddle the figures, hold lots of meetings, and exercise “a judicious combination of apparent change and real stagnation. The product or service remains essentially the same, but the décor is piquantly novel and the advertising a fresh variation...”⁸⁸¹ This resolves the tensions of the dialectic, at least temporarily, but leaves the problems in place and ready to rear their heads again. In this way, the inertial bias plays into the institutional general bias of common sense, and so leads to shorter and longer cycles of decline for an institutional sub-community. But unlike individuals and communities, institutions are eminently replaceable, and the phenomenon of “too big to fail” is, historically, remarkably unusual.

This dialectic should not exist. The health of the institutional sub-community and the interests and personal values of the institutional agents should align, as we said above. They should not be in competition, as they so often are. This is a phenomenon that cannot be controlled by the institutional framework, which is where most political thinkers since the Reformation have sought a solution. Marx has come the closest in insisting on radical

⁸⁸¹ Lonergan, “Study of Emerging Religious Consciousness”, 59

institutional change to put the health of the institution at the service of those involved, but even then, Marxist governments tend to exhibit the inertial bias with all three affective components at a startling clip. And this is a significant part of why they fail to provide the promised utopia. Nor are solutions concerning the institutional framework from the opposite side of the political spectrum less prone to just such difficulties, especially when nationalistic appeals to a more modern *mos maiorum* are involved.

The result in all governmental manifestations of the inertial bias is a reciprocal complex with group bias in the community, each feeding off the other, generally with a sprinkling of individual dramatic and egoistic biases throughout. The institutional sub-community and its agents have no interest in changing (and a great deal of interest in not changing, in some cases), and those in different groups have few options to force them to change. Reforms of the institutional framework cannot address this because the problem is not with the framework, it is with the people operating it. Affective conversion of the institutional sub-community, institutional agents, and the wider community is the necessary remedy.

3.3 General Bias of Institutional Common Sense

The general bias of common sense operates in institutions in much the same sort of way it operates in individuals: it encourages one to stop at “good enough” and “close enough”. Institutions and their sub-communities are, as we said, tasked with filling the two gaps in the larger community’s cycles of knowing and doing: answering questions of fact and turning decisions into coordinated actions. The general bias works to attenuate the performance of these two functions.

With respect to questions of fact, we ask our institutions to answer a great many questions, and we expect a quick response time. As we saw in the previous section, this leads to an institutional common sense which directs that certain kinds of questions be answered in certain ways, according to certain pre-determined protocols of investigation and subject to certain pre-determined standards of proof fulfilling certain pre-determined conditions. This constitutes an institutional common sense, though unlike the individual manifestation, this common sense is articulated and open to inspection.

But much as happens with the general bias in individuals, there is pressure on institutions to get an answer that's merely *good enough* so as to move on to the next question. Where safeguards are not in place or enforced within the institutional framework to ensure that questions of fact are gone into completely, questions of fact often are not explored completely by an overtaxed institutional sub-community, or their exploration will be half-hearted while institutional energies are directed elsewhere. When this happens, the most likely of the available possible answers will be presented or, in conjunction with the inertial or egoistic biases, the answer best suited to provide desired outcomes for individuals within the institutional sub-community.

When combined with the general bias of individual common sense, this can produce some truly unfortunate results. We might look, for instance, at the criminal justice system, where the institutional bias pushes for quick results and successful prosecutions while the individual bias helps investigators create narratives which it can be difficult to disrupt. When the two coincide (which happens more often than any of us would like), defendants are prosecuted and convicted of crimes they did not commit because the investigators were willing to overlook questions and not pursue leads because the narrative they had was

“good enough”, and the institutional sub-community did not force the investigators to explore the available pertinent further questions.

The results of failing to answer questions of fact properly contribute to both the shorter and longer cycles of decline. If the institution has not been into the question properly, then the answers presented by the institution—answers which have not been confirmed in virtually unconditioned judgments of fact—will be presented to the communal subject as a phantasm for valuation and the valuation returned, while potentially accurate to the meaning-as-object presented, will miss the value of the true situation or the actually possible actions available. This will lead the community to choose actions that may not actually fix the problem or address the situation and to reorient institutions towards values that may not be achievable or may be recognized as disvalues if the proper meaning-as-object is presented to the communal subject for valuation. In taking these actions, the community warps the course of development for itself and its institutions, contributing to the longer cycle of decline we discussed in the last chapter.

The other point where the general bias of institutional common sense interferes is in the execution of actions. Even though ‘close only counts in horseshoes and hand grenades,’ when the general bias is operative, “close enough” begins to apply to far more situations than that. When the institution is charged to act, it can opt for a “close enough” approach or it can fill in all the details in the best way possible. Pressures on the institution to economize and work as quickly and efficiently as possible routinely lead to taking the “close enough” approach.

We saw this in the regulatory process the FAA undertook with Boeing in the last chapter. The FAA had the opportunity to fully vet each new airframe, but because of

pressures to economize and reduce the amount of time and money spent on the regulatory process, they put in place procedures to vet each new change independently of the rest of the airframe and not re-certify the whole airframe when changes were made to it after regulations changed. Likewise, they had the opportunity to vet the new changes “in house”, but due to those same pressures, they relied on the reports of Boeing’s engineers. There was a problem about having enough resources to do the job properly, so the FAA opted for an approach that would get their regulatory process “close enough” (and, some would argue, as close as possible under the circumstances).

Boeing, in turn, had several options about how to handle the regulatory burden placed on them: they could create an internal regulatory body of their own, separate from the engineers responsible for design, or they could ask the same engineers designing the planes to also perform the regulatory functions. The first option would be more expensive, would require the construction of a new department within the existing institution, with all that entails, and would lead to a longer internal review process and more lead time from project inception to sales, but it would be more likely to credibly vet Boeing’s designs and catch errors or problems before they could impact anyone. The second option would be easier and cheaper to implement and would result in a faster regulatory process, but the tradeoff would be reducing (slightly) the company’s ability to catch and correct problems before production. Boeing, as we know, chose the second option because it was “close enough” and would allow them to answer questions about the safety of their designs “well enough”.

The options and choices of the FAA and Boeing in this instance point us to two items of note. First, there is not always a good solution, and Boeing, in this case, did not

have a good solution available. The only good solution would have been for the FAA to re-assert ownership of its regulatory process. But there are usually more and less bad solutions to choose between. Boeing's ultimate choice was a product of the general bias of institutional common sense and was out of step with their primary value goal of making safe planes. Had Boeing gone with a separate internal regulatory body, their choice would have been more authentic/less biased and the product of the general bias only proximately, through the FAA's own decision.

The second thing to notice is that the general bias can impact the execution of actions both external and internal. The FAA's initial delegation of regulatory responsibilities to Boeing was an external action so conditioned. It involved an institutional sub-community telling another individual or community outside itself what to do. Not all such external actions will be instructions, of course; the justice system's regular activities come to mind, as do companies that manufacture and sell defective products, wherein they take actions with respect to their retailers and consumers.

But the internal actions are also possible, and Boeing took internal actions here. Their action involved restructuring the responsibilities of the engineers doing design and testing work to include the regulatory work as well. Their instructions from the FAA were to take on this regulatory work, but Boeing's choice was not the FAA's action: Boeing took this action themselves, albeit in compliance with the FAA's instructions. This is an instance where the value goal was dictated to them but not the means they were to use to achieve that value goal. Those means could have been better than they were, but because of the general bias of common sense, Boeing opted to restructure this part of their institutional framework (and so, this part of their institutional community) in a manner that

was cheaper, easier to implement, more expedient, and “close enough.” In doing so, they also skewed the course of their further development—this was not a change new to the 737 MAX-8 team but one that had been in place with subsequent iterations for many years.

As with the inertial bias, there are a few different affective components available here. The first affective component of the general bias of *institutional* common sense is different from the affective component of the general bias of *individual* common sense. At the individual level, the affective component is structured around survival and the need to have the time to do what was needed for one to survive. The general bias of individual common sense pushes us to accept answers that are good enough and undertake courses of action that are close enough to the right ones so we can go on to other necessary tasks. We don’t usually have time to map out the whole of the situation in detail when we approach an intersection; we rely on common sense to tell us what should be happening and we rely on the other drivers to be operating with the same common sense we are. The general bias of individual common sense’s cognitive component says that we can operate that way in all cases and its affective component says we must because we will otherwise be unable to get on with our lives.

At the institutional level, it’s similar but not entirely the same. We discussed this a bit in the previous chapter as well: the value of efficiency tends to be emphasized over the primary value goals the institution was set up to actually achieve. We concluded in the previous chapter that this drive does come from the community, especially for governmental institutions, but particularly for commercial institutions where competition is a factor, that drive comes from the institution as well. And this is why survival is implicated: the institution that is not efficient tends not to survive. The company selling a

product of a quality parallel to other similar products on the market for noticeably more than its competitors will generally not survive long. Likewise, the governmental agency that cannot be seen to spend its people's money wisely will not long survive.

When direct economic competition is not a factor, of course, the wheels turn more slowly, and there are other metrics by which institutions measure their relative importance and, in the extreme, their survivability. Their expanding or contracting portfolios are one such relatively common measure. Along with that, of course, comes the competition for appropriations, and that certainly can make or break an institution.

But the threat to institutional survival is not the only thing that can motivate the general bias of institutional common sense. The second available affective component is similar to the first in that it drives a desire for efficiency in most cases, but it stems from a desire to avoid unnecessary work. Here, rather than insisting that one need not implement changes or just make a show of making changes, the drive for efficiency makes one wonder why I would spend additional time looking for the best answer to the question or the best solution to the problem when I could instead just go with the presently-available answer that's "good enough" or the quickly-enactable solution that is "close enough" and call it a day. This comes with the added benefit of being seen to be an efficient and effective member of the institutional sub-community, so self-aggrandizement can be a part of this affective component as well. But in all cases, it is characterized by the basic overvaluation of oneself relative to others in one's institutional sub-community and those the institutional sub-community is meant to serve.

As with all instances of the general bias of common sense, the quick fix corrects the short-term problem while ignoring or creating long-term problems. Between 2003 and

2011, a chemist in the state drug lab in Boston, Annie Dookhan, falsified tests of suspected illicit substances in quite a number of criminal cases. Her shortcuts included “not actually testing all the drugs that came before her, forging her co-workers’ initials and mixing drug samples so that her shoddy analysis matched the results she gave prosecutors.”⁸⁸² This let her triple the productivity rates of her peers, and despite the need for impartiality in the lab, she eventually developed a remarkably cozy relationship with prosecutors, a status she quite enjoyed, from what her emails to them indicate. No one questioned her remarkable throughput nor her obvious bias because she was too productive, at least on paper, and one does not look gift horses in the mouth.

Before the fraud was discovered, she was hailed as a rockstar and “superwoman”, and she seems to have been driven by the need to be seen as successful and having achieved something real and good. And many, many people were put in prison on the strength of her oft-falsified analysis reports. After her fraud was discovered, over 20,000 cases were dismissed with prejudice and the defendants, released.⁸⁸³ The general bias pushed her to answer questions of fact falsely on the theory that the defendants’ guilt was not really in question and she could put lots and lots of them in prison with a minimum of muss and fuss. Despite the injustice of her methods and of the process the defendants were therefore subjected to, and even if she only properly tested one sample in three, some of them undeniably were illicit substances. In the short term, her methods seemed to work well,

⁸⁸² Katie Mettler, “How a Lab Chemist Went from ‘Superwoman’ to Disgraced Saboteur of More Than 20,000 Drug Cases”, *Washington Post*, April 21, 2017, <https://www.washingtonpost.com/news/morning-mix/wp/2017/04/21/how-a-lab-chemist-went-from-superwoman-to-disgraced-saboteur-of-more-than-20000-drug-cases/> (accessed August 5, 2020).

⁸⁸³ To dismiss a case with prejudice is to preclude it from being refiled. Because Dookhan’s methods involved mixing evidence together, then sampling and testing the mixture, it would be impossible to obtain clean evidence in most cases, so this was the courts instructing prosecutors to not even try.

even if some defendants weren't actually guilty. In the long term, her methods have created additional secondary injustices (some who were actually guilty committed additional crimes on release), a systemic injustice (minorities are about four times more likely to be charged for a drug crime in Massachusetts than their white neighbors), and an incredible headache for the state criminal system, which now has to parse through its drug convictions for a decade and make sure charges are dismissed and convictions, overturned where Dookhan was the chemist.

3.4 Egoistic Bias in Institutions

More worrisome is that in some cases, the authorities choose to create or exacerbate problems because doing so will benefit them personally. Like egoistic bias at the level of the individual, this bias requires that one ignore further questions, but not the same further questions. For the individual, those questions were: "Can one's solution be generalized? Is it compatible with the social order that exists? Is it compatible with any social order that proximately or even remotely is possible?"⁸⁸⁴ What has changed here is the scale and scope of action. The individual will ignore these questions even when prompted to them, and institutions and institutional sub-communities that perdure for any length of time tend to force institutional agents to confront them—doing so is a survival function. This means that the egoistic bias in institutions is typically overtly conscious and further requires that one (at least initially) intentionally ignore tensions in one's horizon of feelings.

This happens in two dominant modes: fief-building and direct abuse of authority. In the first mode, individuals in authority pursue changes that would increase the authority

⁸⁸⁴ Lonergan, *Insight*, 245

vested in their positions (and, coincidentally, resist changes that would decrease that authority). They rather enjoy being the lords and ladies of bureaucratic fiefs and will actively attempt to increase the size and scope of their responsibilities within the institution, often at the expense of others within the institution. This is a more benign valence than the second mode, abuse of authority, but it can nonetheless seriously impede institutional functioning and make institutions markedly less nimble in responding to situations.

This is most seriously a problem in governmental institutions, though anyone who has worked for a few years within a large bureaucracy will recognize this behavior. Those who most desire power will go to the place where the most power is to be had, wherever that may be, and in most functioning states, that's the government or an organized crime syndicate. Such individuals do not usually end up in extremely public positions, preferring the protection of their power that relative anonymity affords. But we could point to a few cases of power-seeking behavior from the recent past.

This is distinct from what we saw Augustus doing at the end of Chapter 1. When Augustus took over Rome as its first *princeps*, he did so (and was able to do so) because of the sclerosis and paralysis of the existing institutional sub-communities of the Republic and the series of political and military crises created by the inability of those institutional sub-communities to take timely and effective action. While Augustus' reforms did lead to his own personal aggrandizement, there are also reasons to think his reforms were necessary and helpful to the longevity of the Roman state.

In the second mode, those in authority are profiting personally from the continued fact of the problem. Sometimes that profit is financial, as in the case studies of capitalism presented by Marx; sometimes the profit is simply being employed when one perhaps ought

not be, as in nepotism. This can be insidious but not immediately injurious, like carefully writing the HR handbook on sexual harassment so as to preclude punishment for certain behaviors and protect a (relatively) small cadre of offenders. This can be an immediate threat to the health of the institution, like refusing to amend accounting practices lest embezzlement be discovered. Or it can be much more pervasive and damaging to the institution in the longer term.

As we saw in Chapter 1, this bias characterized the *nobiles*, the senatorial class, at the end of the Roman Republic. While inertial bias ensured a more-or-less continual territorial expansion and prevented significant alternations of their institutions, the existing institutions were such that senators were encouraged to indulge their personal interests during their governorships at the expense of the territories they were to govern. Because this was so pervasive, there was almost no one left with sufficient authority both legally and morally to call his peers to account, and those that did (most notably Cicero) often ended badly.

A considerable measure of this was also evident in failures of the Roman Catholic Church to address the abuses of indulgences prior to the Reformation, as we saw in Chapter 2. Because the Pope himself had his hand in that till, he could hardly call down his bishops for abuses yet more egregious. And as a result of the abuses, a great many lost faith in the Church as an institution, if not in the God the institution was supposed to be serving.

Annie Dookhan also demonstrated an egoistic bias—as we noted, she was submitting her fraudulent reports partly to achieve a sense of personal fulfillment—but she was not the only chemist at the Massachusetts state drug labs to be arrested about that time for tampering with evidence. The other, Sonja Farak, had a remarkably different pattern

of behavior demonstrating an egoistic bias. Farak was arrested in January 2013 on drug charges after two samples went missing and a search of her work station turned up “various unlabeled drugs and paraphernalia [and] the evidence bags associated with the two missing samples.”⁸⁸⁵ She had been employed at the state drug labs since 2003, and she was cooperative with the investigation:

Farak testified at the grand jury on three separate dates. Farak testified about her extensive drug use; her siphoning of drugs from the Lab’s standards which were used to test drug samples, from police-submitted samples of drugs which were intended to be tested for evidentiary purposes in pending criminal cases, and from other chemists’ samples; and her manufacturing in the Lab of crack cocaine for her own personal use.⁸⁸⁶

Farak’s drug use had been ongoing more or less since at least 2005, when she began using the standard for methamphetamine, according to her testimony, out of curiosity.⁸⁸⁷ Things escalated from there through a spectrum of illicit substances.⁸⁸⁸ When she was arrested in January 2013, she was heavily dependent on crack cocaine and admitted to smoking it 10-12 times per day, obtaining the powder cocaine to cook into crack cocaine from unusually large seizures.⁸⁸⁹ In the wake of Farak’s 2014 guilty plea, the Massachusetts Supreme Judicial Court ordered “more than 24,000 charges from more than

⁸⁸⁵ Maura Healey, *Investigative Report Pursuant to Commonwealth v. Cotto*, 471 Mass. 97 (2015), Boston: Office of the Attorney General, 2016, <https://www.publiccounsel.net/dlcldu/wp-content/uploads/sites/19/2018/05/Farak-Report-Final-040116.pdf> (accessed August 6, 2020), 2; hereafter cited as *Farak Report*.

⁸⁸⁶ *Farak Report*, 3-4

⁸⁸⁷ *Farak Report*, 8

⁸⁸⁸ In her account, though she did develop dependence and an escalating habit, it actually helped her productivity and accuracy. By the beginning of 2009, she had begun experimenting with the lab’s other standards, including ketamine, MDMA, MDEA, and LSD, often “in conjunction with the various amphetamine standards that she was using at the Lab.” *Farak Report*, 11. By the end of 2009, she was carefully tampering with evidence samples, especially powder cocaine, taking up to 5% of a given sample for her own use. By fall 2011, she was addicted to crack cocaine, initially obtained from police samples directly, and by late 2012, she had begun manufacturing crack cocaine for her own use in the lab from powder cocaine in police samples. cf. *Farak Report*, 9-17.

⁸⁸⁹ *Farak Report*, 17

16,000 cases...dismissed because they were tainted by [her] misconduct”.⁸⁹⁰ And, because Farak had been stealing not just from samples she tested but from those assigned to other chemists as well, the court invalidated every report from her lab while she was employed there whether or not she had done the testing. While Dookhan’s perfidy resulted in more vacated convictions, Farak’s invalidated the efforts of an entire lab for nearly a decade.

In each case, the institution was set up in such a way as to create perverse incentives for institutional agents to abuse their authority in pursuit of individual gain. This certainly pairs well with the inertial bias, and the two will often be manifest in the same situation—it certainly was in the instance of indulgences, for instance. But this is not the inertial bias, which encourages the institutional sub-community to resist the correction of problems. In the inertial bias, institutional agents are generally still acting as institutional agents, often with personal agendas, rather than as individuals who happen to hold institutional positions. Instead, here, a member of the institutional sub-community is out for himself first and foremost and will perform his institutional duties only insofar as doing so does not interfere with his personal interests. Where the inertial bias is the active attempt to make sure nothing changes, the egoistic bias in institutions is an active attempt to make sure things change in very specific ways, then exploit those changes to the fullest degree possible without collapsing the system.

⁸⁹⁰ Danny McDonald, “24,000 Charges Tossed because They Were Tainted by Former Amherst Lab Chemist’s Misconduct,” *Boston Globe*, September 25, 2019, <https://www.bostonglobe.com/metro/2019/09/25/charges-tossed-because-they-were-tainted-former-amherst-lab-chemist-misconduct/MUPgdHeLy8bdrzl5KGtvIN/story.html#:~:text=Farak%2C%20who%20worked%20at%20the,to%20feed%20her%20own%20addictions.&text=Farak%20pleaded%20guilty%20to%20stealing,to%2018%20months%20behind%20bars>. (accessed August 6, 2020).

What these two modes have in common is the desire for personal gain of one kind or another. These gains may be tangible or intangible, and so the egoistic bias operates institutionally in two modes, depending on the character of the gain being sought. But in both modes, the object is personal gain without sufficient regard to institutional damage. Unlike the egoistic bias in the individual setting, there is usually some attention paid to whether one's actions are compatible with the existing social order or any social order one might be reasonably able to create.

But the affective component of this bias leads to the valuation of one's personal gain above the damage one does to one's institution and its sub-community in the process. This is the same egoistic affective component that animates the egoistic bias of individuals and some cases of the inertial bias: an affective void. Here also, the egoist is not without feelings as intentional responses; indeed, he feels what he believes to be his own value quite keenly. What he lacks are feelings as intentional responses to other persons or, if he has them, the values and value preferences disclosed in those feelings are wildly distorted.

This still requires overcoming the bonds of intersubjectivity and also now of practical intelligence. On one level, the egoist recognizes the personal value of others but feels it as less than his own personal value. As a result, the disvalue of the harm the institutional egoist does to his co-workers (or subjects) is felt as being overmatched by the value created for the institutional egoist personally. On another level, the damage to the institution and its sub-community means that it will be unable to pursue its primary value goal as effectively, so that the egoist feels his value over that of the wider community and its aims. As a result, the institutional egoist is willing to pursue courses of action that will generate or accentuate the developmental bias of his institution and the community with

one caveat: that no significant negative consequence attach for him. This may manifest as not caring what happens after he has died or not caring that others' lives are seriously negatively impacted because of his actions so long as those negative impacts are not felt in his own life.

4 Institutional Conversion

Discussing conversion in an institution is both simpler and more complicated than discussing it in a community. It is simpler because, unlike in the community, the institution has its organization spelled out and the institution can be considered in terms of that organization. It is more complicated because the organization of the institution must be inhabited by and operated by a sub-community to be even remotely effective. Intellectual and affective conversion will be quite different because they concern first and foremost the structure of the institution, its methods and procedures, and its goals.

As with the community, the institution does not require moral conversion because it is, so to speak, born morally converted.⁸⁹¹ As we noted in Chapter 4, "Moral conversion changes the criterion of one's decisions and choices from satisfactions to values."⁸⁹² We interpreted that to mean that moral conversion shifts the criterion of decision-making from

⁸⁹¹ We do recognize the awkwardness of saying that even truly evil institutions, e.g. the Nazi Party and the German government while under Nazi control, are "morally converted". But as we hope is clear to the reader, Lonergan's discussion of moral conversion does not use the word "moral" in the colloquial sense. The Nazis' depredations were the product of a profound set of biases at every level and a desperate need for every conversion we have discussed except for, curiously, the moral conversion because the leadership was always very clear on the extreme disvalue they wanted to actualize, and for them, it was never a matter of the satisfaction of particular desires. Lonergan was, himself, quite clear that the Nazis were a grotesque monstrosity in no respect comporting with what we usually mean by "moral".

Unfortunately, "moral conversion" is the language we are left with from Lonergan, and we are not able to replace it in the same way we did with the shift from religious to affective conversion. So we will instead be explicit that being morally converted in Lonergan's sense is not the same as being moral in the colloquial sense.

⁸⁹² Lonergan, *Method in Theology*, 225

satisfaction of particular desires to the realization of values. Where other Lonergan scholars have extended moral conversion to discuss the restructuring of the operative scale of values to bring it progressively closer to the normative scale of values, we reserved that for affective conversion, considering that this restructuring comes as part of and in consequence of affective conversion's replacement of the value ordering the scale. Moral conversion, as we discussed it in Chapter 4, has done its work when we are motivated by the values to be realized in and through our actions.

Institutions and their sub-communities do not need to undertake moral conversion, so understood, for two reasons. First, the institutional sub-community is, as we have reiterated several times, a community still, demanding reasons in terms of values for what its members do. For the same reasons a community does not require moral conversion, then, neither do institutional sub-communities.

Second, the institutional framework is already dedicated to a primary value-goal and cannot be otherwise—institutions cannot be dedicated to the satisfaction of a particular desire in the way an individual can be. Even at the furthest extreme of egoistic bias, where the institution's primary value goal has become the satisfaction of one person's particular desires, it is no less a *value* goal for that—the members of the institutional sub-community dedicated to that goal pursue it because they feel the value of it (or because they feel the value of being paid to work towards an end that they do not otherwise find morally objectionable). This is true even if the institutional sub-community's self-understanding is not expressed in these terms. As such, the needed correction of such an institution's structure is an affective conversion, not a moral one.

The institutional conversions are far closer to the individual conversion than the communal conversions in their suddenness. For the individual, each conversion is a gradual build-up to a watershed moment, a pivot point, whereas for the community, each conversion is a gradual process of accreted changes in each member that contribute to the shifts in the communal subject and its horizon of feeling. Because institutional conversion concerns the structure of the institution or who occupies particular positions, these conversions are far more like the individual conversions. There is a gradual build-up of reasons to make a change and considerations of what change should be made and then, all at once, the change is accomplished.

Of course, like the conversions of individuals and communities, institutional conversions can be undone. This is especially true of institutional psychic conversions, but it is true also of the intellectual and affective conversions. The developmental bias of institutions can be quite pernicious and institutional drift remains not just possible but likely, given the operative biases. For all that they are accomplished suddenly in response to the gradual buildup of tensions to be resolved by a change, they will also be eroded if care is not taken to maintain them. These conversions are, then, not just changes to the structure of the institution and the staffing of its sub-community but ongoing and continually renewed commitments by the institutional sub-community as a whole. This is what Lonergan meant in talking about the major authenticity of a tradition and its adherents.⁸⁹³

This position on major authenticity stands in stark contrast to the tendency to think, as we discussed in Chapter 2, that if we could only set up an institution in the right way, it

⁸⁹³ Lonergan, *Method in Theology*, 77-78

would stay there, perfect and so perfectly legitimate, requiring no further adjustment. This is what underwrites the drive in the last five centuries towards systematization and institutionalization of all of society's functions. But because institutional drift is possible, because people are not perfect and cannot be perfected by institutions of their own creation, the perfect institution remains impossible. What *is* possible is an institutional sub-community working constantly to recognize and reorder unauthentic parts of their institutional framework in a more authentic way. Because cultures shift over time, "there is a sin of backwardness, of the cultures, the authorities, the individuals that fail to live on the level of their times", and to counteract that sin, constant vigilance by the institutional sub-community and the wider community both will be required to maintain these conversions or continuously re-convert the institution, depending how one considers the matter⁸⁹⁴

We will, then, discuss what intellectual, affective, and psychic conversion mean for the institution and the institutional sub-community. As with the individual and communal conversions, this will involve the institutional sub-community and, in some cases, the wider community consciously turning the institution away from something and towards something else in a way that is not permanent but can be reversed if sufficient care is not taken. And as with the individual and the community, unless the decision is conscious in this way, unless the community is being purposive rather than just stumbling into a new and better way of proceeding in a particular instance, the institution and its sub-community cannot be said to have converted in Lonergan's sense.

⁸⁹⁴ Lonergan, "Dialectic of Authority", 6

4.1 *Intellectual Conversion*

As the role of institutions is, in part, to answer question of fact for communities, intellectual conversion in institutions will concern the ways that is accomplished. As in the individual, intellectual conversion was a decisive commitment to cooperate with our human ways of knowing, so also in the institution, intellectual conversion is a commitment to operate through collective processes of knowing respecting those same human processes of knowing and its various pitfalls. This requires three component and interlocking intellectual conversions: one in the institutional agents as individuals within the institutional sub-community, one in the sub-community as a collective subject, and one in the institutional framework.

The intellectual conversion of the individual members in the institutional context is precisely the conversion we described for individuals in Chapter 4. The individual must turn away from the “exceedingly stubborn and misleading myth...that knowing is like looking, that objectivity is seeing what is there to be seen...and that the real is what is out there now to be looked at.”⁸⁹⁵ This begins in the self-affirmation of the knower as a knower in a certain way, a subject using his or her cognitional structure to examine cognitional structure and, in operating according to the transcendental precepts, first knowing her- or himself. It concludes with the affirmation that “[t]he reality known is not just looked at; it is given in experience, organized and extrapolated by understanding, posited by judgment and belief” and the “decision about whether or not to let one’s thinking be guided by [the] implications” of that affirmation and the awareness it represents.⁸⁹⁶ The intellectual

⁸⁹⁵ Lonergan, *Method in Theology*, 223

⁸⁹⁶ Lonergan, *Method in Theology*, 224; Byrne, *Ethics of Discernment*, 92

conversion turns away from the sight-based paradigm of knowledge and turns to the paradigm where we live in a world mediated by meaning and where knowledge is whatever is affirmed in a virtually unconditioned judgment of fact. Everything not so affirmed is speculation, supposition—at best probable but not *known*.

For the individual in the institution answering questions of fact, intellectual conversion will mean the willingness externalize these commitments, to delineate carefully between what is known and what is likely in giving one's answers and to insist on that distinction, and to insist on pursuing further pertinent questions to the degree reasonably possible. As we have observed, institutional sub-communities are often not given the time they would need to satisfy the conditions on their judgments of fact and must instead present probable answers to a public eager for knowledge, not probabilities, and often not willing to appreciate and live with the distinction between the two. This commitment, perhaps more than any other, is the defining feature of intellectual conversion of the individual in the institutional setting because it requires not only that an individual commit to operating in a certain way and accepting only what is affirmed in a virtually unconditioned judgment of fact as true, it requires that the individual present his conclusions in just such a way, not merely harboring private doubts about public statements and not presenting to his superiors probabilities as known facts.

Likewise, the institutional sub-community, in becoming intellectually converted, turns away from the outlook and attitude imposed by the general and inertial biases that close enough is good enough as long as it is available quickly and that questions of fact are not worth fully pursuing beyond a certain probability confidence interval. As we have discussed, communities demand reasons from their members, and those reasons are

generally given in terms of values. The value-reasons that the institutional sub-community will accept from its individual members on why additional time and resources should be spent pursuing questions of fact will need to change to accommodate the institutional manifestation of the individual intellectual conversion. The institutional sub-community must turn away, collectively, from an insistence on reasons having to do with efficient use of resources and maximizing outcomes other than knowledge.

Lonergan described intellectual conversion as “the elimination of an exceedingly stubborn and misleading myth...that knowing is like looking, that objectivity is seeing what is there to be seen...and that the real is what is out there now to be looked at.”⁸⁹⁷ With respect to institutions, their sub-communities, and their individual agents, the connection between the conversion and this characterization becomes somewhat attenuated. The myth that knowing is like taking a look mistakes what seems to be for what is and concludes that the conditions for ascertaining what seems to be are the conditions for knowing what is. The general bias of institutional common sense encourages precisely this mindset, but it does so without the reliance on the five senses we discussed with the picture-thinking bias in Chapter 4.⁸⁹⁸ Rather, the general and inertial

⁸⁹⁷ Lonergan, *Method in Theology*, 223

⁸⁹⁸ Sometimes, of course, the picture-thinking bias is more directly invoked. Consider, for instance, the person who is found holding a gun having just fatally shot another person, also holding a gun. In some jurisdictions, the law does not recognize self-defense as an acceptable reason for taking a life. This relative lack of nuance is rooted in the thought that if one is found in such a position, it certainly looks like one has murdered someone else, so that’s what one is to be charged with, and the law will not make allowances for the life-and-death choice implied by circumstances not of one’s own making.

This instance requires intellectual conversion on two levels. First, on the level of the institutional agent, it requires an understanding and acknowledgement that the situation consists of more than just this tableau. Second, for the institution itself, this requires that the distinction between murder and justifiable homicide be recognized. Third, in the operation of the institutional sub-community, this requires that the situation be considered beyond the initial tableau, despite what might otherwise seem to be an open-and-shut case of a murderer caught with the smoking weapon in hand having just done the deed.

biases emphasize that resources are limited, so that what seems to be can be acceptably substituted for what is and the distinction, functionally erased, with an accompanying shift in what conditions may be required, even if lip service continues to be paid to the distinction.

The shift away from this approach may be quite subtle with a comparatively minor discernable change in actual processes and procedures—what will have changed is often not the processes and procedures but the approach to their use. The general and inertial biases encourage an efficiency mentality because, in fact, resources *are* limited and time cannot be devoted to every interesting question. This is part of why common sense is invoked for the individual and no less why its more formal incarnation in institutional protocols and procedures comes to be relied on. We are finite beings with an infinite series of questions outpacing our finite resources. We will not be able to answer all the questions we would wish given the available time and resources, so decisions must be made about how to allocate those resources, and so decisions must be made about which questions to pursue most fully and which questions can be safely left with probable answers.

What the institutional sub-community must turn away from in intellectual conversion is the notion that *all* questions can be left with probable answers because “close enough” seems “good enough” and no one’s perfect. Institutions are set up to pursue certain questions of fact and the institutional sub-community must turn towards answering the institution’s most important questions fully, or as fully as possible with honest

But notice that the picture-thinking bias is only properly involved at the level of the agents within the institutional sub-community. The sub-community’s involvement is in accepting what seems to be as what is and not pushing its agents to a more nuanced consideration. The institution’s involvement is only in recognizing in its framework for handling such a case the possibility that such a tableau may not present what it immediately seems to, even if in most cases, what it seems to present is precisely what it *does* present. Knowing as taking a look is implicated directly on only one level, but it remains influential in the others.

recognitions of the limits on what can be done. Adequately identifying which questions are the most important, though, will itself require an affective conversion, which we will discuss below, to shift the value goal from maximizing profit, throughput, convictions, or other available metrics to maximizing knowledge (as opposed to probabilities).

Doing so will support the individuals in their externalized intellectual conversions, but it will also likely require a re-evaluation and correction of various procedures and protocols in the institutional framework, and this is the third piece of intellectual conversion for the institution and its sub-community. As we discussed above, sometimes the policies and procedures need substantial revision because the probable has been previously accepted as fact. We discussed this in talking about the rise and fall of forensic odontology, for instance, where what was probably standard between otherwise parallel cases turned out not to be when further pertinent questions were pursued.

This is what intellectual conversion means for the institutional framework: the previously deficient protocols and procedures are brought up to date or corrected so that the individuals pursuing answers to questions of fact according to those protocols and procedures will not be misled by them. Sometimes, as with forensic odontology, that means removing an entire avenue of investigation because the previous procedure was meant to satisfy a condition that, on further reflection, is not actually connected to the relevant judgment of fact. Sometimes, it means altering a procedure that was not creating or winnowing the appropriate common set of phantasms, as with problematic rules of evidence or some kinds of scientific studies.

Nor is this limited to initial questions of fact, asking about what is happening or has happened, asking after the facts of the situation. Intellectual conversion in institutions will

also have to take into account the ways the framework determines that decisions be made. “What could we do?” is a question for intelligence just as much as “What is the situation?” insofar as it asks after responses that could be feasible for this community. Intellectual conversion will not guarantee that the following question, “What should we do?”, is answered correctly—that is the work of affective conversion—but an intellectually converted institution and its sub-community will at least present a proper accounting of the available options to the communal feelings for valuation.

Because of this, intellectual conversion functions as a partial remedy for inertial bias. Questions concerning what is creating problems and inefficiencies in an organization and what options are available to correct those problems are among the more important any institutional sub-community can ask and answer. Where an institutional sub-community subject to the inertial bias will exhibit just the lassitude Lonergan described about communicating information about problems and potential solutions to those in higher authority within the institutional sub-community, the intellectually converted institutional sub-community will encourage its members to inform management of such problems and suggest solutions according to an established process that routes the information to those empowered to make decisions, and its members will be willing to do so, being careful to present the issues while mindful of the distinction between probabilities and facts.

Likewise, it functions as a partial remedy to the general bias of institutional common sense. The institutional sub-community is, as we have said, under certain strictures about the allocation of its resources, and part of the work of the general bias is to ensure that this consideration dominates all other questions so that the most important question for the institution becomes, by default, how to do more with less. This is an

important question, but if the institution ceases to properly ask and answer the questions it was created to work on because it is trying to do more with less, then no matter how successful it has been in such an endeavor, it will have failed. Intellectual conversion in the institutional agent moves the agent to insist on pursuing further pertinent questions as far as reasonably possible and moves the institutional sub-community's focus from how to do more with less to how to best answer the most important questions with the available resources, even if that means some other ancillary functions go unfulfilled.

Moreover, because the developmental bias of institutions leads to the acceptance of sub-par protocols and procedures for answering these (or any) questions in the interests of not rocking the boat or trying to achieve ever-greater efficiencies, because close enough is good enough, and because of the difficulty of fighting the inertia of institutional sub-communities who like the way things are and do *not* like hearing they need to change in some significant way, the institution's protocols and procedures become progressively warped. Intellectual conversion corrects for the developmental bias in that it results in restructured protocols and procedures that answer questions fully, don't accept close enough as good enough, and ensure that information about problems and solutions is brought to the attention of those empowered to make decisions.

But, as with intellectual conversion in the individual, this will not completely correct errors in answering questions of fact. The intellectual conversion of an institution can be complete or it can be partial, but if it is partial, the remaining unconverted portions will tend to have an outsized impact on the sub-community and its operations. If the institutional agents on the front line are doing their best to report problems through a process that is adequate to bring this information to the attention of their institutional

superiors but those in power ignore it because they do not immediately see the relevance, intellectual conversion has not been completed in the institutional sub-community. Moreover, if those individuals in power refuse to become intellectually converted and instead cling to the inertial bias, this is not something their subordinates are likely to be able to correct.

This will require the replacement of the recalcitrant leaders. In the wider community, we discussed this as psychic conversion, shifting the leaders from an obstructive to a productive role. In an institutional setting, this is part and parcel of both intellectual and affective conversion. Where the leaders cannot be shifted from an obstructive to a productive role by intellectual conversion in their institutional capacity, the intellectual conversion of the institutional sub-community will require new leaders. This is not always a simple process, but fortunately, unlike the wider community's elite, who wield soft power that takes time to erode (barring the revelation of serious misconduct, and sometimes, not even then), intransigent leaders in institutional sub-communities can be replaced.⁸⁹⁹ This often is quite a process of its own, but it takes less time and is more easily accomplished than changing out or converting the elite of a wider community.

Likewise, as we have said, the value orientation of institutions and the value commitments of their sub-communities cannot be changed by intellectual conversion; this is the work of affective conversion. But this also means that when the institutional sub-community shifts from answering all questions "well enough" to investing additional resources as needed to answer its most important questions (and especially those having

⁸⁹⁹ For instances we will not explore here, one might consider and compare the fallout not just personally but to their influence in the wider community of allegations of serious sexual misconduct by Bill Clinton, Jeffery Epstein, R. Kelly, Harvey Weinstein, and Donald Trump.

long-term implications), it may not properly identify those most important questions. And that is not something intellectual conversion will be able to correct.

Concerning the developmental bias, intellectual conversion can correct some of the problems in the development of the institutional framework in the immediate term. But because the developmental bias is characterized by the distortion of the generative principle of the institution, unless and until that generative principle is corrected in affective conversion, the institution will not long remain intellectually converted. Distortions in the protocols and procedures will be re-introduced, and all will end back where it started.

For the individual institutional agent, intellectual conversion can be a difficult commitment to maintain. The siren song of the inertial bias creates a potent and ongoing temptation to each individual agent. For the institutional sub-communal subject, likewise, this can be a daunting commitment. The pressures to economize and the attention demanded by budgetary shortfalls and personnel problems will not evaporate because the institutional sub-community has committed to answering its most important questions as fully as it can. Intellectual conversion is a habit that we build or break down with every act of knowing, with every question pursued or neglected, and in so doing, the institutional sub-community and its agents change themselves as constitutive meaning and originating value, but not in a way that cannot be undone. Backsliding is possible, and in institutional sub-communities, because of the inertial and general biases at work, the natural resting point is the easy confidence in common sense's omniscience. What has been achieved can be lost, and when it is lost, it is usually lost through what amounts to a kind of intellectual laziness that sets up systems and uncritically accepts their output, a "set it and forget it" operational mentality. Intellectual conversion requires continued commitment

from institutional agent and sub-community alike, a constant attention to questions and how they might be best answered. As they continue to choose intellectual conversion, though, subsequent choices become easier as habits are built up and become a sustainable part of the institutional culture.

4.2 *Affective Conversion*

To complete and perpetuate the changes made by intellectual conversion, an institution and its sub-community must also be affectively converted. Nor is the institutional agent immune from this need for affective conversion. As with intellectual conversion, the affective conversion of institutions is composed of three component conversions concerning individual institutional agents, the institutional sub-community, and the institutional framework.

As we noted at the outset of this chapter, in “The Analogy of Meaning”, Lonergan called institutions “communities of commitment” to common value, which we have discussed as institutional sub-communities committed to the primary orienting value goal of the institutional framework organizing their operation.⁹⁰⁰ The reader will note that we have not spent much time discussing the organizational structure of institutions nor who within an institution does or does not hold power, and that is down to the extraordinarily variable list of available institutional structures. But the leaders will be critically important in accomplishing the affective conversion of the institution.

The institutional sub-community is, as we have repeatedly emphasized, a community, and so it shares many features with the wider community we discussed in the

⁹⁰⁰ Lonergan, “Analogy of Meaning”, 202

previous chapter. Its affective conversion will, likewise, closely resemble the affective conversion of the wider community, but with a couple of significant caveats. To recall, the wider community chooses a new prime value in its affective conversion. This often, but not always, involves a shift in the level of value within the normative scale of values to which the community's operative scale of values is ordered, as, for instance, the shift from social to religious values that characterized Diocletian's reforms in Rome in the late 3rd century AD. Such shifts between levels often also, though again, not always, entail shifts in schemes of legitimation, as happened in the shift from religious to personal values that characterized the collapse of the medieval synthesis and the rise of consent theories. And it is possible both to have affective conversions, where the prime value moves up to a new level of the normative scale or stays within the same level, and to have affective perversions, where the new prime value drops to a lower level of the normative scale. Such shifts in the prime value of the community often take years to build and, when the major shift is completed, often entail numerous ancillary shifts in other secondary and tertiary value commitments left over from the old value ordering that need to be harmonized with the new prime value (or abandoned altogether, in some cases). The pace of such change is generally glacial and generational, though sudden moments of shifting remain possible, as in the aftermath of the civil rights marches from Selma to Montgomery in 1965 or the rise of #metoo in 2017.

Affective conversion in the institutional sub-community entails all these things with a few additional complications but generally at a much faster pace. The wider community moves so slowly partly because of its size and partly because its prime value and operative scale of values are so rarely explicit. It will always be easier to shift the culture and

operative scale of values within a small community than within a large community, and the wider community is the largest available, and the institutional sub-community, as organized by an institutional framework requiring definite and explicit value commitments, has made explicit its prime value, its ancillary value commitments, and (often) its operative scale of values. But in affectively converting, the institutional sub-community has to account for and perhaps contend with two additional things: the scale of values operative in the wider community's horizon of feeling and the institution's primary value goal.

The conflict with the wider community's scale of values will tend to arise *because* institutional sub-communities move faster than the wider community. Partly, this is because the leaders within a given institutional sub-community, those in authority, can be moved relatively quickly and, once they are, have tremendous power to pull others along with them. We said in the community that the process of intellectual and affective conversion can be obstructed by the community's elite, requiring psychic conversion to shift the elite from obstructive to constructive role, and this can be true in the institutional sub-community as well, but it's much easier to accomplish. And for this reason, as with intellectual conversion, what was psychic conversion in the community is part of affective conversion in the institutional sub-community.

But when the leaders become affectively converted or are replaced by new leaders who are affectively converted, when the institutional sub-community reaches its crisis point and stands on the brink of an affective conversion, it becomes necessary to intentionally harmonize the converted scale of values with the wider community's scale of values. This is especially true for governmental institutions if they are to build or maintain legitimacy with their people. Because the institutional sub-community can move rather

faster than can the wider community in making these changes, it is likely that the institutional sub-community will be rather more progressive (or regressive) than the wider community on certain points. It is also likely that, because institutional sub-communities tend to be resistant to change, in line with the inertial bias, the comparison will show a mix of both. And in making its shift towards affective conversion, the institutional sub-community will need to be intentional about not staking significant value positions and orientations that the wider community cannot and will not support.

We saw an instance of this kind of mismatch in the Nuremberg Trials—this is, really, what created the crisis of legitimation we set out to answer here. At Nuremberg, for the first time since the Thirty Years War, one nation set out to hold another accountable for their internal actions under a supranational moral standard that the defendant nation had violated. We recounted in Chapter 2 how those trials came to take place: the American commitment to a certain vision of justice and the Soviet desire for a propagandistic theater piece overcame the British drive for a quick and practical end to the matter. But the defendants could not be tried on that basis alone, not with anything like credibility. This required the international legal institutional sub-community to innovate—to affectively convert to a new primary value goal, shifting from the level of social or cultural value to the level of personal value—which, coupled with a significant exercise of common sense in finding a legal framework (or pretext, depending) for the trial, lead to the novel charges of crimes against humanity.

But the grounds of those charges and the violation of Westphalian sovereignty they represent that have never sat comfortably with the wider Western community. We may all agree that, in principle, human rights ought to be respected and that when they are not,

international military intervention may be justified to defend an individual's rights from violation by that individual's government, but we do not agree about what counts as a human right or why, nor where the line is drawn on military intervention. We may all agree that, in principle, international intervention may be justified for humanitarian reasons, but what qualifies as a humanitarian reason has never been settled. The institutional sub-community of international law was forced into an affective conversion that significantly outpaced any matching affective conversion in the wider Western community. The wider Western community will support international interventions in the case of genocide and ethnic cleansing, as happened in the former Yugoslavia and as the wider community seemed to desire in Rwanda in the 1990s, following the precedent of answering the Shoah at Nuremberg. But military interventions on humanitarian grounds short of that will find their support tenuous at best, a problem which has characterized the divide between the foreign policy establishment and the wider community on the various Western military and economic (mis)adventures in the Middle East since 9/11.

The other tension the affectively converting institutional sub-community may encounter is the primary value goal of the institutional framework to which it is committed. At Nuremberg, this was substantially obviated for the international legal institutional sub-community because the value goal of the international legal institutional framework had already been changed from simply regulating the relations between states to regulating also in some ways the relations between a government and the community it governed. But events do not always proceed in this order. It can also be the case that the institutional sub-community has converted before the institutional framework and exists now in tension with rather than in commitment to the primary value goal of the institution. But since the

institutional sub-community is not competent to select its own primary value goal, the must first persuade the wider community they've likely outpaced to catch up with them.

This is what we saw Augustus doing at the end of Chapter 1. He understood that the primary and secondary value commitments of the Roman Republic were no longer viable—Rome was committing the “sin of backwardness” we discussed—but he also understood that the wider community was not yet willing to follow him on that. The Second Triumvirate was an informal governmental institution, but it was not the formal institution of Rome's governance, and the community of Rome needed to be persuaded to shift the primary value goal of its formal governing institutions from securing the cultural value expressed in *Senatus Populusque Romanus* to securing the personal or religious value, depending how one considers it, of the *Princeps* and his *majestas* and, through him, the cultural, social, and vital values of Rome.

This led to the two *personae* Augustus presented: on the one hand, the wise and irreproachable father of *tota Italia*, acting for the best interests of the nation, and on the other, the consummate and bloody-handed politician. The Senate needed to be assured that he could fulfil the political and religious functions needed to bring order out of the chaos of 1st century BC Rome. The People needed to be reassured that he would protect them and their livelihoods where the Republic had failed to do so and that he would do so in an even-handed way, not giving significant preferment to one set of citizens over the other on ethnic grounds. He was Machiavelli's *Princeps*, but that also happened to be who Rome needed at the time. He was as authentic as he could have been, on our account, even if that authenticity was focused at the level of cultural values rather than religious values. And because of it, he was able to pull the community along with him as far as they needed to

go to acknowledge his *majestas* and restructure the state (even if not as far as subsequent emperors might have liked). He was not just an individual *in* authority, he was an individual *with* authority.

Another way of considering Augustus' and Diocletian's actions also highlights another feature of the conversion of institutional sub-communities: because they have discretion not over ends but over means, often, their conversions will not involve the primary value goal to which they remain committed but will instead involve secondary value goals. We have generally been speaking of institutions as though they but one single primary value goal, but in most cases, they have several that can be harmonized in different ways leading to different secondary value goals and different scales of value operative within the institutional sub-community. Augustus pushed the institutional sub-community of the Roman government and religious establishments to accept a new value structure in his Second Settlement. Diocletian did something similar with his restructuring of the Roman government. In both cases, the Roman government never stopped existing for the protection of the Roman state and its citizens, but it began to do so in a different way. And this is another sort of affective conversion for the institutional sub-community.

This corrects for the general bias of institutional common sense. Eventually, close enough stops being good enough and chaos is the result. This is what happened in Rome prior to the reforms of both Augustus and Diocletian. This is what happened to the Church prior to the Reformation. This is what happened to international law at Nuremberg. And in each case, an affective conversion to a new value orientation was required of the institutional sub-community, generally coupled with the changes being made to the value goals of the institutions themselves. Affective conversion of the institutional sub-

community corrects for the general bias by renewing a commitment to the primary value goals of the institution, from which their attention may have waived over time, or by elevating that primary value goal to something higher. This is part of why affective conversion is a continuing commitment: when attention drifts away from the value goals of the institution because of the press of events, general bias (and the cycles of decline with it) tends to be the result. Affective conversion shifts the institutional sub-community out of the siege mentality and refocuses it on the value goals it is to attain and maintain.

Affective conversion of the institutional agent will follow the same basic program as affective conversion in the individual with two important caveats: first, it will be subject to the same potential tensions between the agent's converted scale of values and the operative scale of value of the wider community on the one hand and the institution's primary value goal on the other. In addition, the institutional agent faces also the possibility of tensions between their own operative scale of values and the agent's converted scale. But, much as with the institutional sub-community that converts affectively before the wider community, the converted institutional agent can push their sub-community towards a similar conversion.

Second, as we have said above, the institutional agent is a different *persona* from the individual operating in that *persona*.⁹⁰¹ The scale of values and orienting value commitment to which the institutional agent affectively converts, then, will not necessarily be the same as that to which the individual converts. In the modern West, for instance, we expect institutional agents within our government to operate with value commitments that

⁹⁰¹ Again, I use the word "*persona*" in the sense of a stage mask one uses to slip into a role, following Hobbes' use in *Leviathan* XVI.

are not religious, though we take no issue with religious values as the guiding orientation of an individual filling that role. We expect a dichotomy there not because we lack respect for religious values but because we expect institutional agents to be pursuing the primary value goal we have given the institution they work for.

This is in part what the minor authenticity we discussed above is about. The point of that minor authenticity is to understand one's place and one's role within the tradition (or institution) and to carry that out faithfully. This is precisely what the institutional agent will do when being authentic, even if that individual, absent his institutional role, would have different and sometimes conflicting value commitments. The affective conversion of institutional agents is the commitment to perform their duties in line with the institutional value commitments, even when such actions are felt as a disvalue by individual acting as an institutional agent.

The role of the institutional agent in the major authenticity of the institutional sub-community is to point out to the sub-community when a given course of action would deviate from their value commitments or when a secondary value goal is not compatible with the primary value goal or other secondary value goals in some significant way. The affectively converted institutional agent will feel the value of those commitments; the converted horizon of feelings is part of their agential *persona*. When such a tension or disvalue is felt by a converted institutional agent operating in a converted institutional sub-community will make this known to those responsible. And those responsible, if they too are converted institutional agents, will take that seriously and either explain as best they can why this is the best course of action despite the tensions it creates or change course, given the new information.

But, as we mentioned, sometimes the felt tension is not between the converted agent's scale of values and the institutional sub-community's value commitments but between the feeling horizons and operative scales of value of the individual and agential *personae*. And this is part of the complexity the institutional agent will need to navigate: when the two value commitments conflict, what is the right way to act? A considerable amount depends on the nature and degree of the conflict. We also expect institutional agents to be able to recognize when the institution's primary and secondary value goals are so far from their own value commitments that they cannot perform their duties with a clear conscience, that is, when their duties are odious, understood as those duties that cannot be reconciled with the individual's felt scale of values and would reshape the individual into something they do not recognize. In undertaking those duties anyway, institutional agents will simply *become* their roles—that is one of the dangers we cited above concerning the mistreatment and exploitation of institutional agents—and we do not generally expect this of institutional agents.⁹⁰² But we do expect institutional agents to be able to evaluate actions to be taken by the institutional sub-community and to resist those that are significantly out of step with the value commitments of the wider community.

This posed one of the other principle challenges of Nuremberg and later the trial of Adolf Eichmann. Part of being an institutional agent is following the orders of those above you in the institutional sub-community—part of how an institution coordinates human action is by giving some institutional agents the power to instruct the behavior of other institutional agents—and so many of them had been “just following orders”. Yet they

⁹⁰² This is, we should point out, different from encouraging individuals to seek out adaptive professions, which means in part that their individual and institutional agential scales of value will not come into too much conflict. Nor, we should emphasize, is this the only way in which an institutional agent can *become* their role.

were, by and large, held accountable for having followed those orders, even knowing the likely outcome, especially those involved in transporting Jews and other “undesirables” to the concentration and death camps.

Most cases of such tensions between the individual and institutional agential horizons of feelings and operative scales of values will not usually be so stark, of course, as they ought to have been for these Nazis, nor will the orders of the empowered institutional agents generally lead to genocide; other disvalues are likely to be actualized if their orders are followed, but the stakes are rarely as high as the Shoah. There is no quick and simple answer to the right thing to do in each case—sometimes, the tension should prompt institutional agents to leave the institutional sub-community; sometimes, they should remain and push back, attempting to affectively convert the institutional sub-community, sometimes they should follow their orders despite the tension.

Likewise, the leadership of institutional sub-community, themselves institutional agents, are constrained in the kinds of orders they can give and the kinds of actions they can instruct their subordinates to take. What they would like to do is, in many cases, not among their options under the existing institutional constraints. They have to take the best of a set of options, but all of those options may be felt as disvalues in their individual scale of values even as their institutional agential scale of values feels one or more as a value. This will always create a difficult situation, and as with their subordinates, there is no hard and fast rule about what to do when tensions of this sort emerge. This is why we emphasized above that the authentically operating institutional sub-community and those in positions of power within it will not require that institutional agents perform odious duties.

Part of the difficulty in both cases is the need to discover various things about the situation and arrive at a properly informed judgment of fact concerning what could be done and an informed judgment of value about the probable results. Arriving at such judgments of fact and value requires a fully converted individual, and this is another part of why it is critical that institutions be operated and institutional sub-communities be populated by fully converted individuals. The fully converted individual will be able to rely on the tensions between their felt scale of values and the actions they must take as individual agents, either as those in authority within the institution or as those carrying out their orders. The fully converted individual will also be able to say reliably where the institution is creating a problem and when the least disvaluable outcome will be created by taking the tension-inducing action in spite of that tension. When those in power are not converted, they will begin to demonstrate the biases we discussed above to the detriment of their institutions and sub-communities.

And, as we say, when those in power are not converted, they may need to be removed from power. This will cure individual iterations of the egoistic bias in its institutional manifestation because, among other things, individuals who happen to be in positions of institutional authority are not acting as institutional agents. Replacing them with someone who will properly adopt their institutional *persona* and act as an institutional agent will be, by itself, a simple expedient to ending such an egoistic bias so far as it impacts the institutional sub-community and its operations.

Likewise, the inertial bias' various affective components require affective conversion to cure. One who is protecting a narrative self-image of oneself as part of a certain kind of institutional sub-community, in affective conversion, does not shed the

narrative self-image but transcends it. In this case, the agent turns the narrative self-image from an accepted story into an ideal to be striven for—a value goal. Once this happens, the images needed to correct the problems will be admitted. It is never too late for the institution to be what it might have been either, but that requires a clear understanding of what the institutional sub-community presently *is*, which is only available once the goal is recognized as being a goal, not yet an achievement.

A similar shift is needed to correct for the institutional agent who resists changes to the institutional framework because of tradition or an over-valuation of the framework as it exists. Here, though, the problem is not that the institutional framework does not represent a goal but that the goal is unworkable or would itself be a disvalue if realized. Institutional affective conversion shifts the institutional agent from a commitment to what the framework is to a commitment to what the framework needs to become. This will make the institutional agent far more willing to pursue and accept more significant changes to the institutional framework and impart momentum to that pursuit.

By comparison, affective conversion of the institutional framework itself is actually fairly straightforward. As we have said, institutions are the framework structuring the organized communal effort needed to realize and/or maintain a particular value, and this value goal forms the orienting principle of the institution and its framework, with secondary and tertiary value goals being ordered as the necessary means to the end of the primary value goal. The affective conversion of the institutional framework, then, is the shift from one value goal to another. The institution leaves behind its old value goal and turns towards a new one.

The challenge is in identifying which value goal the institution should be turned towards. Though it may be consulted on the change, because the institutional sub-community is not competent to choose the primary value goal of the institution, such a change will need to be undertaken by the wider community whom the institution serves. But if the affectively converted sub-community is placed out of step with the wider community by its conversion, this can create problems the institutional sub-community will need to navigate. This is one avenue to the kind of compromise Lonergan is concerned with in the longer cycle of decline.⁹⁰³ Only when a fully converted community and a fully converted institutional sub-community are operating in tandem can the institution itself become affectively converted with respect to its primary value goal without introducing tensions between the community and the sub-community and without compromising the institutional structure between them. The affective conversion of the institution with respect to its primary value goal, then, requires a wider community converted affectively along the lines we discussed in the previous chapter. Without an affectively converted community governing the institutional affective conversion, the result is as likely (if not more likely) to be an affective perversion of the institution, a further warping of its developmental path in line with the developmental bias.

⁹⁰³ Of course, not all compromise in institutional affective conversions is problematic in the way suggested here. When either the sub-community is converted and the wider community is not or vice versa, compromise becomes problematic if (a) the compromise moves in the wrong direction; (b) it is exceedingly difficult to change down the line; (c) the sub-community does not continue working for conversion on this point (or vice versa), or (d) there is no serious harm in holding out for a better deal, i.e., the conversion of the wider community (or sub-community, as the case may be). Incremental change is not, in itself, a bad thing. When the problem is such that even incremental change will save lives, for instance, especially when a wholesale change is likely to *cost* lives, incremental change by compromise is likely the best available course. But care needs to be taken to recognize when it is also a surrender to unauthenticity, and that surrender happens when compromise creating incremental change abandons the goal of also prompting conversion.

But an affective conversion is also possible with respect to its secondary value goals, and these, the institutional sub-community *is* competent to alter as appropriate. This will require an affectively converted institutional sub-community for the same reasons that an affective conversion of the primary value goal will require an affectively converted wider community. But once the institutional sub-community has been affectively converted, we generally do expect that it will undertake such changes as it is competent to make in line with that conversion, just as we expect it will begin pushing that conversion in the wider community if it has not already taken place.

5 Conclusion

At the end of this lengthy journey, we are, finally, in a position to say what institutional authenticity comes to. The authentic institution will be one that orders human action towards a value goal identified by the wider community as worth pursuing within the communal horizon of feelings and does so by means that the wider community does not (or would not, if they fully understood the means) feel as disvalues, both with respect to the way the institution orders its sub-community and with respect to the actions the institution mandates. The authentically operating institutional sub-community will be one that fills at least one of the two lacunae we identified in communal processes of knowing and doing while managing its own internal change, all attentively, intelligently, reasonably, and responsibly, and advancing needed changes to the wider community's operative scale of values within the strictures of that operative scale of values. Change often comes but slowly until it is forced, and as the institutional sub-community becomes converted intellectually and affectively, it will be in a position to push the wider community towards needed affective conversions of its own.

As extensive as this discussion has been, we wish to bring the reader's attention to three items we have not touched on for the sake of (relative) brevity but which bear further scrutiny and may be the subject of our future endeavors. First, we have assumed above that the institutional framework pursues a value goal that would not be felt as a disvalue within a normative horizon of feelings. But that does not actually describe all institutions communities have constructed. There is no way, for instance, for an institution set up to facilitate genocide to be authentic because its (dis)value goal is so entirely out of phase with the normative scale of values. In most such cases, the (dis)value goal of the institution is not so obviously a serious disvalue, though. Discerning which institutions are set up to create a normative disvalue, as opposed to those institutions that are simply the product of a different operative scale of values in a different and possibly less advanced community, is a complicated matter worthy of exploration elsewhere.⁹⁰⁴

Second, it can sometimes be the case, as we will notice in the next chapter, that an institutional sub-community's affective conversion surpasses the wider community's affective conversion. Whereas we have said above that the institutional sub-community is not competent to alter its own primary value goal, only its secondary value goals, it seems that in such a case, the institutional sub-community may recognize a need for a change to its primary value goal before the wider community does. When this happens, it introduces a significant tension between the institutional sub-community and the wider community. This tension is resolved when either the wider community reforms the institutional framework in line with the institutional sub-community's affective conversion or the

⁹⁰⁴ "Finally, what is authentic for a lesser differentiation of consciousness will be found unauthentic by the standards of a greater differentiation." Lonergan, "Dialectic of Authority", 6

institutional sub-community regresses to match the wider community again. In the meantime, there is an interplay between the two as the institutional sub-community makes its case to the wider community for a change.⁹⁰⁵ The nature of this interplay and the tools available to institutional agents in it merit more consideration than we have been able to afford them here.

Third, we have said that part of what makes the operation of institutions and institutional sub-communities authentic is their respect for the personal values of their institutional agents. Institutions should not be structured to demand that institutional agents make themselves into things they do not want to be through the actions demanded of them on the institution's behalf, nor should institutional sub-communities demean or exalt them so far as to negate, disparage, or hyper-inflate their personal values. But beyond that, we have said little or nothing about the role institutions play in shaping their agents and other individuals in the community around them. This is especially true of schools and other institutions built explicitly to shape individuals in certain ways, but it happens through other institutions as well. In this way, institutions not only uphold but reinforce the communally operative scale of values and make individuals more (or less) authentic than they might otherwise have become. This crucial role of institutions bears scrutiny we have not been able to devote to it here.

Nonetheless, our primary goal from the start has been to understand what Lonergan means by a legitimate institution, especially a legitimate government, and how one might

⁹⁰⁵ For instance, this is the history of *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). There, the district court, noting that it was bound by the precedent of *Plessy v. Ferguson*, ruled in favor of the Topeka's school board, but included in the ruling was a road map to how the Supreme Court might undo the *Plessy* precedent by holding that "separate but equal" could not be equal and that, in government services at least, it violated the Equal Protection clause. This is the route the Supreme Court ultimately took in deciding *Brown*.

evaluate a government (or other institution) as legitimate or not through that understanding, and at long last, we have in hand the tools to accomplish that task.

Conclusion: Evaluating Legitimacy

“Authenticity makes power legitimate. It confers on power the aura and prestige of authority [and] legitimates authorities... Legitimated by authenticity, authority and authorities have a hold on the consciences of those subject to authority and authorities.”⁹⁰⁶

We have been attempting to discuss what makes an institution, with its sub-community and its agents, legitimate as authorities in whatever area. For Lonergan, the answer is authenticity, and we have spent several hundred pages now trying to articulate just what that means. The answer has not been at all simple, nor has it been entirely what we might have expected. For Lonergan, as we said in Chapter 3, authenticity is a property of meanings and values, of processes insofar as they produce authentic meanings and values, and of individuals and communities insofar as they are employing authentic processes. But the meanings and values that are authentic for one culture at one time may not be for another at another time, and so also with the processes that produce them.⁹⁰⁷ It

⁹⁰⁶ Lonergan, “Dialectic of Authority”, 6

⁹⁰⁷ “Finally, what is authentic for a lesser differentiation of consciousness will be found unauthentic by the standards of a greater differentiation. So there is a sin of backwardness, of the cultures, the authorities, the individuals that fail to live on the level of their times.” Lonergan, “Dialectic of Authority”, 6

is possible to act authentically in any situation, but what constitutes the authentic action in a given situation will change with the situation and the people involved. Our goal, then, has been to begin to delineate what is meant by the words “authentic process” and what individuals, communities, and institutional sub-communities may be said to be employing them.

We conclude by first considering how this can be applied to Lonergan’s approach to legitimation, second, conducting an analysis of the lead-up to the Nuremberg Trials to demonstrate how an analysis of processes as authentic or not can help us evaluate the legitimacy of institutions, and lastly, noticing the thoroughly trans-cultural applicability of Lonergan’s legitimation thought, including briefly recapitulating what we said about the rise and fall of the Roman Empire to be considered under this rubric.

Our ultimate goal has been to inquire into the legitimacy of governmental authorities and how that might be tested. We have provisioned ourselves appropriately with the tools to do make that inquiry on the grounds of their authenticity, but the use of such tools can be cumbersome. Unfortunately, Lonergan was quite correct: “Inquiry into the legitimacy of authority or authorities is complex, lengthy, tedious, and often inconclusive” because direct evaluation of authenticity is complex, lengthy, tedious, and often inconclusive.⁹⁰⁸ He suggested instead that we should evaluate the fruits of the individuals, communities, and institutions since “[t]he fruit of authenticity is progress” and “[t]he fruit of unauthenticity is decline.”⁹⁰⁹ As an indirect approach, this can be profitable,

⁹⁰⁸ Lonergan, “Dialectic of Authority”, 6

⁹⁰⁹ Lonergan, “Dialectic of Authority”, 6, 7

but it tells us where the individual-communal-institutional matrix has been, not necessarily where it is now or where it's going.

But on the basis of our investigations, we can suggest to the reader a supplemental application of Lonergan's approach to legitimation allowing for contemporaneous inquiry. This inquiry can be conducted into the extant operations of the existing authorities and their institutional sub-communities. Lonergan's suggestion of a retrospective approach has the advantage of being more reliable, but it can only be so because it is considering matters well after the fact, when all can (often, at least) be known. But we can also give a probable answer based on the processes employed in the moment on the grounds of the transcendental precepts: Are they attentive? Are they intelligent? Are they reasonable? Are they responsible? After all, "authenticity results from a long-sustained attentiveness, intelligence, reasonableness, responsibility."⁹¹⁰ And where we find that communities, individuals subject to authority, and individuals in authority are not attentive, intelligent, reasonable, and responsible, we can say with some confidence that they are not being authentic.

"But long-sustained attentiveness notes just what is going on."⁹¹¹ We have been at pains to note in these last three chapters just how that happens. Individuals are attentive in attending to the data of their experience. Experience prompts questions, first and foremost of the kind, "What is it?" To have the multi-modal composite image given by imagination in consciousness is not yet to know the object of our consideration, be it a person, thing, or

⁹¹⁰ Lonergan, "Dialectic of Authority", 6-7

⁹¹¹ Lonergan, "Dialectic of Authority", 7

situation. It is not yet even to be aware of what it might be. That is the reason for the question: we don't know what it is, so we ask.

Communities, as collectives with a myriad of experiences, tend to be rather bad at this—attention to detail is not a strong suit of nearly any unstructured collective. For this reason, they construct and inhabit institutions that sort through or generate those experiences, as relevant and appropriate, according to established protocols and produce a common set of phantasms to present to intelligence. Institutions and their sub-communities charged with answering questions of fact for the community have as a secondary value goal the kind of attentiveness at issue here. They do not always accomplish this perfectly—sometimes some important detail will slip through or be ignored—but they nevertheless do aspire to this secondary value goal.

“Intelligence repeatedly grasps how things can be better.”⁹¹² Progress is an iterative process, as we have said. Individuals understand, among other things, how systems can be improved, and we have been at some pains to explain how this happens in an institutional setting in this chapter. Institutional sub-communities are charged with both making such changes as they are competent to make within their own institutional frameworks and assisting the community in changing itself to “live on the level of their times.”⁹¹³ Individuals participate in this process, in their *personae* as institutional agents, and exercise their practical intelligence in service to it.

Practical intelligence, though, simply as an act of intelligence, does not produce change in the individual, the community or sub-community, or the institution. “The

⁹¹² Lonergan, “Dialectic of Authority”, 7

⁹¹³ Lonergan, “Dialectic of Authority”, 6

inventiveness of practical intelligence can issue in practical results only if [one can select] some possibilities from the manifold [of possibilities] and by that decision and choice initiating and grounding the transition from the intellectual conception of a possible order to its concrete realization.”⁹¹⁴ The criterion of choice here is value, and the question to be answered becomes, then, “Which values should we realize?” This, communities must answer; while institutional sub-communities are competent to compile and present the options and (in some cases) to make the selection as communities in their own right, often, the wider community must be consulted in some fashion or, when they are not, they will make their views known in other ways. When the wider community is not consulted, there is a lapse of authenticity in the institutional sub-community that leads authentic subjects to “resist the claims of illegitimate authority and illegitimate authorities.”⁹¹⁵

But as we say, intelligence merely grasps the possibilities. “Reasonableness is open to change.”⁹¹⁶ This is the willingness we spoke of in the authorities to hear and respond appropriately to reports of problems in their institutional operation and another part of why we spent so much time on the change management process. The changes to be made to the world mediated by meaning external to the institution by institutional sub-community are myriad and not generally susceptible of neat categorization (and certainly we have not attempted it here). But the process by which institutions are changed and what authentic process means for institutional sub-communities changing themselves and their institutions does have certain common features, and those we discussed above.

⁹¹⁴ Lonergan, *Insight*, 621

⁹¹⁵ Lonergan, “Dialectic of Authority”, 6

⁹¹⁶ Lonergan, “Dialectic of Authority”, 7

“Responsibility weighs in the balance the short- and long-term advantages and disadvantages, benefits and defects.”⁹¹⁷ Value is the criterion of choice between the various options presented by the institution’s answers to questions of fact, and consideration of the values and disvalues to be realized by each available option is a necessary part of this process. The community, be it the wider community or the institutional sub-community, must engage with this. We universally feel the unauthenticity of arbitrary and capricious institutional decision-making and, as authentic, the individual rejects such decisions even when they redound to the individual’s benefit.

Moreover, as we have clarified above, for the institutional sub-community to live on the level of its times means that these decisions must be made within or at least accounting for the wider community’s operative scale of values and value commitments. Not every reason for enacting a policy or taking an action will be equally acceptable to every community, nor will every community feel the values and disvalues of every available course of action in the same way. In being responsible, an authentic institutional sub-community will take this into account and, while taking the opportunity to push forward the wider community, will also not do something the wider community in its current state will find unsupportable.

We can, on this rubric, evaluate various institutions, especially relatively open institutions like governments, for their legitimacy concurrently. This approach is not foolproof. As a rule, not all the relevant facts can be known in the moment. So, as we have emphasized, we must be careful always to couch such an analysis as only probabilistic: we can say at most that an institutional agent, an institutional sub-community,

⁹¹⁷ Lonergan, “Dialectic of Authority”, 7

a community, an individual, or the matrix of all of them is *probably* authentic and so legitimate. But unauthenticities are more recognizable in the moment. Authenticity requires “long and sustained fidelity to the transcendental precepts” of Be attentive, Be intelligent, Be reasonable, Be responsible.⁹¹⁸ But “unauthenticity is realized by any single act of inattention, obtuseness, unreasonableness, irresponsibility.”⁹¹⁹ Because it requires only one act to be unauthentic, while demonstrating authenticity requires a lengthy pattern of behavior that is considerably more difficult to compile and assess, unauthenticity will generally be easier to recognize.

This is another way of saying what we said at the end of Chapter 4 in discussing the comparatively utopian cast of Lonerganian authenticity. When the standard of perfection is applied to imperfect people, the standard becomes an ideal to strive towards and a measure by which to judge who has come the closest to being perfect. When the standard of authenticity is applied, when “commonly, indeed, it is no more than a withdrawal from unauthenticity”, the question is just how unauthentic one is being.⁹²⁰ So while we cannot say for certain in the moment which institutions and their sub-communities, which governments and authorities, which communities and individuals are being authentic in a sustained way and so are being legitimate, we can say which probably are, which might be, and which definitely are not.

We can, in this way, account for what happened at Nuremberg and why it was, in the main, an authentic exercise of power despite abrogating the standards of the day in the

⁹¹⁸ Lonergan, “Dialectic of Authority”, 6

⁹¹⁹ Lonergan, “Dialectic of Authority”, 6

⁹²⁰ Lonergan, “Dialectic of Authority”, 9

extreme.⁹²¹ We have been clear about the problem the Nuremberg Trials represent: the end of Westphalian sovereignty without an adequate account of its successor and the administration of justice to those who were doubtless guilty of horrors that would be unacceptable to nearly any community properly informed about them without a pre-existing legal basis on which to administer that justice. Our goal here is not to explain why the Nazis' actions were *extraordinarily* unauthentic; we are fairly sure the reader needs no assistance there. Our goal here is rather to explain where the Allies' actions at Nuremberg were authentic and so legitimate (and where not) despite the abrogation of the existing world order and previously accepted norms of justice that was necessary to take those actions.

With respect to attentiveness, the Allies were extremely attentive to what had happened. The results of the Shoah were documented in extreme, often quite graphic detail. The retreating Nazis had taken pains to dispose of the evidence of their genocide, leaving little behind at most of their major Polish death camps. Their goal was to ensure that the Allies had very little left to pay attention to, very little to prompt the questions for intelligence about "what happened here?" that would undoubtedly otherwise arise. Aerial

⁹²¹ The reader may wonder why we have chosen to illustrate a method of concurrent evaluation using an example that is roughly 75 years old at the time of this writing. There are several reasons for this. First, this is the most recent significant epochal shift causing a serious legitimation crisis. One might point to the populist wave in the Western world as another such, and in time, it may be shown to be so, but that is not yet certain—its longevity remains in doubt.

Second, this example is relatively contained. The complete analysis can be adequately performed on a relatively brief record. This could not be said of most other, more recent events, and because description is always already interpretation, it would be considerably more challenging to give such an analysis in way that does not invite criticism over the details considered and omitted.

But though we will be addressing an event well in the past, we will be analyzing it as though contemporaneously. What differentiates this approach is not how recent events are but that it relies on an analysis of the processes by which a result was arrived at rather than an analysis of its fruits. That one could also now conduct a credible retrospective evaluation of the legitimacy of Nuremberg is beside the point.

photos of Belzec taken by the Luftwaffe in 1944, for instance, show nothing but a garage for the repair of SS vehicles—all the other construction, the gas chambers, the crematoria, and the mass graves had been removed.⁹²² This practice included “liquidating” all remaining prisoner workforces to ensure that no one would be left to testify against them; of the half-million or so Jews sent to Belzec, only seven survived. But at Majdanek, the incompetence of the camp’s deputy commander meant that these steps were (thankfully) not taken in a timely fashion, and the camp was captured more-or-less intact when the Red Army overran it more quickly than anticipated. When the Soviets arrived in July 1944, several thousand prisoners remained to testify against their former captors.

Likewise, great care was exercised to preserve what internal records the Nazis had not already disposed of. They were aided in this by the German cultural commitment to the values of order and good records. Due to the speed of the collapse of Nazi forces following D-Day and especially the Battle of the Bulge in December 1944, opposite the rapid gains of the Red Army, which was on the banks of the Oder River, 100 km or so from Berlin, by early March 1945, there was not time to destroy a large number of the significantly incriminating records. Moreover, many German officers understood what was coming and secreted caches of such documents incriminating their superiors in troves around Germany, Poland, France, and elsewhere in hopes of using them to bargain for leniency or amnesty. Nazi records thus captured or turned over run to hundreds of thousands of pages. Based on those records, the prosecution was able to locate, interview, and produce eyewitnesses to many of the crimes alleged to testify at the trial.

⁹²² The obsession with keeping records meant that many such photos were taken to give the Nazi government some idea of what was left for others to find and to ensure that the answer was “little or nothing suspicious”. And many such photos—judged innocuous because of what they did *not* show—survived the records purge of early 1945.

The cases assembled against the various defendants were capacious and meticulously detailed. And especially after the liberation of the death camps at Majdanek and Auschwitz and the labor camps at Nordhausen and Mauthausen, among many others, it would have been difficult to ignore what had happened. Certainly, the Allies were attentive to the crimes of their captives. They could hardly avoid it, and their attentiveness was not limited to those who were prosecuted. The many now-former Nazi scientists and intelligence assets who were allowed to immigrate to Western countries through programs like Operation Paperclip routinely had dossiers in their files listing the crimes they were suspected of having committed and statements of why their value to the Western Allies in the incipient Cold War outweighed the value of prosecuting them.⁹²³

Discerning that “Something happened” was not difficult.⁹²⁴ Discerning precisely what had happened and who had taken part was a far more complicated process, though one aided substantially by the captured and surrendered records and testimony of prisoners and former officials. In most respects, this went hand in hand with attending to and gathering the evidence in the first place. This is often the case: it is unusual that we spend long puzzling over the question for intelligence, “What is it?”, and we often instead accept that answer and proceed to the question for judgment, “Is it so?” Because common sense, though not omniscient, is still very good, this does not usually pose a problem for us as individuals, but in institutional settings, it can quickly become a more significant issue.

⁹²³ These included doctors like Walter Schreiber, who was recruited for expertise in chemical weapons gained by experimenting on Jewish prisoners. Schreiber was later instrumental in creating and ramping up US capacity for sarin gas production. It also included rocket scientists like the former Director of Operations for the Nordhausen-Mittelwerk forced labor camp, Arthur Rudolph, who oversaw production of the V-2 rocket in a former gypsum mine there. As many as 20,000 prisoners are estimated to have died during production, about five times more than the V-2 ever killed. Rudolph subsequently was the director of the Saturn V program from 1963 until his retirement in January 1969.

⁹²⁴ Lonergan, *Insight*, 306-307

The prosecutors were again very good about this. Relatively quickly, given the scope of the material and the number of witnesses to be interviewed, the prosecutors had assembled cases detailing what they understood to have happened and who they understood to have done it. Though there were all-but-literal mountains of evidence to sort through, they do seem to have been thorough in their investigations and made accusations by-and-large supported by their evidence.

The reasonability and responsibility of the trial, though, had less to do with what happened in the courtroom and more to do with constituting the court in the first place. As we have observed repeatedly, international law at the time did not provide for the prosecution of government officials following the law with respect to the treatment of their own citizens within their jurisdiction. Under Westphalian sovereignty, “you do you” was the order of the day—it was not the business of the Allies what the German government had done to German citizens within Germany, especially if the actions they took were legal. But it was very clear to everyone involved that what had taken place needed to be addressed and those responsible, held accountable for it.

“Reasonableness is open to change. Responsibility weighs in the balance the short- and long-term advantages and disadvantages, benefits and defects.”⁹²⁵ It is difficult to consider the openness to change and the weighing of consequences from that change distinctly from one another in this case because the openness to change was substantively conditioned by the available options. The lawyers were all quite convinced that if they were to abrogate Westphalian sovereignty enough to hold the Nazi leadership accountable for what all acknowledged as their crimes, they would need to have a good and workable

⁹²⁵ Lonergan, “Dialectic of Authority”, 7

alternative available. They were also well aware, by the time this question came to a head in 1944, that they did not have much time to put that alternative together.

The motives of each of the three major Allied powers in coming to the trial were rather different, which is to say, they each felt the value of the alternative courses of action rather differently. One might reasonably question whether Stalin cared that this trial would be a significant abrogation of international law. He was open to the change, but he had his own reasons for wanting these war criminals to be publicly tried, even if the Allies had to fabricate the grounds for doing so from whole cloth. It was sure to be a propaganda gold mine. At Yalta, it seems, he said in so many words that he wanted a trial “on the perfectly frank grounds that Russians liked public trials for propaganda purposes”.⁹²⁶

Insofar as this is an accurate statement of Stalin’s position, we may be reasonably sure that Stalin was operating rather less than authentically here. He was not responding to his community but attempting to control their thinking, and he wanted the trial to further that purpose. As such, this question was not about the international legal order or even the crimes the Nazis had committed, for him. It was about his ability to use the trial to his own ends. One might reasonably conclude that this was the institutional manifestation of the egoistic bias in action. Stalin was, in this case, attentive to and intelligent about the wrong things.

His legal team, on the other hand, was open to abrogating Westphalian sovereignty for a different reason. At the International Conference on Military Tribunals in London

⁹²⁶ Guy Liddell, “Diary of Guy Liddell, Deputy Director General of the Security Service, June to November 1945,” entry of 21 June 1945, The National Archives, London, reference KV 4/466, p. 14

over the summer of 1945, the Soviet's main judge, General Iona Nikitchenko, framed the issue thus:

We are not dealing here with the usual type of case where it is a question of robbery, or murder, or petty offenses. We are dealing here with the chief war criminals who have already been convicted and whose conviction has been already announced by both the Moscow and Crimea declarations by the heads of the governments, and those declarations both declare to carry out immediately just punishment for the offenses which have been committed. ... The whole idea is to secure quick and just punishment for the crime.⁹²⁷

So, to the Soviet legal community, the issue had already been decided. The abrogation had already taken place and the accused had already been convicted as soon as this decision was taken by the Allied leaders. The war criminals would be held accountable. Their guilt was not in question, only the efficiency of the process guiding them to the hangman's noose. For that same reason, he was irritated by the American and British insistence that the judges be restrained by a feigned impartiality, which he thought would only waste time.⁹²⁸

It is difficult to say that the purposes of Stalin and Nikitchenko were quite the same here. They were not open to abrogating international law for the same reasons—Stalin didn't care and Nikitchenko saw it as a *fait accompli* and was more interested to get it over with. And one can certainly empathize with Nikitchenko's position—that these men merited death, in many cases, was not really in question, so why spend the time and money on a trial when that time and money was so badly needed to rebuild? This dedication to practicality, however, was, I think, a manifestation of the general bias of institutional common sense, which pushes to do things in the fastest, easiest way possible, even if time

⁹²⁷ Robert Jackson, *Report of Robert Jackson, United States Representative to the International Conference on Military Trials, London, 1945* (Washington, DC: US State Dept., 1949), 104-105, 106; hereafter cited as Jackson, *ICMT Report*.

⁹²⁸ Jackson, *ICMT Report*, 105-106

and effort put into answering further questions might reveal a better way. This is less unauthentic than Stalin's position insofar as Nikitchenko was at least being attentive, intelligent, and reasonable. The problem is in the matter of responsibility.

The British position was likewise that these men were guilty, that their guilt was not in question. "Once the world was convinced that action against these men was 'justified on the highest moral and political grounds', they could be punished by summary action."⁹²⁹ That being said, the British government did not consider this as a violation of the Westphalian order, which they recognized was not able to handle such things as crimes against humanity in a supranational way. There was considerable opinion in the Foreign Office especially that this was not a matter of law at all and that their crimes were so heinous as to not be a matter for judges and lawyers. Their fate should be settled as a matter of legislative and executive policy.⁹³⁰ This was an expedient for which British law contained ample precedent, so their preference for sidestepping a judicial process should perhaps not be surprising. Once stated by the Foreign Office, this was the clear position of the entire British Civil Service from August 1942 through the Yalta Conference in February 1945.

Even were they to be tried judicially, there was significant hesitation to do so on an *international* basis, which would violate Westphalian sovereignty, rather than continuing in national courts. This was highlighted perhaps more directly by the commission of war

⁹²⁹ Tusa and Tusa, *The Nuremberg Trial*, 63; quoting Anthony Eden, paper of May, 1944, FO 371/51026

⁹³⁰ Tusa and Tusa, *The Nuremberg Trial*, 61-63. As we noted in Chapter 2, this was the last known instance of a serious suggestion that a bill of attainder be laid before Parliament. This was, though, coupled with the hope of the Lord Chancellor, England's chief lawyer, that the German people might spare the Allies the need to settle their leaders' fates and simply execute them themselves before the Allies could arrive to take custody.

crimes by German soldiers in Germany.⁹³¹ This difficulty was noted by the Lord Chancellor, Viscount Simon, the man with responsibility for the functioning of the British courts. War crimes were generally to be tried in national courts, so he proposed legislation to extend British jurisdiction over war crimes to war crimes committed against British subjects abroad and relax the rules of evidence in such cases to make it easier to obtain a conviction, “given the practical impossibility of securing convictions otherwise.” This was ultimately shot down as an impermissible “modification of the traditional standards of British justice and of the British judicial system.”⁹³² Many of those who would have been tried in the British criminal justice system under the Lord Chancellor’s proposed scheme were eventually tried by the Allies at the subsequent Nuremberg Trials, and human rights and related considerations made frequent appearances in those indictments.

In this, we may also question the authenticity of the British government. The problem is that, once these kinds of crimes had been committed and recognized as wrong by the wider British community—a conversion from their previous apathy on German treatment of the Jews that the British government actively encouraged as part of propaganda efforts once the full scope of that treatment became known following the liberation of Majdanek—an adjustment to the institutional framework was necessary to handle those crimes. The British government did not want to make such an adjustment at

⁹³¹ Though the surrender documents initially prepared by the Allies and later repurposed as the Berlin Declaration provided, in the preamble and Article 13, a legal basis for the prosecution of civil crimes by the Allies as the supreme authorities in post-war Germany, and though the Moscow Declaration of 1943 articulated that war criminals should be tried by competent authorities where their crimes were committed, there was no clear authority for war crimes charges against Germans who had acted in Germany, which would usually be domestic crimes.

⁹³² Cabinet Minutes, WM 131 (44) 3, National Archives, London, CAB 65/44. For a more complete version of the Lord Chancellor’s proposal, see also the associated Cabinet Memorandum, WP (44) 550, NA, CAB 66/55, circulated prior to the meeting in question.

all, and if they had to, they desired that it be as minimal an adjustment as possible. This was an instance of the inertial bias. The British government was appropriately attentive and intelligent, but their reasonableness and responsibility here are suspect. They were not as open to change as the situation called for, and the changes they were interested in were insufficient to the moment.

The American position was more open and responsible than the British position. While Roosevelt supported a position similar to that of the British in the guise of the Morgenthau Plan, when this was leaked to the American press following his meeting with Churchill in September 1944 in Quebec City, the backlash was swift and severe.⁹³³ The American people were not at all pleased and found such a disposition of the war criminals to be a significant disvalue. This, they made very clear to their elected leaders, who subsequently supported a legal solution, even at the cost of the serious challenge it would pose to the existing arrangement of international law.

This was a very different motivation from the Soviets, who were interested in a trial, yes, but for propaganda reasons. The American concerns had far more to do with a concern for justice even to the worst criminals imaginable. This created an openness to changing the institutional framework when it was no longer sufficient to the value commitments of the community—in other words, the American political institutional sub-communities became affectively converted. Mostly.⁹³⁴ Insofar as this is true, the American

⁹³³ Tusa and Tusa, *The Nuremberg Trial*, 60

⁹³⁴ There were those, including Justice Jackson, the lead American prosecutor, who wanted *all* war declared a criminal enterprise. This would have been well beyond what the American community would agree to at the time, as best I can tell, and would have been unauthenticity in a different direction. His attempts to insert such language into the charter of the court I do regard as unauthentic, given that he was pushing against the value commitments of not only American community but British, French, and Soviet communities as well, but it would have been unauthentic had he succeeded.

government was operating most authentically of the three here.⁹³⁵ In making this claim, I do not mean to say that the democratic republic was in a blanket way more authentic than the constitutional monarchy or the communist dictatorship, nor that the democratic republic was perfectly authentic—for instance, even after the affective conversion of the political community with respect to the question of a trial, the American War Department still repeatedly refused to bomb the rail lines to Auschwitz and other concentration camps. What I do mean to say is that, in the particular instance of coming to the trials at Nuremberg, the process engaged in by the democratic republic was the most authentic (or least unauthentic) way of producing the meaning of the trial and the value of justice.

The resulting trial was, then, a mostly authentic effective and constitutive act of meaning creating a generally authentic value of justice (as opposed to the lesser value or disvalue, depending on one's horizon of feelings, of retribution) through its revisions of international law, even if the processes used to create it were suspect in some cases. This process was most authentic in the American case, and one can argue whether Soviet practicality or British intransigence was runner-up. But the American approach has its issues too. For instance, in restructuring the international order and creating the United Nations as a vehicle to prevent further such dire human rights abuses, among other things, certain elements of the general and group biases slipped into the process. Most notably, the veto power that was included in the UN Charter under the guise of an unanimity principle in the interests of allowing each of the major powers to protect their interests—it

⁹³⁵ The reader will have noticed that there were Four Powers, but we have mentioned only three. The French were not included in the discussions and deliberations preceding the declarations of the American, British and Soviet governments at the Tehran, Yalta, Moscow, and Potsdam conferences. They had no input on whether to address these crimes judicially or extrajudicially. By the time they were involved, the major decisions had already been taken and they were debating the scope and format of the trial itself.

was a way of both recognizing the realities of international politics and making sure that some nations would always be more equal than others. And while it has been used to shield member nations from unjust resolutions, it has also been used to shield permanent members and their close allies from consequences for serious human rights violations.⁹³⁶ In taking the common sense, pragmatic approach to this question, the United States (among others) initiated a new longer cycle of decline.

And this is the final point we have to make: because reasonableness is open to change, there can never be one system to rule them all, to paraphrase Tolkien. Though the democratic republic exercised the most authentic process in arriving at the Nuremberg Trials in 1945, that was not a necessary result and there is no guarantee that it would be duplicated should a similar set of circumstances repeat itself. There is a system, an institutional framework, that is appropriate to each political and cultural moment in which we find ourselves. Lonergan is clear on this: “Legitimation is manifold. It occurs on any of the many differentiations of consciousness.”⁹³⁷ As cultures change, so also do the legitimation claims that are made and accepted. The “external criterion by which [the authorities’] position can be publicly recognized” shifts from one culture to another, from one time to another, but this is not a sufficient condition: “The sufficient condition must include authenticity.”⁹³⁸ The external criteria, the institutional structures, change over time and Lonergan is not tied to any of them. Nearly any form of government could conceivably

⁹³⁶ This is part of why, for instance, Russia’s invasions of Georgia, Crimea, and eastern Ukraine have not been blocked or pushed back by international military efforts, China has not been held to account for the ongoing genocide of the Uighurs or their actions in Tibet and the United States has not been held to account for probable torture of detainees in the War on Terror.

⁹³⁷ Lonergan, “Dialectic of Authority”, 8

⁹³⁸ Lonergan, “Dialectic of Authority”, 9

be legitimate in the right place at the right time. But none of them will be unless the individuals, communities, and institutions and their sub-communities are also authentic.

Exploring this claim in a historically concrete way was part of our purpose in walking through the various historical legitimation schemes in Chapters 1 and 2. Legitimacy in the early Roman Republic was a matter of myth and ritual: governance was given to priestly classes and those who were thought to have the ear of the gods. This shifted into a matter of law after the Licinian reforms of 367 BC, when the patrician lock on high office was finally broken and the vetting of candidates for high office was instead accomplished through the *cursus honorum*, on the assumption that any who had responsibly exercised power in a lesser post would be responsible (authentic) with it in a higher post. While he remains an admirable and romantic figure in many ways, by the end of the Republic, Cicero was failing to live at the level of his times; Augustus was the more legitimate of the two in recognizing that the Republican institutions were no longer sufficient to the challenges they faced.

Diocletian was legitimate at the beginning of his reign, but towards the end, his exercise of authority became unauthentic, his power left “naked...reveal[ed] as mere power.”⁹³⁹ Though he fulfilled the external criteria for holding his post, those were not by themselves a sufficient condition for calling his power true authority. Constantine restored the legitimacy of Roman imperial authority through his authenticity. The Church lost it through its corruption, and with the collapse of the medieval synthesis, we lost more than just the legitimacy of Church authority, we lost majesty as a legitimating force.

⁹³⁹ Lonergan, “Dialectic of Authority”, 6

In the void that remained, we attempted in various ways to find a new and systematic way to understand legitimacy based on universally applicable moral codes and various other schemes. This includes the consent theorists, the utilitarians, the communists, and more, each of whom makes an attempt to propound a system defining and regulating the legitimate use of government authority. But we have yet to find another in a really stable way, despite all the work of consent theorists, discourse theorists, and others, and we have muddled on ever since. What Kant said of logic we can now also say of the pursuit of a comprehensive theory of structural legitimation by what Lonergan above called “external criteria”:

If after many preliminaries and preparations are made, a science gets stuck as soon as it approaches its end, or if in order to reach this end it must often go back and set out on a new path; or likewise if it proves impossible for the different co-workers to achieve unanimity as to the way in which they should pursue their common aim; then we may be sure that such a study is merely groping about, that it is still far from having entered upon the secure course of a science...⁹⁴⁰

One could conduct a similar analysis on the history of the Muslim world, which has been in an ongoing legitimation crisis since the collapse of the Ottoman Empire and the Caliphate in 1922-23. Where before then, the Caliph legitimated the rule of each Muslim ruler in a manner similar to role the Pope played in European legitimation before the Reformation, the subsequent colonial period introduced a new slate of liberal democratic legitimation theories. At the end of the colonial period, many Muslim nations responded by overthrowing the governments left by the colonial powers and establishing military dictatorships appealing to ethno-nationalism for their legitimacy (e.g. Nasser’s Egypt). But the Western legitimation theories have not simply gone away quietly. In the aftermath of

⁹⁴⁰ Immanuel Kant, *Critique of Pure Reason*, trans. and ed. Paul Guyer and Allen Wood (New York: Cambridge University Press, 1998), B vii.

the Arab Spring and the relative diminution of ethno-nationalistic legitimization claims, the Muslim world is left to try to sort out what part of those is consonant with the principles of Islamic law governing the lives of their communities (and which understanding of Islamic law should be governing the lives of their communities), which part must be set aside as part of the anti-colonial intellectual process, and which part (if any) must be set aside to be a functioning part of the wider community of nations. Lonergan's thought could help guide this process by helping Islamic intellectuals understand what it will mean for those communities and their institutions to operate authentically—even though their authentic operation will undoubtedly be different from that of Western communities and institutions because of the differences in their respective histories and extant communal value horizons.

Likewise, we could have conducted a similar analysis on the recent history of China and its sphere of influence. Until the end of the Qing dynasty (1912), Confucianism was the state religion and informed not only the operation of the government but also the legitimacy of government through the principle of *tianming*, the Mandate of Heaven. The world under heaven (*tianxia*) is ordered, and to the degree that the people, the government, and the Son of Heaven (the Emperor with *tianming*) are working with that order, they will prosper. Operating against that order creates disruption and privation in both the natural world and the economy. The emperor will rule by benevolence, first to his own people and in lesser degrees to all other peoples, relative to their proximity to the Imperial Court, and will not often need to rely on the sword to enforce his rule.

But at the conclusion of the civil wars between the communists and the nationalists after the fall of the Qing dynasty, Mao was left in charge of the great bulk of China, and he was rather staunchly anti-Confucian. He grounded his claims for the Chinese Communist

Party's (CCP) rule instead in the dialectic of history he re-articulated from Marx. But one is left to wonder how many of the people (or even how many members of the party) truly believe in the Maoist conception of communism grounding their current government. It is difficult to assess because of the tight media controls. But the government flagrantly manipulates economic data to its benefit, and lately it has been acting with considerable benevolence to the developing world (e.g. the Belt and Road initiative and the COVID vaccine doses offered free of charge), as well as allowing (and, perhaps, encouraging) a limited restoration of Confucian thought within their own jurisdiction—it has, in other words, been at pains to both reintroduce Confucianism in a form useful to the state while also being seen to fulfill the duty the state has under Confucian thought. There is, then, a collision of Maoist and Confucian thought that will need to be sorted out. Eventually, one may be left to wonder what it is that makes this government communist despite its markedly capitalist orientation.

What Lonergan's thought offers here is not the same as what it offers the Muslim world. Rather, Lonergan's thought can help facilitate a new analysis of current practices in legitimation to help understand on what grounds the government is currently understood as legitimate and in which direction that should move (if any), and we may take up that work in a later project.

But neither our main line of historical analysis nor these two alternatives mean that legitimacy is impossible nor that the means to recognize it contemporaneously are entirely out of reach. Openness to change means that significant, iterative change will be unavoidable, if we are being authentic. What was authentic at Nuremberg would no longer be authentic today. Habermas captured what legitimation meant for Western liberal

democracies at the end of the 20th century in the West, but it is not clear that this holds today. There remains a theoretical exigence, a demand for the systematization of our experiences and evaluations of authenticity and legitimacy that is not easily met. In effect, what we want is an institution to evaluate the legitimacy of our institutions, something not easily come by or constructed. We may, in further work, discuss and evaluate the various attempts to construct such an institution, and perhaps offer a suggestion or two of our own.

We end our discussion here, on this note of mixed pessimism and hope. There remains a legitimate possibility of legitimacy, and a way to pursue it and evaluate that pursuit. Legitimacy is not only a feature of governments but of any institution that creates by its structure a power disparity, of any individual in authority under the auspices of such an institution and its sub-community, of any community building such institutions (and any sub-community inhabiting and committed to them), and any individual subject to authority. It requires the authenticity of each part of that interlocking matrix, and that makes it a rare bird indeed.

But it remains the goal for which we should all strive.

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