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On Political Obligation and Civil Disobedience

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ABSTRACT—The problems of political obligation and civil disobedience have recently been re-emphasized in the civil rights struggle, in student demonstrations of various kinds, and in direct action connected with the peace movement. At the same time, men like the late President Kennedy have seemed to say that deliberate disobedience of law could never be countenanced.

In the light of controversies such as these, the present paper explores the disquietude about legitimacy of political rule in the Western political tradition; restates and evaluates several of the views that seek to give an account of political obligation; and formulates a possible way of viewing obligation and the conditions under which civil disobedience might be both a right and a duty. No historical political system, the paper argues, has ever been completely legitimate, so that under certain circumstances the possibility, right, and obligation of civil disobedience must be understood to be open.

The United States, during the past five years, has given birth to new versions of very old issues in dramatizing such central questions as the bases of political obligation and the legitimacy or illegitimacy of civil disobedience. In Birmingham, while in prison, Martin Luther King wrote his Letter from Birmingham Jail in which he restated the justification for deliberate disobedience of law; and in Berkeley, California, a similar problem was posed during the autumn of 1964 by leaders of the greatest student revolt of the present generation. At the same time, public officials seek to restate the duty to obey law, apparently without qualification. Thus, the late President Kennedy, in 1962, maintained that Americans were not free to choose the laws they should obey (N.Y. Times, 1962:22); and Senator Goldwater, in the campaign of 1964, denounced those who, in his judgment, were condoning both direct action in general and civil disobedience in particular (N.Y. Times, 1964:12). Recent articles, moreover, have given a certain popularity to the issue (Bedau, 1961; Cohen, 1964; Frankel, 1964); and dry questions that a few years ago seemed to be appropriate only for desiccated professors of political philosophy have suddenly taken on new life.

There is, of course, a long tradition that may cast considerable light on the current discussion of political obligation and civil disobedience. This paper proposes to re-examine certain aspects of that tradition, to relate them to the contemporary debate, and to vindicate both the right and the obligation of civil disobedience.

Three points are developed. First, the long-standing disquietude about the claims of the State to our obedience is examined. We seek to illustrate this by reference to certain classical statements of St. Augustine, and to adapt these statements to the uncertainties of others and to the language of our own day. Secondly, we remind ourselves of the various doctrines that, in light of the disquietude, have been advanced to provide a basis for political obligation. Noting the merits and weaknesses of each, it is argued that no one of them furnishes an adequate foundation for political obligation. Thirdly, building upon the fact of uneasiness and such insights as are provided by the several accounts of obligation, the attempt is made to restate a basis for obligation and to develop criteria for judging when civil disobedience is legitimate.

The Disquietude About Legitimacy

The anxiety concerning legitimacy may be illustrated if we recall the dilemmas confronted by St. Augustine, the fifth-century Church Father, who sought to evaluate all political systems in terms of their justice. On the one hand, he conceived of a city of God, whose members are destined for salvation, who are pure in heart, and who are members of the heavenly city. On the other side are those condemned to spiritual death, who have turned away from God, and whose destiny is presumably hell. The cities or states of human history stand between the city of God and the city of the damned, since any given historical society will be composed of both the saved and the condemned. Out of this commingling of heavenly and nonheavenly citizens arises political authority to provide a kind of uneasy peace pending the coming of the end of history, the date of which no man knows and which may be imminent or remote in time.

What puzzles Augustine—and presumably all those exercised about the issue of political obligation—is whether any distinction can be made between and among the types of political authority he has known or about which he has read. Are all of equal value and equally entitled to obedience? Or are some legitimate and others illegitimate? If so, how do we distinguish between the legitimate and the illegitimate? In Augustine's thinking, political authority did not exist in Eden but is the result of the necessity for coercion that accompanies the Fall of Man. Can distinctions be made between and among...
historical societies, so that one feels a greater sense of obligation to some than to others—always keeping in mind that all grow out of wickedness?

Augustine tried out two alternative answers (Bk. II, Ch. 21; Bk. IV., Ch. 4; Bk. XIX, Ch. 21, 23, and 24). His first point of departure was Cicero’s statement that a people is a multitude of men associated together by a common acknowledgment of right and a community of interests. Augustine interpreted “right” to mean “true justice.” And true justice includes not only giving to each man his due and to society what belongs to it, but also genuine worship of the one true God. Taking these requirements together, he concluded that there had been in reality no just society in history. Yet without justice, he asked, what is any kingdom but a great robbery? Remota justitia quid regna nisi magna latrocinia? From this point of view, no historic political society has satisfied the Augustinian criterion of legitimacy and, inferentially, our obligation to all such societies reaches the vanishing point.

But he tended to withdraw in horror from what seems to be the logic of his position and he asked whether there may not be a more reasonable or, perhaps, usable definition of a people. He found the clue to his second conception in the fact that while all historic political societies have been little better than “robberies,” it is equally true that even robber bands have at least one of the characteristics of Cicero’s populus: They are associations of men united by the objects of their love and with rules for the distribution of spoils. Although they may not be just in terms of their ends, they do and must provide a certain ordering—if only to carry out robbery efficiently and to distribute the spoils according to regular rules—and order is valuable regardless of its goals. At least, it is better than disorder. Or, as a modern scholar has put it, there is “law” even among the “outlaws.” (Merriam, 1934: Ch. III). Every robber band, Augustine suggested, is a little kingdom and, contrariwise, every kingdom is an enlarged robber band. Both provide a measure of order and, perhaps, this is about all we can expect in this world of fallen men. The implication of this view would seem to be that every well established power structure, since it at least establishes order, has a certain claim on this: The only ground for disobedience is presumption of obligation. And, indeed, he seemed to suggest precisely this: The only ground for disobedience is presumably a specific Scriptural command (Deane, 1963:147, 89, 90).

Nor is St. Augustine the only great thinker to give evidence of a profound uncertainty over the degree of legitimacy present in political societies. Although St. Thomas Aquinas seemed to think that even relatively bad governments may be implicitly seeking good ends, he appeared to imply the very mixed character of all political rule and he envisioned occasions on which men may have to consider disobedience. Luther was bothered by the contrast between the maxims of the Sermon on the Mount, on the one hand, and the apparent imperatives of statecraft, on the other. Rousseau appeared to think that most historic political authority has been—at least in considerable measure—simply a disguise for illegitimate ends. As for the Marxist tradition, it is Augustinian in its despair about any possibility of congruence between “justice” and historic states, but hopeful in its belief that the historic process itself will provide a “solution” by wiping out all class-biased (and therefore unjust) organizations, thus opening the way for a true morality.

Obviously, the disquietude expressed by many thinkers has a foundation in our actual experience. Governments that exist presumably to promote peace actually encourage war on a large scale (Cook, 1962). Rulers established to help guarantee freedom tend to destroy it. Governing classes placed in control of the state machinery by an originally democratic process become oligarchies and thus restrict or destroy the process.

Under circumstances of this kind, can one wonder at Augustine’s despair or be surprised by his tendency to state, in effect, that any kind of order must be obeyed, since it is at least an order? Can we escape his seeming conclusion that in effect all political societies are, relative to true justice, at about the same level, and that it is hopeless to differentiate between and among them with any certainty?

Legitimacy and Obligation

Despite this ubiquitous disquietude about the possibility of distinguishing political societies from one another, the tradition of political philosophy has obviously made some attempt to do so.

The Naturalist View

Perhaps the most persistent effort to construct a theory of political obligation has been that of what we might call the naturalists. Although there are many rather diverse views included under this designation, they have in common the notion that man’s true ends can be rationally determined, can be separated from false ends, and can furnish a foundation for natural law whose precepts will provide grounds for distinguishing between legitimate and illegitimate rule. By this account, man is a political animal whose ends are naturally fulfilled only within a political society. That system of rule is binding, then, which conforms in its main outlines to the precepts of Nature conceived as a rationally discovered system of ends or goals. Beginning with such presumably self-evident propositions as that we should seek the good and avoid the evil, the naturalists then ask what the good for man may be held to be. Their answer turns on an examination of his natural needs, whether biological, social, or spiritual. From these needs they deduce such principles as that order is essential; that government is necessary for order; that legitimate government is that that enhances achievement of goals natural to man and discourages ends that are unnatural. The individual’s obligation to obey positive law turns on the degree to which it expresses natural law, or at least does not contradict it.

One difficulty with natural law conceptions in differ-
entiating between legitimate and illegitimate systems of rule is that the distinction between natural and unnatural ends is not easy to determine. What is natural tends to be a function of the culture, and objective standards, where they may be held to exist, are ambiguous at best. Is the government of the United States legitimate, for example? The present Constitution was adopted by procedures that violated the law of the land at the time. Is not the admonition to act according to positive law a principle of natural law? Why, under natural law principles, am I obliged to obey the Constitution? Some naturalists might say that because it has existed for a long time and has been generally obeyed, "prescription" makes the government established under it legitimate, hence obligatory. But does this imply that anything old — e.g., the institution of war — carries with it the odor of moral sanctity simply because of that fact? This is simply one example of the many questions on which naturalist views seem to cast a light that is uncertain at best.

**Contract**

According to another position, contract provides the basis for obligation. Although many versions of the contract theory have existed — among them those of Hobbes, Locke, Rousseau, for example — they have in common the notion that each of us has made an agreement with his fellows to obey a government — either under certain specified conditions and limitations (as with Locke) or without qualification.

The objections to contract theories are numerous. When did members of the present generation contract with one another to obey the rules of a document drawn up in 1787? When did the British agree to obey the government of William the Conqueror — that "bastard" leading an "armed banditti," as Tom Paine used to call him — after 1066? Even if we maintain that a given generation agrees to submit itself to political rule, why is this alleged contract binding on future generations who have made no such specific agreement? Nor does the doctrine of an implicit consent stated by such thinkers as Socrates (in Plato’s *Crito*) and Locke meet the issue, for by the time I have reached the age of discretion, I have been so conditioned by the culture and language of a nation that my decision to remain in that nation is hardly a free one.

Yet another important question is whether we should regard the keeping of promises — a central value imperative under contract theories — as the supreme value. To be sure, the principle that promises should be fulfilled is an important one, but it would seem doubtful that it ought to take precedence over all other considerations in making up one’s mind about what is right at a given moment; and if one accept this notion, promises should be only one factor in making a decision on what is right.

My promise can never be interpreted as one committing me to obey under all circumstances and regardless of my sense of right at a particular time.

**Utility**

Some have asserted that obligation might be based on utility. If the government promotes more pleasure than pain, said the nineteenth-century utilitarians, and assuming that pleasure is equivalent to "good" and pain to "evil," then I am obliged to obey, since it is to my interest to do so. The great merit of a utilitarian view is that it attempts to make less vague such often rationalizing formulae as "vital interests" and "general welfare." On the other hand, it is obvious that even a utilitarian scheme must begin with propositions not derived from utility; and since "obligation" tends to be identified with "interest," the problem of obligation, as Carritt has pointed out (Carritt, 1935), is really evaded or ignored.

**Organicism**

Organicist positions have something in common with naturalist statements but need not put their viewpoint in terms of a natural law. In the tradition stemming from Rousseau and Hegel, and embracing, to some extent, such thinkers as Green, the general will of the moral community binds me because it is the true or real will of myself. Thus I am obliged to obey because I have a moral duty to transcend the limitations of my "empirical" self and to release the "true self" that is struggling to be born — a self, purged of egoism, that understands that only obedience to the general will can make for moral progress. My empirical self, which operates in terms of self-interest, can be transcended only by being constantly reminded through law of the unselfish being that is constantly at war with it. Out of this conflict arises the distinction between mere "interest" and "obligation." The former means unlimited freedom to express my present self, the latter the freedom to do what I ought in terms of my rational self.

There are many difficulties with the organicist position; among them is the problem of discovering the identity of the true self. This problem is similar to the question confronted by the naturalist when he attempts to find out the meaning of right reason or the ends of Nature. Does the law of every historical state, for example — no matter what its contents may be — automatically identify my true self? The historical state notoriously reflects compromise and clashing economic interests. In what sense, then, can it be said to speak for my true or moral self?

**Evaluation of Views**

The upshot of all this is that all traditional accounts of the basis of political obligation are inadequate in one or more respects. At the same time, if we do not push them too far, each of them gives us an insight into the complexity of treating obligation, and each, moreover, points up one aspect of the problem. Naturalist views surely reflect an important desideratum for any doctrine of legitimacy — a nonarbitrary, nonconventional set of standards by which we can judge political authority. Contract positions dramatize the notion that authority to be binding must repose on consent as well as embody the morally defensible statements stressed by the naturalist. Utilitarian views warn us against taking refuge in such unsatisfactory and vague expressions as "national interest" or "national honor." Finally, organicist ideas...
rightly stress the social and political dimensions of what we call "personality" and, therefore, the unreality of completely discrete "individuals."

An adequate theory of obligation will have to take account of both the strengths and the weaknesses embodied in the several traditional views.

**Disquietude, Obligation and Civil Disobedience**

Having now suggested the anxiety about political society and having summarized important attempts to provide an adequate foundation for political obligation, I turn, in this last section, to (a) a restatement of the issue of political obligation that will take account of both Augustine's dilemma and the weaknesses and strengths in the several analyses of obligation, and (b) a justification, under certain circumscribed conditions, of civil disobedience.

**Restatement of the Issue**

A theory of obligation requires, first, a delineation of what a fully legitimate authority would be; second, a similar sketch of an ideal-type illegitimate ruler; and third, judgment of all historical authorities by standards arising out of our standards of legitimacy and illegitimacy. Our obligation is greatest to those alleged authorities that endeavor by their actions to approximate legitimacy, and least to those that appear to forget the criteria of moral licitness.

From the viewpoint of this paper—and of an important tradition in Western political thought—a completely legitimate authority is one that exists in a society that has reconciled our consciousness of individuality with our feeling of belonging to others. In such a society—envisioned in greater or lesser degree by such thinkers as St. Thomas Aquinas, Rousseau, Marx, Engels, and Lenin—each person would be free and spontaneous and yet would be associated with his fellows for collective endeavors. The order demanded when men mingle with one another would not find itself in tension with personalities that have ends beyond the social order.

In a perfectly legitimate society, it would seem, the coordinating machinery of the society, so necessary when men become specialized in their tasks, would primarily administer "things," as the Marxist communist version would have it. Direct coercion of men, and particularly the utilization of physical force, would vanish. Law would become, in Emerson's pregnant words, a mere "memorandum"; and once individual personalities read the words of the memorandum, they would see immediately the legitimacy of its prescriptions. Law "making" itself would be the end result of a consensus-gathering process, with formal voting reduced to the vanishing point. The pull of special economic interests would have been abolished through common ownership and administration of resources, and distribution in accordance with need (a need that each self-disciplined individual would determine). Taxation as we know it today would have vanished, since collective necessities would be supplied from the total product before individual distribution could take place. Armies would, of course, be no more. Complete freedom of expression would obtain.

**Under conditions of this kind, in other words, authority would, so to speak, be fully authoritative and would carry its own "power." Vera justitia—true justice—would obtain.**

If, now, one were to imagine an ideal type illegitimate system of political relations, one need only spell out the reverse of the picture of legitimacy. The coordinating machinery of society would manipulate men for its own ends in such a way that they would not even be aware of their own exploitation. If perchance they resisted, force would be applied, sometimes without even the pretense of using forms of law. Law and principles of morality would be determined completely by the ruling classes, any distinction between right and might being eliminated. Threats of various kinds would keep the population cowed and submissive. Law would be imposed with no explanation of the reasons supporting it. Armies would, of course, play an important role, one road to political power being success in military intimidation. Spontaneity would be discouraged in every way, even in the realms of sport and recreation.

This dichotomization between legitimate and illegitimate is obviously based on a particular view of what the conception of humanity implies by way of social ordering, and in this respect the notion of legitimacy is directly connected with those perspectives that earlier were termed naturalist—in the sense that legitimacy implies a situation in which man's true nature has been fulfilled. But there are also elements of the contractual, insofar as consent becomes a fully developed and genuine ingredient in political relations. Utilitarian ideas are relevant, too, at least to the degree that authority would necessarily have to appeal to judgments about consequences and would have to define objectives in concrete terms. Finally, organicist conceptions are mirrored in the overcoming of the alienation of men from their fellows.

Just as Augustine's first definition of a commonwealth emphasized the fact that no historical society is fully legitimate, so does my formulation maintain the highly mixed and morally ambiguous character of all past and present regimes. Every political system is partly robbery and piracy and yet it is also, in terms of Augustine's second definition, some kind of order that we deem valuable. At best, any given historical scheme can be justified only relatively and our obligation is only a relative or conditional one.

What criteria can we discover for distinguishing between relatively legitimate and relatively illegitimate regimes?

We might see an answer, first, in terms of the procedures whereby decisions are reached and, second, in relation to the substance of the decisions themselves.

With respect to procedures, any claimed authority that closes avenues to the enhancement of its legitimacy would seem to be attacking the principle of authority at its roots. Thus any quasi-authority that cuts off criticisms, reduces freedom of expression, or deliberately withholds information is undermining the basic foundations in that it is denying the means for nonviolent change in the direction of greater legitimacy. Other pro-

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cedural values are scarcely less important, and for the same reason: among these are reasonably nonarbitrary procedures in criminal and civil courts and the absence of too wide a discretion in the sphere allocated to the executive. In general, any serious denial of the rule of law subjects a regime to the charge of too great a degree of illegitimacy.

If the framework allows change and progress in the direction of full authority, then the substance of many decisions can be tolerated, if not fully approved, on grounds either that they are ethically neutral or that, given the actual conditions obtaining, they may be relatively justified. Thus, under conditions of perfect legitimacy, physical coercion would disappear. Within the relativities of history, however, some coercion under certain specific circumstances might be regarded as supportable.

But some decisions would seem to be ruled out in a virtually absolute sense. Thus the deliberate and premeditated taking of life under the guise of "authority" would appear to be beyond the pale. This prohibition of deliberate killing might be said to derive from the notion that a central function of authority is to enhance life and not to destroy it. In particular circumstances, to be sure, we might well be uncertain as to what constitutes deliberate and premeditated taking of life as against accidental or unintended killing; but surely capital punishment and war would be ruled out, at a minimum.

Then, too, a high substantive priority would be a property system that assures a livelihood for all, even though distribution of economic power might be far from the norms of pure legitimacy. The property question assumes high-order priority because of its close relation to the objective of enhancing life.

These, then, are among the most significant of the procedural and substantive values, the denial of which by the quasi-authorities of history would seem to reduce political obligation to the vanishing point and open the way for morally legitimate civil disobedience. Having sketched out ideal-type legitimacy and illegitimacy and their adaptation to the relativities of history, the principles under which civil disobedience may be justified can now be spelled out.

**Justification of Civil Disobedience**

Those who would support civil disobedience, we suggest, must act with a sense of responsibility, give the benefit of the doubt to the law, be fairly certain that basic norms of procedure and substance have been violated, disobey overtly rather than covertly, act nonviolently, and recognize that the individual himself, rather than a group, has the right and obligation to decide when civil disobedience is required.

**Responsibility.** By responsibility is meant that the purpose and possible consequences of the proposed civil disobedience must be carefully weighed before the decision is made. Thus mere impulse must be ruled out as incompatible with rational human action.

**Benefit of the Doubt.** Fully admitting that any given legal and political system is a mixture of the aspiration for legitimacy and an attack on legitimacy, the benefit of any doubt, it would seem, should be given to the existing law or decree. This is because we can share with Augustine the view that the value of order—any kind of order, or, in other terms, any system of mutual expectations—is so great that unless the system can be shown to be gravely deficient in its moral underpinnings, it must be assumed to have a certain claim, however bastardized.

**Norms of Procedure and Substance Violated.** In deciding whether the presumption of obligation to obey is to be overthrown, reference should be made to the notion of legitimacy suggested earlier, both in its ideal-typical and in its adaptation to the exigencies and relativities of the historical situation. First of all, one should give primary weight to procedures and to the notion of rank ordering of values in the procedural framework. A system of rule that disregards the basic norms of even relative authority is contradicting its implicit purpose, which is, let us repeat, a more solidly based authority from the moral point of view. Similarly, to the extent that the basic substance of decisions contradicts the ends for which quasi-authorities are established, to that degree does claimed authority cease to be morally obligatory, even in a relative sense.

Thus when alleged authority silences a man through intimidation, takes a life in war, kills a person under the guise of punishment, or deprives human beings of livelihoods through an inadequate property system, it thereby undermines its own authority and correspondingly weakens its claims on my obedience. After a certain point has been reached, if I do obey it will be because of sheer expediency and not by virtue of a sense of obligation.

It was considerations of this kind that led Martin Luther King, in 1963, to violate court orders forbidding him to protest segregation (King, 1963: 7); that impelled students at the University of California to occupy buildings in violation of law; and that often send the conscientious objector to jail for refusing to register under the conscription law.

**Overt, Not Covert Disobedience.** It is precisely because the civil disobedient take seriously their political obligation that they feel impelled to violate the law deliberately and overtly. They make public announcement of it, accept responsibility, and stand ready to suffer the consequences in terms of a penalty. They disobey because they value law and deem the rule they are violating to be either no law (the natural law view) or bad law (the positivist position). Although they recognize that no alleged law can be fully authoritative in the mixed world characteristic of history, they insist that it must meet certain minimum requirements lest it destroy its very raison d’etre. They thus vindicate the principle of law in the very act of violating a particular command.

**Non-Violence.** The disobedience must not only be overt but also nonviolent. One cannot consistently protest against the undermining of authority by the historical state and, at the same time, utilize violence in the process. For violence runs counter to the idea of moral authority, it denigrates human personality, and, in effect, it subverts the foundations of the order to which I am
appealing as a civilly disobedient person. Thus violent revolution tends to be self defeating, destroying the foundations of moral order while it claims to be seeking a more nearly legitimate authority. When violence is used to secure revolutionary change, it is as illegitimate and therefore as unauthoritative as the violence of a war waged by the quasi-authorities of history.

Decision by the Individual. In deciding whether to be disobedient, the individual in the end must be guided by his own conscience.

Some thinkers, to be sure, are dissatisfied with conclusions of this kind, protesting that the individual cannot and must not determine when he should and should not obey. Typical of these critics is Dr. Will Herberg, who wrote:

Every man has his conscience; and if the individual conscience is absolutized (that is, divinized), and made the final judge of laws to be obeyed or disobeyed, nothing but anarchy and the dissolution of the very fabric of government would result (National Review, 1964, p. 580).

In response to such objections, we might well remind ourselves that "conscience" originally meant "joint knowledge" and that in considerable measure it still has this connotation. One's conscience about a particular matter is developed within a social context, is nourished by constant testing against the views of others, is not the product of mere impulse, and is animated by a sense of responsibility both to humanity and to oneself. Both naturalist and organicist views would stress this conception; and some versions even of contractualist and utilitarian positions would not dissent. In other words, the conscience cannot be regarded as the vain subjective ghost of some mythical discrete individual.

We might also ask who should make the decision, if not the individual person. Where would Dr. Herberg turn? To the church? But which church? And how can we assume that the church is a better judge of matters of right and wrong than the individual? To the state? But would the historical state ever advise us to break its laws? And how can we differentiate the state from Augustine's band of robbers without appealing to an authority beyond the state? Would Dr. Herberg have recognized Hitler's state as authoritative? If not, whose judgment, if not his own, would he have accepted?

There would seem to be no alternative to the individual conscience. Informed and carefully examined, it must be the final judge of civil disobedience, as of other matters, Even if it be in error, it must still be followed, as St. Thomas Aquinas has so persuasively argued (Summa, First Part of II, Q. IX, Art. 5; Quodlibet, 27).

As for the charge of anarchy, it has been the burden of this paper to maintain that any legal or political system is far safer in the hands of those who obey or disobey law on conscientious grounds—and with a more or less conscious doctrine of obligation in the background—than it is in the custody of those who either obey or disobey law without thought and without criticism. An historical order reposing on conscience may have elements of durability; but one bottomed on unreflective obedience and impulsive disobedience can be swept away by whim and happenstance. Possible civil disobedience is the price we pay for an order resting, in part at least, on awareness that all historical regimes are in some degree illegitimate and may have to be resisted. But this price is far less than the moral and social charge assessed when we assume that all alleged law must be automatically obeyed; for automatic obedience implies automatons in the guise of men—a denial of the aspiration for autonomy and moral authority, which is the most distinctive quality of humanity.

In our day particularly, with its large-scale manipulation of human beings, the civilly disobedient may not only vindicate their own personal integrity but also render a genuine social service. They vividly remind us that all power tends to corrupt; that shock techniques are needed to recall so-called democracies to their own principles; that elites often become both stupid and immoral; and, to recur to St. Augustine, that only a relatively thin line may separate the ruler claiming political authority from the pirate chief.

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