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Hitler’s Conscience, Redemptive Political Emotions, and the Politics of Fear

Thoughts Occasioned by Professor Vetlesen’s “Atrocities: A Case of Suppressing Emotions or of Acting Them Out?”

Abstract

Framed as a response to Arne Vetlesen’s “Atrocities: A Case of Suppressing Emotions or of Acting Them Out?” (Passions in Context II [2011]), this essay interrogates the requirements of serious, responsible, and productive disciplinary engagement with political evil, here defined as the unjustifiable mass killing of human beings as a political policy and project of modern states. I argue for the following seven requirements: first, that the easy, comforting, and until quite recently, ruling disciplinary move of pathologizing perpetrators and perpetrator states must be abandoned because it renders opaque and largely meaningless their purposes and projects; second, that proper engagement proceeds from acknowledging perpetrator motives and beliefs as political and their acts as a specifically political form of evil; third, that proper engagement therefore seeks to interrogate both the nature of those political motives and beliefs and the nature and quality of those political acts; fourth, that as regards the second, any serious account of political evil must acknowledge that, like any other political policy and project, political evil requires committed political support and supporters, that as an act and policy...
of state, political evil takes form—and can only take form—through the machinery of state and especially through its legal machinery, and that whatever else may be said of it, political evil is a legally constructed and lawful state system of ordered brutality; fifth, that, as regards perpetrator beliefs, serious engagement requires acknowledgement that perpetrators may, and with respect to the leadership cadre, must, be persons of sincere conviction and good conscience and that, in consequence, perpetrators need not be evil persons; sixth, that productive engagement resides in establishing perpetrator beliefs as false and perpetrator acts as evil; and seventh, that as regards perpetrator belief, the belief that founds political moralities that propose and permit political evil and that must be established as false is redemptive millenarianism, that peculiar and devastating political emotion of the modern period. The remainder of the essay seeks to demonstrate these requirements with respect to the political morality Hitlerism and the conduct of the Hitler state before then concluding with a brief exploration of what is required to immunize ourselves from the seduction of redemptive political emotions from which political evil always arises.
Man will only become better when you make him see what he is like.
Anton Chekhov

There is a degree of evil in which humanity stands alone, in its own responsibility. ... A true memorial to the Holocaust gives first an approximate, distant sharing with the experience of the victims. It can give a stronger sharing with that shadow of potential humanity who occupies the body of his murderer. We are the heirs of that murderer’s lost and betrayed conscience.

Harold Kaplan

Evil, when we are in its power, is not felt as evil, but as a necessity, even a duty.

Simone Weil

In 1945, Hannah Arendt predicted that the Holocaust would thereafter burden the project of thinking by placing at its center the problem of evil. She was wrong. Evil as a force in human affairs has not occupied postwar intellectual practice in the West. This is not to say that the evil revealed by the

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4 Hannah Arendt, “Nightmare and Flight,” Partisan Review 12, no. 2 (1945), reprinted in Jerome Kohn, ed., Essays in Understanding, 1930-1954 (New York: Harcourt Brace, 1994), p. 133–135. The entire passage, which is important for present purposes and is seldom cited in full, reads as follows: “The reality is that ‘the Nazis are men like ourselves’: the nightmare is that they have shown, have proven beyond doubt what man is capable of. In other words, the problem of evil will be the fundamental problem of postwar intellectual life in Europe—as death became the fundamental problem after the last war.” The quote is from Denis de Rougemont’s The Devil’s Share (New York: Pantheon Books, 1944) which Arendt was here reviewing.
Holocaust and the other Disasters of the murderous twentieth century has been ignored or forgotten. It hasn’t. It is however to say that our practices of engaging and interrogating that now naked evil have been something very much less than central to our disciplines. Indeed, those practices have been largely\(^5\) hived off from wholesale disciplinary self-understanding and practice and thereafter either encased as Holocaust studies or more recently secreted in a trans-disciplinary retail specialty that I shall here moniker ‘atrocity studies’.\(^6\)

Professor Vetlesen’s essay, “Atrocities: A Case of Suppressing Emotions or of Acting Them Out?”\(^7\) is an instance of that latter specialty. In this commentary, I intend to interrogate his aims and methods in order to suggest that, for a variety of very discernible and so important reasons, ‘atrocity studies’ such as his forfeits the defining and abiding truth of the twentieth century’s revelation about our situation—namely, that evil, as possibility and temptation,

\(^5\) Largely certainly but a number of glosses are nonetheless in order here. First, history—beginning with Raul Hilberg’s magisterial *The Destruction of the European Jews* (New York: New Viewpoints, 1961)—is a robust exception. Second, engagement across disciplines is uneven. For instance, and surely remarkably, philosophers have had more to say about the matter than have academic lawyers who have with very rare exception stood mute since the Hart-Fuller debate of the late 1950s [see: H.L.A. Hart, “Positivism and the Separation of Law and Morals,” *Harvard Law Review* 71 (1958), p. 593 and Lon L. Fuller, “Positivism and Fidelity to Law —A Reply to Professor Hart,” *Harvard Law Review* 71 (1958), p. 630]. Third, engagement is different, both in terms of quantity and quality, as between the English-speaking and non-English speaking academies.


inheres in us and through us, in the mundane practices and institutions of civilized life—and that in so doing, this species of inquiry makes us more and not less vulnerable to evil.

As I read him, Vetlesen has here two aims. He wishes first to uncover the role that perpetrator emotions play in large-scale atrocities, and he wishes secondly to draw instruction from that disclosure about how we are best to insulate ourselves from those violence-generating emotions. His aims then are analytic and prescriptive. At the end of the day, he concludes as regards the first analytic matter that “violence presupposes, and is made possible by, a silencing of emotions—though not … a silencing of emotions per se or en bloc, but a highly selective silencing” and that this selective emotional containment is what lets loose the “emotions [that] are systematically activated in perpetrators of large-scale violence so as to intensify, deepen, and prolong suffering,” namely, emotions of “the aggressive kind” like “rage,” “fury” and “contempt.” And as regards the instruction that analysis prescribes, he concludes that salvation resides in a philosophical ethics of the kind formulated by Emmanuel Levinas that aims to call forward those parts of our-

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8 Ibid., p. 53, emphasis his.
9 Ibid., p. 36.
10 Ibid., p. 55.
11 Ibid., pp. 38, 47.
12 Ibid., pp. 40, 44.
13 Though I cannot here pursue either matter at any length, it is perhaps important for present purposes at least to mention that Levinas’ understanding is, on the one hand, self-declaredly either non-political or supra-political and on the other hand, theological either in origin or in substance. As regards both matters, see his “Prefatory Note” to the 1990 republication of his profoundly wise and prescient 1934 “Reflections on the Philosophy of Hitlerism” where he asks in light of the Holocaust whether “liberalism is all we need to achieve authentic dignity for the human subject” and proposes that the achievement of human dignity finally “comes from a god—or God—who beholds [each of us] in the face of the other man, his neighbour, the original ‘site’ of the Revelation”: see, Levinas, “Reflections of the Philosophy of Hitlerism,” trans. Sean Hand, Critical Inquiry 17 (1990), p. 63. The Pauline cadence of the latter is found, it seems to me, in 1 Corinthians 13:13 (KJV): “For now we see through a glass, darkly, but then face to face: now I know in part; but
selves that permit us to “regard and treat others as objects of love, compassion, and sympathy” deserving of protection from “pain and suffering.” He makes his case for a salvic ethics of this sort against the political realism of Hobbes, a matter to which I return below.

The demerit and, as I shall argue, the danger, of these conclusions originate, in my view, in the very genealogy of atrocity studies. Atrocity studies grew as a response to the sorry state of Holocaust studies which have, until quite recently, served to shelter us from the dark and brutal truth of our situation by reducing the Holocaust to pathology. This construction involved two complementary moves. First, it is said that the Holocaust was conceived by pathological perpetrators; and then it is said that it was carried out by the pathological state that those perpetrators commandeered and commanded. The first move generally takes form in the claim that the perpetrators were pathological anti-Semites. According to this view, the perpetrators were caught in a frenzy of hatred of Jews so rapturous that they left behind the bounds of morality altogether. The second move is a conclusion drawn from the first: if the perpetrators were amoral beasts, then the state they used must have been just as pathological. Accordingly, the Nazi state is said to be a state so brutal, so criminal, so perverted, that it constitutes a radical, atavistic

then shall I know even as also I am known.” For further ‘evidence’ see Alphonso Lingis’ wonderful exploration of Levinas in The Community of Those Who Have Nothing in Common (Indianapolis: Indiana University Press, 1994).


15 History, in as much as it could (improperly, in my view) be characterized as part of this canon, is again excepted.

16 Recently being in my view properly calculated from the appearance of Zygmunt Bauman’s Modernity and the Holocaust (Ithaca: Cornell University Press, 1989).

17 Two glosses are perhaps in order here. First and as regards origins, the pathology narrative first gained purchase at the various Nuremberg Trials: for an analysis of this genealogy, see David Fraser, “Shadows of Law, Shadows of Shoah: Towards a Legal History of the Nazi Killing Machine,” Oxford Journal of Legal Studies 32(2) (2012), p. 401. Second, since that time, the narrative has progressively both captured popular imagination and culture (think for instance of Schindler’s List) and infected what passes as Holocaust education.
rupture in the otherwise largely benign progress of law and politics, at least in the West. On both accounts—for reason of rapture and for reason of rupture—the Holocaust is, then, Other: it is an event and a process entirely distinct from us, from our way of life and from our political and legal institutions, practices, and commitments; and it was produced by people entirely distinct from us in moral sense and sensibility. So imagined and remembered, the Holocaust is marginal to our lives and trivial to our projects. It can remain for us no more than a call to sympathy for its unfortunate victims, and with the passage of time and lives, even that meager hold on us is bound to wither away.

I take atrocity studies to be at once a rejection of the standing pathology story of Holocaust studies and an attempt, most laudable, to salvage the human significance of the Holocaust by making evil the focus of scholarly inquiry concerning it. This originating ambition took, however, a curious turn. For atrocity studies also distinguishes itself from Holocaust studies by claiming to embrace as its own a phenomenon, atrocity, much wider than the Holocaust and of which the Holocaust is but an instance. It is this turn, I want to suggest, that leads to a taxonomic deficiency, here shared by Professor Vetlesen, that puts atrocity studies on the wrong ground from the very beginning.

Let’s consider first of all what should have been the logic of atrocity studies. As just mentioned, atrocity studies sought to displace the mere assertions of pathology that characterize traditional Holocaust studies with disciplined interrogation of the Holocaust as evil. But, in that case, the next task should have been the specification of the sort of evil that atrocity literature is claiming as its object. This is necessary because evil appears in the world in different ways both as regards its nature (the what) and its origin (the whence). Suppose we distinguish between acts and beliefs (a critical distinction to which I return below) and stipulate that the evil cognate with atrocity concerns acts and not beliefs. Suppose then that we stipulate as the easy case of evil acts those that cause mass suffering and death. These simple stipulations compel consideration of the authorship of those acts. Disciplined reflec-
tion on the Disasters of the twentieth century makes abundantly plain that there exists a distinction that very much counts between acts personal and acts political. Indeed, it is on basis alone of that divide that we may cogently distinguish, on the one hand, between freestanding pogroms and acts of state and, on the other hand, between different sorts of state-sponsored acts and in particular between the mass suffering and death caused by war and the mass suffering and death that is genocide. Further distinctions and demands then become available. For we can next distinguish between state acts that cause mass suffering and death as a matter of policy and those perpetrated by state actors on their own account and not as authorized by policy of state. Since mass suffering and death as state policy encompasses both war and genocide, the demand for a theory of just war appears; and since unauthorized acts by state agents very often are associated with and take place in the context of state policy authorizing mass suffering and death by certain means, there appears the need for grounds certain to distinguish between acts of policy and acts personal. So pursued and disciplined, the ambition of atrocity studies should have given rise to the claim that its object of interrogation is political evil, the paradigmatic instance of which is the Holocaust. The first and critical defense of this disciplinary ground would then be the articulation of the nature and meaning of political evil. Such an articulation would

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19 Yehuda Bauer claims, rightly in my view, a further distinction between genocide and holocaust, the latter created and so far instantiated alone by the historical Holocaust and distinguished from the former by its being “a radicalization of genocide” by which he means “a planned attempt to physically annihilate every single member of a targeted ethnic, national, or racial group.” See Yehuda Bauer, *Rethinking the Holocaust* (New Haven: Yale University Press, 2001), p. 12.

necessarily depend upon and descend from an articulated conception of political morality which articulation would in turn be defensible to the extent that it descends from a coherent and true philosophical anthropology that discloses both what it is about we humans that makes us law-needy beings and what sort of law and state we in consequence truly need, and that in this fashion grounds the proper place and limits of the state. And whatever the details of that articulation of political evil might turn out to be, any articulation worth its salt would render the following four truths; first, that political evil consists of the unjustifiable mass killing of human beings by states as a political policy and project; second, that like any other political policy and project, political evil requires committed political support and supporters; third, that as an act and policy of state, political evil takes form—and can only take form—through the machinery of state and especially through its legal machinery; and fourth, that whatever else may be said of it, political evil is in consequence a legally constructed and lawful state system of “ordered brutality.”

Rarely is any of this disciplinary discipline on display in atrocity studies. And when in consequence the difference between the personal and the political is elided—and when morality tout court and political morality are confused and when political and personal emotions and motivations are collapsed one into the other—the price paid is not only taxonomic confusion and definitional impairment but, as I’ll later submit, meandering and mis-


placed prescription.23 So far as the first matter goes, Professor Vetlesen’s otherwise provocative piece is a case four squares on point. There, the personal does not so much consume the political as the political fails ever really to speak its name. Vetlesen takes aim at a number of events (My Lai, Nanking, Srebrenica, Rodney King, war between nations as well as the Holocaust24) that occasions a number of inquiries (philosophical, gender, and psychoanalytical25) that carries forward to a critically unhappy destination: the failure to distinguish political evil from the other sorts of evil to which we humans are prey as victims and by which we are tempted as perpetrators.

The productivity of the distinction between acts and beliefs does not however end with taxonomic clarity and precision. It permits as well clarity of judgment and of analysis and, perhaps above all, it demands that we confront the truth about political evil and, with that, the truth about ourselves. So far as judgment goes we will not be beguiled by any post-modern lament proclaiming that judgment is beyond us because, as put by one such crier, it is “our embarrassment and scandal” that “we must confess to having no cosmic backups for our condemnation of Auschwitz.”26 On the contrary, we will find ourselves steeled with the stuff of denunciation provided by a clear-headed conception of political evil. As regards analysis, we will set our sights on the beliefs on which perpetrators in any given case based their politically evil projects and policies. Here we will find the wherewithal to repudiate those beliefs as lies about us, about our nature as humans, about our situation, about our needs, and about the right ordering of our affairs, political and private. Here too we will discover truths about the origin of our propensity to political evil and about what we should properly do about that inclination, matters with which the remainder of this commentary contends.

24 See respectively pp. 37 & 50; 39; 43–44; 37 & 47; 37; and passim.
25 See respectively passim; 47–48 & 57; 49–51.
The cleavage between politically evil acts and false beliefs comes with two certain and burdensome truths with which, in my view, all responsible interrogation of political evil must begin and subsequently contend. The division implicates, firstly, that perpetrators may be people of sincere conviction and good conscience. The second implication follows from the first: perpetrators, despite their evil acts and false beliefs, need not be evil persons. I want to explore both of these truths in the context of the political morality of Nazism and with reference to Professor Vetlesen’s contributions in their direction.

Not only were there Nazis of good conscience and sincere conviction, as a practical matter, most Nazis of any standing must have been so since all political projects, including politically evil political projects, require committed actors and followers. What made these Nazis, men and women of good conscience was of course their sincere commitment to the beliefs that together comprise the political spirit and morality of Nazism and the Hitler state. That political spirit is the cradle of the political morality more generally considered. Nazism (or ‘Hitlerism’, as Levinas, I think, more properly terms

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28 There is a caveat that I cannot here explore, with respect to culpability for false beliefs, namely, that some of the many roots of such errors may involve culpability or subjective guilt on part of those who make those errors and who commit to those mistaken beliefs. Even, however, where this is the case, more would be required, properly to characterize that culpability as itself evil. Clearly, neither negligence with respect to the truth nor reckless disregard of the truth would suffice and perhaps deliberate rejection of a known truth alone would do. But, in that case, the set of personally evil perpetrators would be either very small or null.
it)\textsuperscript{29} was first and foremost a millenarian political movement.\textsuperscript{30} For what was sought was redemption—personal redemption, national redemption, civilizational redemption—through politics; and what was proposed was to change, root and branch, the moral order, the entire social imaginary, of the West, which is to say, our background understanding of ourselves, of others, of society, of government—and with all of that, of our predicament. Now, I want to suggest that this millenarian spirit, this “longing for total revolution,”\textsuperscript{31} is the specifically political emotion from which all political moralities that propose and permit political evil finally arise and on which each ultimately depends. And it is just this political emotion that permits us to judge those seized of it as persons of good but mistaken conscience and, absent other evidence, as persons not personally evil.

The political millenarianism of Hitlerism has two defining aspects, one theological and the other scientific. The former expressed a redemptive providentialism according to which the German Volk and their Führer were elected by Providence to create, through force of politics, a new heaven and a new earth;\textsuperscript{32} and the latter founded proof of this in the neo-Darwinian scientism

\textsuperscript{29} Levinas, “Reflections of the Philosophy of Hitlerism“.


\textsuperscript{32} Bucher, Hitler’s Theology.
then ascendant throughout the West\(^{33}\) and according to which evolutionary progress is depended upon the stronger and the best—here of course defined racially and collectively—shouldering their evolutionary duty.\(^{34}\) Why they were prey to the millenarian political emotion of Hitlerism, to this jumbled mix of salvation and science, to this providential political mission, is another matter. Rainer Bucher points first to “liberal modernity[s] ... unreasonable demands of the individual”\(^{35}\) and then associates the attraction of the Hitlerian alternative with certain “desires it evoked and simultaneously catered to”\(^{36}\), namely, “the yearning for community,”\(^{37}\) “the yearning for the alleviation of humiliation,”\(^{38}\) “the temptation of the heroic life,”\(^{39}\) and “the temptation of ‘theological totalitarianism’” itself.\(^{40}\) Though there is much wisdom here—and not least his construction of Hitlerism as, contra the pathology narrative’s allegation of atavism, a distinctly modern phenomenon—it seems to me that there is a deeper level still. They were, and we are, prey to millenarian political emotions because we share the elemental, existential burden of identity, of answering to the imperative and imperious questions of ‘Who am I?’ and ‘Who are They?’ Under the conditions of modernity, this burden and these questions have become especially troubling; and under those conditions, political millenarianism is an alluring alternative to the messy, freedom-insisting demands of modern adulthood.\(^{41}\)

\(^{33}\) So ascendant indeed that Chesterton was moved to devote an entire book to the matter in 1917: see Gilbert Keith Chesterton, *Eugenics and Other Evils: An Argument against the Scientifically Organized Society*, ed. Michael W. Perry (Seattle: Inkling Books, 2000).


\(^{35}\) Bucher, *Hitler’s Theology*, p. 114.

\(^{36}\) Ibid., p. 113.

\(^{37}\) Ibid.

\(^{38}\) Ibid., p. 116.

\(^{39}\) Ibid., p. 117.

\(^{40}\) Ibid., p. 118.

Professor Vetlesen does nod to the Nazi conscience, but his analysis so environs the matter that what remains provides him no direction to the issue of Nazi political morality nor any instruction as regards the question of how best we are to protect ourselves from what he calls atrocity and what I have here termed political evil. The evisceration takes place in his discussion of the view proposed by many and by Zygmunt Bauman\textsuperscript{42} and Christopher Browning\textsuperscript{43} in particular that strong emotions such as hatred and rage were discouraged by and among the perpetrators. Against these views, he places, and endorses, Daniel Goldhagen’s notion of eliminationist anti-Semitism according to which strong emotions are the \textit{sine qua non} of the Holocaust.\textsuperscript{44} Vetlesen’s choice of Goldhagen is, in my view, unwise. Not only has Goldhagen been subject to devastating critique,\textsuperscript{45} his proposed explanation simply reiterates the rapture thesis of the pathology narrative. And that thesis is more the end than the beginning of inquiry and understanding. So once again here: Vetlesen finally explains away the Nazi conscience through the alchemy of psychology and gender.\textsuperscript{46}

Vetlesen allows himself this move—or so at least in my view he must be taken—by drawing a distinction between the point of (political) conception (at which point he appears grudgingly to concede some stature to perpetrator conscience and commitment) and what he would clearly take to be the

\textsuperscript{42} Bauman, \textit{Modernity and the Holocaust}.


\textsuperscript{44} Daniel Goldhagen, \textit{Hitler’s Willing Executioners: Ordinary Germans and the Holocaust} (New York: Knopf, 1996), chap. 3.

\textsuperscript{45} See especially Raul Hilberg, “The Goldhagen Phenomenon,” \textit{Critical Inquiry} 23(4) (1997), p. 724 (“so lacking factual content and logical rigour”), 727 (“in this depiction, the Holocaust becomes orgiastic”; “Goldhagen does not preoccupy himself with the countless laws, decrees, and decisions that the perpetrators fashioned, or the obstacles with which they constantly struggled”; “instead, he shrank the Holocaust, replacing its intricate apparatus with rifles, whips, and fists”), p. 728 (“Goldhagen will be quoted by ignorant generalists”).

fist-meets-face point of execution (at which point, of course, he thinks hot emotions rule). But this is to mistake entirely the force and effect of perpetrator conscience. Taken seriously, perpetrator conscience demands the deliberate and enforced exclusion of hot emotions at the point of execution just because such discipline is a necessary part of the ongoing construction of the millenarian political emotion from which the conscience descends and of the maintenance of the purity and effectiveness of both. Which is to say, political evil requires conscience, and conscience requires discipline.

Nor do matters end there. Vetlesen’s fundamental undervaluing of perpetrator conscience acts as well to absolve ourselves of the revelatory burdens of our history. The political evil of the twentieth century carries harsh lessons for those who stand in its shadow. Solzhenitsyn put those lessons as well as anyone. In investigating the difference the twentieth century has made to our understanding and experience of evil, he contrasts “classic evildoers,” like Shakespeare’s Macbeth and Iago, evildoers who “recognize themselves as evildoers and ... know their souls are black” and who acknowledge their “purposes and ... motives as being black and born of hate” to what we should now know to be the reality of evil. Those classic evildoers are, he says, “somewhat farcical and clumsy to our contemporary perception” because we now should know “that’s not the way it is!” On the contrary, we now should know that “to do evil a human being must first of all believe that he is doing good.” And what made Macbeth and Iago “little lamb[s]”—“evildoers [who] stopped short at a dozen corpses”—is that “they had no ideology.” The twentieth century discloses, he says, that ideology alone

47 Aleksandr I. Solzhenitsyn, The Gulag Archipelago 1918-1956: An Experiment in Literary Investigation, trans. Thomas P. Whitney and Harry Willets, abridged Edward E. Ericson (New York: Harper Row, 1975), p. 173-174 [original emphasis]. I want to thank my colleague Professor Annalise Acorn for taking the time to read this piece and for reminding me of Solzhenitsyn’s pertinence to these matters.

48 Ibid.

49 Ibid.

50 Ibid.

51 Ibid.
“gives evildoing its long-sought justification” and with that, it “gives the evildoer the necessary steadfastness and determination. That is the social theory which helps to make his acts seem good instead of bad in his own and others’ eyes, so that he won’t hear reproaches and curses but will receive praise and honors.”52 “Thanks to ideology”—and to the thinking that doing evil is doing good that it alone permits—“the twentieth century was fated to experience evildoing on a scale calculated in the millions. This cannot be denied, nor passed over, nor suppressed.”53 Yes, harsh lessons about the spiritual depth of the matter indeed: Hitler thought he was doing good, and absent evidence beyond mere and easy proof of his being ideologically mystified and wrong, he stands before us a good faith and otherwise innocent murderer of millions.54 We mustn’t, as Professor Vetlesen does, hide this brutal truth from ourselves because both honouring his victims and ensuring our safety very much depends upon our acknowledging it.

With the whole of this, Professor Vetlesen so situates himself that the politics of the Holocaust never emerge to view and because they do not, the question of protection becomes for him a quandary. The reason for this is simple enough: if the problem of political evil is existential in origin and political in conception and execution, then since neither human nature nor the human situation can be transformed, any possible cure must be framed in terms of the political morality which was, and will always remain, the indispensable foundry of the conception and execution of political evil. So, before

52 Ibid.
53 Ibid.
54 Which is not of course to say that his innocence so viewed is, in any human fashion, redemptive. Solzhenitsyn illuminates here as well (ibid., p. 175): “Evidently evildoing also has a threshold magnitude. Yes, a human being hesitates and bobs back and forth between good and evil all his life. He slips, falls back, clambers up, repents, things begin to darken again. But just so long as the threshold of evildoing is not crossed, the possibility of returning remains, and he himself is in reach of our hope. But when, through the density of evil actions, the result either of their own extreme degree or of the absoluteness of his power, he suddenly crosses that threshold, he has left humanity behind, and without, perhaps, the possibility of return.”
proceeding to the matter of protection, to his view and mine, it is imperative first to provide a sketch of the political morality of Hitlerism.

The Holocaust was full of law and lawful. It was both because it descended from, and was only conceivable in terms of, the political morality of the Hitler state. As must any political morality, the political morality of Hitlerism had necessarily to address the core constitutional norms of state authority and purpose: it had, that is, minimally to specify both the source of law and the content of law. As regards the first, the Führerprinzip vested legal authority entirely with Hitler: he was the final source of law, and his state was in consequence a Führerstaat. This constitutional result did not appear willy-nilly. It was rather a necessary consequence of two discernible constitutional predicates, namely, the notion of a racialized national community (Volksgemeinschaft), and the constitutional blending together first of the Nazi Movement and the Volk and then of the Party and the State. The foundational constitutional norms governing the content of law involve a complexity that the overview that follows no doubt offends. That said, two norms, in my view, do provide the revolutionary gist of the matter. Firstly, Hitler’s constitution elevated Being over Acts. It was this norm that permitted and indeed demanded the construction of racially differentiated and hierarchialized legal subjectivities and the construction centrally of the legal category of ‘the Jew’ as Lebensunwertes Leben, that Being below rights (or as Arendt put it, without the “right to have rights”) that can in consequence be killed but not murdered. The story of the Nazi legal revolution—what the Nazis termed the Deutsche Rechtserneuerung, the German renewal of law—did not end, nor could it have ended, with the construction of that legal subject beyond murder, ‘the Jew’. Nazi law had also, as perverse as it might sound, to enable that

55 For a book-length exploration of Nazi legality much richer than the sketch space demands see David Fraser, Law After Auschwitz: Towards a Jurisprudence of the Holocaust (Durham: Carolina Academic Press, 2005).
subject to appear with effect and force in the world. Clifford Geertz claims “It is ... precisely at the point at which a political system begins to free itself from the immediate governance of received traditions ... that formal ideologies tend first to emerge and to take hold.” 58 Otherwise put, for the millenarian ideology of Hitlerism to take hold in the world, it fell to Nazi law to cleanse the life-world of those parts of received tradition that would render empty its constitutional construction and production, ‘the Jew’.

Nazi jurisprudence knew of this cleansing of received tradition as *Gleichschaltung*, by which was meant the co-ordination and subordination of public and private life to Nazi norms. *Gleichschaltung* is the second constitutional principle governing the content of law. Its aim was the politicization of the whole of public and private life, institutional and personal, social and spiritual. 59 The institutions of private life—especially the Church and the family—were reconceived through law as expressions and sites of national values and will. So far as the law itself was concerned, co-ordination meant the wholesale cleansing of its institutions and practices of the Western Legal Tradition. 60 Gone therefore was any notion of independence, both of the normative independence of the law as a whole and of the institutional independence of the legal community in each of its aspects, judicial, practicing, and academic. 61

I mentioned earlier along that Professor Vetlesen uses Hobbes as a foil to elect Levinas’ ethics as the proper understanding and means of curing our-

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61 It hardly needs saying that the institutions of public and private life were easy and complicit prey to the co-ordinating state. So far as lawyers and judges are concerned, see in this respect Ian Kershaw, “The Extinguishment of Legal Rights in Nazi Germany” in OIwen H. Hufton, ed., *Historical Change and Human Rights* (New York: Basic Books, 1995), p. 217.
selves of mass atrocity. I think him mistaken on both counts: he misunderstands Hobbes, and even if he had not, the Levinasian understanding is with respect to the matter entirely misplaced. It was Hobbes’ project to construct a politics for social peace given what he took to be the human situation. Vetlesen thinks Hobbes’ understanding of the human predicament is mistaken because in his view, and Levinas’, what is critically at play is the asymmetry of power between people and not the symmetry from which Hobbes proceeded. But this is either to undervalue or to misinterpret Hobbes whose point is that we humans are, at least with respect to political questions and political answers, best thought to be defined by our co-equal vulnerability to one another. This Hobbesian insight—that we are law needy because we are each of us at once vulnerable and predatory—does not parade as a morality tout court; on the contrary, it is by intent and design a specifically political basis for a specifically political morality. And it is in this sense alone that it has served, since Locke, as the point of departure for political philosophy of the liberal sort, and this despite the illiberal Leviathan that Hobbes mistakenly thought was the law and the state we need.

Likewise Levinas: his is an ethics expressly beyond politics from which can never be conjured the political morality that the matter of insulating ourselves, as potential prey and potential perpetrators, from political evil, requires. We may wish to be other than what we are—we may wish that we were not prey to millenarian political emotions, to the call and impulse of redemption through the state—but political wisdom begins not with reverie, but with “a recognition of [our] common, flawed humanity.” Nor does it


end there. If we humans are flawed, so too—and just as incurably—is human
government. Wisdom in this respect commences with the acknowledgement,
that “political goodness” is a “rare and precious species” more to be hap-
pened upon than to be planned or designed.64

So, if security from our millenarian impulses and from government’s
evoking and catering to those impulses is not to be found in transcendence of
the Levinasian sort, where then? It would be true to say that security from
both requires just what the liberal tradition has always proposed: that indi-
vidual and social liberty and security reside alone in moderate, non-
perfectionist and therefore limited government.65 But this is too glib. While
the political irrigates this shorthand of the liberal tradition, without more, the
political does not seep nearly deeply enough. We require a depth and nuance
that accords with the acknowledgement of the imperfection and imperfecta-
bility of ourselves and our governments.

The predatory state—the “destroyer state“66—begins in equal measure as a
conscience state and a seducer state. That is, it is seized of millenarian convic-
tions, and it aims to convert, along the lines suggested by Bucher, its subjects
to those convictions. And, as I have suggested, it then acts on its convictions
and in consolidating its project and its power by doing what states, all states,
always do, and what they may always choose to do. It creates the legal su-
bjects that its perfectionist mission demands and defines, and it colonizes the
lifeworld to whichever extent it thinks necessary to secure its mission. We
know this and we know too our own flaws and because we do, we must, I
believe, also acknowledge that security, if not, of course, ever redemption,
resides just where Judith Shklar claimed it only ever is to be found, in fear,
fear of and for ourselves and fear about the awful potential and propensity of

64 Tzvetan Todorov, The Fragility of Goodness: Why Bulgaria’s Jews Survived the Holocaust,
65 See for example Rudolph J. Rummel, “A Libertarian Explanation for Genocide,” Novem-
66 Fraser, Law after Auschwitz, p. 59.
the state that we acknowledge we require.\textsuperscript{67} Shklar proceeds, as I have been recommending here, from the premise that liberalism is “a political doctrine, not a philosophy of life”\textsuperscript{68} that arose from and continues as a response to what she terms “undeniable actualities” of political history.\textsuperscript{69} And she claims that “liberalism’s deepest grounding is ... in the conviction [that] cruelty is an absolute evil”\textsuperscript{70} and that its “nonutopian”\textsuperscript{71} project is to provide people the ability “to make as many effective decisions without fear or favor about as many aspects of [their] li[ves] as is compatible with the like freedom of” everyone else.\textsuperscript{72} For this liberal political promise to be made good in the real political world—or people to live lives in freedom beyond fear and favor—she thinks requires “deep suspicion” of government, of the “overwhelming power [of government] to kill, maim, indoctrinate, and make war.”\textsuperscript{73} Which is to say, for lives to be lived without fear beyond the law and state, requires the vigilance of fear with respect to law and state: the antidote to millenarian political emotion, it turns out then, is the political emotion of fear. So viewed, law and state are negative virtues in two senses: their value (and their legitimacy) resides in the barbarity and cruelty they prevent (or as Shklar puts it, their proper business is “damage control,” the damage we do ourselves and others through state and law),\textsuperscript{74} and their provision of these human goods relies in the final analysis on the political virtue of fear among their subjects.

I cannot here explore the question of what is necessary for the production and maintenance of this bulwark of politically fearful citizens that alone disables the state’s ability to evoke, provoke, and cater to our always latent millenarian political emotions. Clearly, certain institutional investments are un-

\begin{itemize}
\item \textsuperscript{68} Ibid.
\item \textsuperscript{69} Ibid., p. 27.
\item \textsuperscript{70} Ibid., p. 23, 29, 31.
\item \textsuperscript{71} Ibid., p. 26 [sic].
\item \textsuperscript{72} Ibid., p. 21.
\item \textsuperscript{73} Ibid., p. 30.
\item \textsuperscript{74} Ibid., p. 27.
\end{itemize}
avoidable, as liberals have long acknowledged. But beyond those by now near bromides of institutional design, things become much more complicated and especially so under the conditions of the modern administrative state that increasingly administers the lifeworld and in so doing, increasingly reduces its citizens to clients. I will end this commentary instead with a caution that applies with equal force to all interrogations of political evil, whatever their disciplinary source and whatever their scholarly venue, my own and Professor Vetlesen's fully and equally included. The caution is this: we need to be humble. Robert Nozick concludes his brief yet so insightful and poignant meditation on the Holocaust this way: “I have outlined here one interpretation of the Holocaust that gives it commensurate weight, but I would not want to exclude other interpretations or insist on this one come what may.” He is here not parading scholarly modesty, false or otherwise. On the contrary, his is a reasoned humility that I think we all should share with respect to our claims concerning the meaning, origin and significance of political evil, the Holocaust not only but especially included. According to Nozick, the Holocaust is a “trauma—so recent” that it “dwarf[s] a single person’s understanding” and certainly, he adds, his own. Nor is this assessment facial. In the next passage, that deserves reproduction here at length, he continues:

75 Not surprisingly, Shklar mentions all of these institutions: “limited and responsible government” (ibid., p. 23); separation of “the spheres of the personal and the political” in which separation she rightly believes “the limits of coercion begin” (p. 24); and “the first original principle of liberalism, the rule of law” (p. 37).

76 Clientelism and colonization of private life is each critical to the matter because, as Herbert Hart long ago recognized, liberal citizenship depends upon the “sense that there is something outside the official system by reference to which in the last resort the individual must solve his problems of obedience” and in the absence of which he predicted, “the society ... might be deplorably sheeplike; the sheep might end in the slaughter-house.” See: H.L.A. Hart, The Concept of Law, 1st ed. (Oxford: Oxford University Press, 1961), p. 206, 114.

The Holocaust is a massive cataclysm that distorts everything around it. Physicists sometimes speak of gravitational masses as twistings and distortions of the even geometry of the surrounding physical space .... The Holocaust is a massive and continuing distortion of human space, I want to say. Its vortices and gnarled twistings will extend very far. Hitler too constituted a force that distorted the lives of those around him—his followers, his victims, and those who had to conquer him. The vortex he created has not disappeared. Perhaps every evil of whatever magnitude constitutes some distortion of human space. It has taken a cataclysm to get us to notice.78

So, according to Nozick, the murderous past of the twentieth century is not only not past, it is very and, in a very real sense, too, near. We remain buffeted, at once torn, uncertain, and compromised, by its dark legacy. We fool ourselves if we think otherwise; and we discredit and dishonor the suffering of the past if we speak either too soon or too glibly. Yet speak we must and interrogate ourselves we must. It is just that in doing so, we mustn’t either misappraise—and in a very real sense, undervalue—what the perpetrators did and why they did what they did or misunderstand ourselves and what we now should know we are capable of. Silence is a cure in neither regard; care and humility are.

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78 Nozick, “The Holocaust”.


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