Wrath

Part II

"War is a judgment that overtakes societies when they have been living on ideas that conflict too violently with the laws governing the Universe"

Dorothy Sayers

"... our head is straight. But our life? An aimless fate has brought us to live in a system more absolute than any kingdom, for now the State is god, total annihilation being its sign and power..."

Hayden Carruth, Sonnet 38

"... But a strict inquiry is in store for the mighty. To you then, O monarchs, my words are directly, so that you may learn wisdom and not transgress".

Book of Wisdom 6:24

Introduction:

In part One of this essay, we attempted to demonstrate that legal juridical torture, defined as pain of any kind inflicted with the end, or goal, of gaining confessions, subsists in the First World industrially developed countries. The more sanguinary Roman forms manifest in the dark operations of the sovereign state: democratically sanctioned permission is given to the operators of the "war on terror". We have presented an hypothesis that requires more study: *a new kind of torture has evolved* which is bloodless, clean, invisible, antiseptic, ubiquitous and immensely efficient. We have demonstrated this modern form of torture is using the Darwinian principle of the *survival of the fittest*: in order for the powerful legal practice of *juridically extracted confessions* to continue its existence, it would have to *evolve*, to change its *exterior* aspects in quantity, quality, timing, location and other conditions in order to become acceptable to public opinion polls. The *end* of torture is legal, its methods are legal within limits measured by the volume of blood and brutality: less is more legal.

Until the *end* of torture, confessions and self-incriminating "plea-bargains", is outlawed, torture will continue to evolve according to the logic of the industrial beast, with mechanical guts. Plenty of negative visions of "science fictions" have warned us about this: we just have to listen. In the Communist expression of industrial production, children who chose the "People" over their parents were made heroes. That same development occurs now in "free market" industrial politics: children who turn in their parents for smoking are lauded. The old structures of family, which Plato suggested be replaced by the function of the state bureaucracy, are coming to pass away in a slow, methodical and organic way. All must make a common (in the sense of universal) *confession of belief* in the political economy as to a *deity*. That is, one confesses fidelity to the law of the land—its customs, ordinances and ways of life. The confessions are made not in a sporadic space of intervals, like our Christian confessions of faith made in prayers and liturgies set in cyclic times of the day, week or the year. New principles have been developed out of Benthams models, new epistemologies, or theories of *how* one knows or learns. The randomness and ubiquity of our confessions of faith we attribute to the *principle of atomization*—the breaking up of matter into tiny particulates, which, if one looks at the tiny particles of a complex substance, one might not know its overall nature. This principle of atomization occurs in the

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nature of gases and liquids and purified solids. Torture has, we have suggested, been atomized such that, as we saw in Soviet Russia, each individual in society is a torturer of the other, and even one's own "self" stands against the self that dares question the People. The total interiorization of the sovereignty, if not the sacredness, of the State has been imposed by a pleasurable and profitable *coercion*.

This charge of "atomization" is not as far fetched as critics might say. Allan Carlson identified a "suburban strategy" adopted by social engineers during the Cold War which is a form of the atomization principle of which we speak[i]. The general pattern of human settlement tends towards congregations into villages, hamlets; and in the metropolis, the analog is the neighborhood ordered by similar grounds of language, ethnicity and religion. Families themselves are protective units that do not split apart into "nuclear" families; the well-being of the elderly demands the extended family. However, such arrangements which put many people in one place poses a military problem when the war-planners assume the use of weapons of mass destruction. The "only real defense" to the atom bomb is the destruction of the natural tendency to congregate by laws of the state to enforce patterns of settlement which would reduce casualties. In 1951, Carlson documents, the "Bulletin of the Atomic Scientists: A Magazine for Science and Public Affairs" published a recommendation titled *Federal Action Toward a National Dispersal Policy*. This policy of engineered social dispersion, which we call atomization, can be proven by empirical evidence: just look around at the First world pattern of development. It is not the organic conglomerations and concentrations of peoples and families, but a highly regulated and controlled process enforced by the police powers of the zoning commissions which are guided by the atomization principle concocted by government sponsored scientists. The construction of social reality and its institutions is no longer under the control of people who live in society, and operate on the principles of religious and cultural affinity. Social reality is now constructed by experts and social engineers who view people as nodes in a system, which must be heterogenetically designed based on the concept of people as "targets", potential victims, and consumers of housing produced in industrial mode. If a government can totally control its residents' "choice" of living arrangements, *a fortiori* it is feasible to engineer public safety, justice and a legal system that operates on mechanistic engineering concepts such as atomization.

This section of our trial of the industrial justice system will look at two attempts at reform of the system which provide a scaffold around which to build an argument that to remove and discredit torture and confessions can be achieved only by way of a method of study and action which seeks wisdom; and the current models of philosophy do not have virility necessary to do so, and must be replaced by the kind of jurisprudence Harold Berman called *integrative*. We will try to demonstrate that his novel moniker is another name for *Thomistic scholasticism* in which the science of law considered in the tradition of *sic et non*.

Reform in the State of Nevada:

The Nevada State Constitution calls for the establishment of a legal "system"[ii]. Insofar as language in some way shapes world view and the actions subsequent to that view, perhaps Nevada's "system" explains its notorious torture system that produces a 99% rate of extracted confessions from those who cannot hire an aggressive attorney to do battle by trial in the Anglo-Saxon adversary mode of justice. In 1912, Mark Twain, the American icon, met head-on with the Nevada "system", which believes in the voluntarist conception of the law, which we'll briefly illustrate.

Twain and his friend, Silas Snozzlebottom, started a campfire at Lake Tahoe which apparently got out of hand and created a forest fire. He appeared in Washoe County to

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answer charges and defend himself. The newspaper report opines that Twain did not have an awareness of the "seriousness of the offense"[iii], citing the fact Twain does not hire an attorney. What Twain does do is rely on the existence of natural law and equity which is the foundation of common law. He argues his innocence saying that a great wind came up that blew embers into the dry trees. He utilizes the principle of law which insurance companies use as escape clauses for pay-outs of policies: the notion of "an act of God". This is a principle well known which means simply that the direct and immediate cause of the fire was the unforeseeable event of the wind which is a creation of God. Twain has no control over the wind, or God, so thus cannot be held to blame for the forest fire. He was within his rights to make a campfire, and presumably he was not negligent in any way to be blameworthy of the attack on his person and wealth by the good "people" of Nevada—which is a mere democratic *slogan* for the sovereign state. The judge rules over Twain's appeal to the natural law which recognizes man's God-given reason and the supernatural origin of law and life itself: but he does so, ironically, with the same principle of natural law, but which *emphasizes will over reason*. The judged is reported to have said: "it was a similar act of God which impelled him to levy a fine of 500$ and one month in jail for leaving his campfire subject to the influence of the wind". (James, 364)

The cutting edge, advant-garde philosophies at the time Nevada was admitted into the Union, 1864, were Darwinism, utilitarianism, and the positive progressivism of Auguste Comte, and American pragmatism. The *mechanization* of transport, agriculture, and almost all production was in full swing, so it is no wonder the citizens of Nevada, presumably up-to-date in the theories *du jour*; could imagine a "system", or mechanism of law. The United States analog constitutional provision for judicial power *does not* call for a *system* of courts, but only *courts*. This change in language we feel to be a not-to-be overlooked factor in the *current* evaluation of the American rates of incarceration. Under the legal philosophy of America, that is the positive theory of law, the other philosophies of law are by necessity sidelined as meaningless and insignificant. The modern positive theory of law, which has its roots theologically in Luther and Calvin, became absolutely ascendant in the rise of *industrial civilization*. Most of, if not all thinking about the reform of law and procedure is "system's thinking". This is, in my opinion, a term which reflects a world view dominated by the same positivism that dominates the laws which people want to reform. The only *motion* which can occur by a positivist critique of a positivist system will be a *growth* in positive law. If any *diminution* or *alteration* is going to happen it is going to be the result of a challenge from the critique of precisely what positivism considers its enemies natural and historical theories of jurisprudence. Let us try to make these "theories" understood as quickly as possible.

Harold Berman provides us with some clear concepts in a speech made late in life:

1. Positive law is the "political dimension" of law.
2. Natural law is the "moral dimension" of the law.
3. Historical theory is the "time and tradition dimension"[iv].

Berman argues the crisis in all law is due to an imbalance, or disequilibrium caused by the over-emphasis of positive law and sidelining of the other two. Positive law is emphasized in both Reformation and the subsequent eras of the enlightenment and the romantic movements. Protestant theology placed emphasis on voluntarism or the *Will* of the creator, and de-emphasized God's *Reason*. The "will" is an operative principle underlying the sovereign will of the "people"—whether under a dictatorship of the workers or of an elected body of representatives. Positive law theory says the law is what "people" say it is—of course there is no *direct* participation, but a quasi-representational participation. This understanding of law is the basis of the communist law, the law of Nazi Germany, and is still dominant today—in the West as a whole, including the United States.

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The historical "time and tradition" theory of law sidelines the other two theories and, Berman points out, was favored by Calvin, and is not as exclusive of natural law theory as positive law. The Anglo-American principle of *stare decisis* is the evidence of historical jurisprudence. That means "let it stand" and is the practice of legal precedence, the conservation of what previous judges have said the law is. We see this play out as tension on the Supreme Courts of the fifty states who generally do not see themselves as agents of interference of the lower Courts unless convinced. The problem with this is that such an operative theory neglects reason, or refuses to act even when good reason is supplied, being that preservation of the tradition of law reigns supreme over the individual case at hand.

The natural law is the most ancient and perfect among these theories because it is *inclusive* of these other theories. It recognizes the necessity of man-made laws, but has *reason* to prevent the sovereign from overstepping his bound in a capricious manner; natural law honors and preserves the time dimension of law, but has the virtue of epikea and equity to prevent the letter of the law from dominating the spirit of the law. The natural law is at once the most perfect but the most troubling because it is the most scientific and the least capable of being abused to the benefit of a "faction". The cult of revolution can legally justify acts that fall beyond the ken of reason, under the view that law is *what is*; it over-rides historical "time dimension" because it can claim to be historical progress. The language of "future-speak" is designed to appease the conservative concerns of tradition. But it cannot over-ride Reason of natural law except by force or fraud.

The *difficulty* with natural law is in its recognition of the supernatural, eternal and divine sources of law. Once a population has been successfully trained in the dogmatism which *denies* such sources of moral foundations of law, the natural law loses its credibility. The historical theory of law can at least incorporate the historical fact of religion in a socio-psychological sense. Positive law can accept, by majority vote, the *conclusions* of natural law, and most of the positive laws on the books are in actuality secularizations of what was once religious, church and biblical law. Since positivism in its *radical industrial* form is so utterly materialistic, natural law is unacceptable as a dominant force of authority. In the industrial economic world what counts is the "bottom line", the "numbers"—not what is good, and right—now and always. It is unlikely that industrial positivism will ever accept upon its own logical rules the authority of natural law as a set of guiding principles as it would lose *the position of authority and power through which the industrial economic machine* is blessed with: *moral acceptability*. Natural law theories challenge and in a many cases destroy the *apparent* moral grounding of the economic system.

We will provide one example of positive law thinkers attempting to reform a system of positive laws to try and demonstrate that such a theory, because it is not guided authoritatively by *reason*, is impotent to make any really true change but a growth in its own power and dominance; which; obviously by the wreck of destruction the project has created, is not necessarily equivalent to an increase of the common good, right, fairness or improvement in the life of the individual, nor "just" in its metaphysical, eternal sense.

Systems Thinking and Policy Reform:

We don't wish to denigrate the intentions of the reformer using the "political dimension" of the law to reform the law. We wish for these reformers to add the other dimensions to their considerations of ends and means. The irony of a positivistic science of any topic is that it is less than "scientific" in its highest and most noble meaning. Science implies the taking in of *all* evidence, not just that data which suits one's ends. Positive law theory by definition excludes the historical dimension and the moral dimension which is not under the control of the *political*, mundane dimension. Thus, the "science" of positive law

theory is as much a pseudo-science as "economics", or an atheistic "psychology".

J.A.I.L.

In the United States there exists an idea that a new law should be in place that "holds judges accountable". It was such an idea that appeared on the ballot of South Dakota in 2006[v]. *Redress, Inc.*, a non-profit group was preparing in that same year a ballot initiative. The name of the South Dakota initiative was *Judicial Accountability Initiative Law*. The executive director of Nevada's *Redress, Inc.* reform group, thought that the South Dakota initiative did not go "far enough". The South Dakota proposal was to create a *special grand jury* which would investigate charges of malfeasance on the part of local court judges—actually all judges of the State who commit any "deliberate" violation of the law:

1. Fraud.
2. Conspiracy.
3. Violation of due process.
4. Disregard of material fact.
5. Judicial acts without authority.
6. Blocking lawful conclusion of a case.
7. Deliberate violation of constitution.

The judiciary under common law is shielded from *civil* lawsuit for financial remuneration as an individual person. His acts as a judge can be and *are* sued in the process of rights of appeals, and under criminal prosecution for acts done as a citizen off-duty, and on the bench, if he were to violate laws of conspiracy or obstruction of justice. Also, "public" referendums can be drummed a up by well-financed scare campaigns, as was done to the California Supreme Court Justice Rose Bird some time ago. This shield is part of natural law, in common law, and has never had to be stated by a legislative act. The law is reflected in the Bible itself, as *judges* were the preferred form of leadership by God Himself: it was the clamor of the "public" that God listened to and permitted the establishment of *Kings* in ancient Israel.

The legislature of the State of South Dakota exercised its power of influence and issued a decree in both houses "suggesting" voters reject the idea. Nevada already *has* a *Commission on Judicial Discipline*, which acts as a quasi-grand jury; the *Redress* group in Nevada would broaden any such powers to include within its investigative powers other nodes of the "judicial system" such as the police and attorneys. However, even if such other nodes were included such as the parole boards and commissioners, parole and probation officers, and even County and Municipal planners and commissioners were to be included, we perceive this well intentioned proposal to be mere an *expansion of the State*, by enactment of a man-made statute. We agree wholeheartedly with the *end* proposed; we argue *all the vehicles of law are already in place for such ends to be achieved*—that is that justice be truly *just* and *fair*. Such operative principles are within the Western legal traditions of natural and historical jurisprudence. Modern industrial law is equivalent to the *monopoly* of *positive law* over all other dimensions of law. This monopoly has caused a blindness and a kind of real impotence in citizens to imagine alternatives, as the bulk of knowledge *about* law lay's in the past, and is not in the form of a *legislated statute*!

For example, the very idea of a kind of justice that keeps judges subject to an ethic that does not permit the abuse of power vested in them is Biblical! The story of Susanna in

Daniel 13, where the judges, corrupted by lust, "and refused to allow their eyes to look to heaven"; they laid false charges on her and got her condemned to death. Young Daniel, full of the Holy Spirit "prophesized" and had her brought back to court on appeal, and found the judges guilty of perjury, and Susanna exonerated. This *principle of appeal* is not a statute of any state, but a principle of divine and natural law. That law is expressed not in the original Constitution, but in the first amendments *of* that Constitution, as the worry was that the State, as it always seems to do in history, gathers up too much power.

The belief of the J.A.I.L reformers, led by Gary Zimmerman and Juli Star-Alexander, is that "a failure to hold the judges accountable is crippling the legal system". The exact opposite is true: the judiciary has fallen more and more under the tyrannical passions of the whipped up mob of the political dimension of law, by creating "mandatory minimum sentences" and emphasizing the "societal protection" theory of penal administration. This, in effect, ties the hands of the judge. Likewise, the industrial pressures of increasing the "numbers" and "bottom line" to satisfy the political promise of a "safer society", the entire "system" works for *that* goal, not the end of "justice" in its transcendent and particular sense.

This J.A.I.L initiative looks to us like the "people's commissars" of Soviet Russia which merely overlooked the nodes of the industrial production of prisoners. The current Judicial Commission is such.

What would make more sense would be to take the money which *would* have been spent such on a new administration, and close down the current Commission on Judicial Discipline, which is nothing but a toothless sham operating in secrecy and mostly making sure that judges enforce the legislators will of inflexible, predetermined minimum sentences, and pour *all* that money into proper *indigent defense* and public training in *habeus corpus* and other legal procedures which are already available to sue the "system" into sensibility. There *should* be financial protections for damages done to individuals by individuals who fill the functions of the court officers. However, they should allow due process in *all* proceedings, bar none. The right of appeal should exist everywhere and allowed all the way to *international* courts of appeal! The remainder of monies should be allocated to *increase* the number of judges, and create specially neighborhood courts for many of the issues now handled by "the State", which has transmogrified into the Orwellian, omniscient *parens patria* for all torts and delicts. The current duties of the grand jury in Nevada needs to be expanded and this may require legislative permission, but if anything, legislative decrees themselves need to be subject to challenge and review through the courts.

What cripples society is the systematic removal of legal and particular justice from the courts and turning them into a system. Systems thinking and the business language of "accountability" needs to be replaced by an English which has recovered the power of its polyglot origins of French, Latin, Spanish and the concepts of a virtue oriented ethical language, not the bleached, meaningless sophism of sloganized industry-tongues of the various professional "communities" which is rarely understood or spoken outside their gated enclaves. The traditional language of virtue has terms of justice which, when understood, gives culture access of understanding natural law principles which are the foundation of Anglo-American jurisprudence. The virtues of equity, epikea, mercy and clemency are terms understood by all in human society and need no special training or expertise. For more conducive to a peaceful society would be *increased public* education on law—library services expansion, jury training and the like would be far more intelligent than the ridiculous increase of the punishment calculus that would merely put punishments on even more people. This sovietization of the Western legal tradition is unacceptable, from an realistic point of view. From an industrialized business point of view, the current trajectory of society, though completely derailed from the moral and historical dimension of law, is fine

and dandy.

The State of Nevada already has on the statute books has already a waiver of sovereign immunity from remunerative damages (Nevada Revised Statute 41.031 "Waiver of Sovereign Immunity"). However, it has many loopholes written into the law which makes due process impossible. For example, current language says that suits cannot be brought for money damages or equitable relief on public officers "based on performance or failure of a discretionary function on the part of the State, whether or not that *discretion is abused*". This is mirrored in Federal law and in case law; only an historical analysis, and an analysis from the moral dimension of law, can rise up and challenge what amounts to free reign to be an unreasonable idiot wearing the cloak of legality. Perhaps Nevada's own Constitutional law could be set in confrontation with this absolutizing of power in the sovereign judicial system: the "Right of Suffrage", Article 12 Sec. 1 states,

"No idiot or insane person shall be entitled to the privilege of an elector."

Replace "elector" with "public office" and that would provide legal ground to challenge the acts of all public officials irregardless of the principle of sovereignity.

The kind of development or recovery of a culture guided by all dimensions of law has occurred. One example are "small claims" courts, which are *de facto* courts of equity, an off-shoot of the ancient English tradition that was "merged" into regular courts as an administrative experiment in most American states. The small claims courts, like the old equity courts are highly informal and actually prohibit the presence of lawyers (except as coaches I believe). The courts generally supply *in pro per* packets of which are available for free or at highly reduced costs. Another court of equity at the federal level is the U.S. Bankruptcy Court, which also provides self-explanatory packets for self-representation (*in pro persona*). Most of the forms for all state and federal courts are online, and the Federal Bankruptcy Court actually now has electronic filing computer mechanisms to simplify the process.

All courts are basically courts of equity as well as courts of law—at least that was the intent of the lawgiver in closing down the old Equity Courts and demanding law courts wear two hats. Of course, the courts cannot do this as perfectly as when the special courts of equity were around to help with the "civil war" of societal conflicts that naturally occur. That's why small claims bankruptcy and other courts are set up—it's sort of an admission of failure of the act of closing down the Courts of equity. We think a great deal *more* can be done to increase the education of all citizens on the deep and rich Western legal system. It is not the judges, lawyers, and the official police functionaries such as agents and officer of the court who need education. *They* are already over-programmed to the point of idiocy in regard to the big picture—that being the *spirit of the law*, which is, by natural law theory, *higher* than the letter of the law. The bureaucratic functionary is nothing more than a highly paid cog in the mechanized "system" of courts *mandated* by Nevada's constitution, as well as the *universal* belief in the operative principles of the philosophy and theology that make the domination of the political dimension of law, positive law, *the only law theory of the land*. This "systems thinking", which Orwell worried about in his fictional *Newspeak*, cannot beat its way out of the box it has built for society; it can only *add* to the box.

Principles of equity must be *recovered* and given to the public by the same means it deprives them of those principles now: by "education". The lie of omission has shaped a citizen fit for an economic system that can operate *only* on positive law. Natural and historical principles of law are *obstacles* to *material fetishism*. Unending, unbounded growth is a fetish required to be held by the "consumer" as an inalienable god-given right—and the only way to convince people of this lie is to *omit* and *obscure* the *moral* and *historical-cultural* dimensions of the law, which would expose the lie!

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Law courts must make available in an equitable manner the processes it now obscures by professionalization. What exists today is precisely the conditions which existed eons ago when people turned to the king and church in appeal to the abuses of *law* courts and which created courts of equity. If people are given the *tools they will* shape law as they have done in the past. The historical trajectory of Anglo-American adversary jurisprudence has always had *three feathers* on the shaft of history. Two have been ripped off for reasons which we say in a nutshell are purely economic. But one can well imagine what a single-feathered arrow does—it misses its mark.

The topic of the use of torture to fill the politically willed increase of the positivistic public safety theory of sentencing offenders is not forgotten. The way to fight this shameful and ungodly trend is to put the feathers back the arrow of law, and allow the accused and the punished and the condemned to fight fairly with the same tools as given the State. One such tool *now* available, which is, in essence, a kind of recovery of natural and historical jurisprudence, is the Federal Statute which is an equity proceeding: the Complaint for Deprivation of Civil Rights found in *42 United States Code, section 1983*. We'll discuss a test case which represents an historical, but thwarted, attempt at the use of the courts to destroy the monopoly of positivism and the "system" and replace it with courts interested in justice as an invisible principle, not as an actuarial calculus to control the body politic's self conception as an industrial consumer.

The principles of due process can and must be achieved in *all* facets of the government; its courts of law must become more equitable by not withholding from anyone access to itself by controlling knowledge of how it works.

1. *Pro per packets* must be made available for all actions, motions defense action, with the *poor* in mind. What man can *afford* the lawyer who provide this knowledge only to those who Calvin proposed are marked by wealth as a "chosen-to-be-saved" individual.

2. All forms, and explanations of procedures *must* be made available, not only to the indigent accused rotting *incognito* in County jails, but at the government websites and *all* public libraries as well as State mandated school sites at require *civics* courses. The current monopolization of such information until the *17th year of education* is a violation of constitutionally protected right to access to courts—by omission, or by an *active retraction* by the *State* and its segregation into social spaces *to which only the wealthy can retrieve*! This is a *form of apartheid* which has changed, as a chameleon, not only its color, but shape and most other attributes like location, time, quantity, in a manner not unlike *torture*.

3. The absolute and quasi-sovereign status of the probation and parole commissions, the police, the Directors and commissioner, heads of departments, understandably must be protected from *financial* harm (except the loss of their jobs), but their *discretion qua discretion* must be allowed to be held to the *light* of reason and law by those being *harmed* by it. The loop-holes which allow the functionaries *absolute power* must have their discretionary decisions held to answer to all dimensions of the law—moral, historical and positive—by those whom they judge.

Lewis V. County of Lehigh 516 Fed. Supplement 1369:

The legal court system of torture hypothesized to subsist in part One of this essay was observed and challenged in an action in the State of Oregon in the late 1900's. it was a Title 42 Civil Rights action filed, seeking equitable relief, by indigent, self-represented inmates being held in a county jail, complaining of the civil rights violations of the "system" on the accused as a matter of practice. That the case was heard at all is because of the

principle of equity arising out of the moral and historical dimensions of law preserved in the Western legal tradition. Complaints in equity must be construed as widely as possible. That means that the judge is bound by unwritten principles, not statutes, to look for substance, for violations of fairness of the *law* itself, not violations of the law. This case, I think, was thrown out in error. There is no evidence in the preserved case that the plaintiff prisoners appealed, and if they had, I am certain they would have won, especially if they had greater cognizance of the law. In part One, we have described County jail conditions, and probably not at their worst in America. It is not unreasonable to conjecture that the prisoner plaintiffs did not have access to the *Corpus Juris Secundum*, the massive compendium of Anglo-American common law derived from case law.

The case was thrown out for "failure to state a claim". The Judge likewise did not leave the door open for the plaintiffs to amend their complaint and resubmit. That decision to close the door was actually a signal that the door was open by the *substance* of the allegations, and the "system" would have been foolish to invite the enemy in. It was a deliberate error by the court that would have, I believe, been taken up by higher courts, though not necessarily won. That the substance of the matter was heard at all was a sign of cognizance of a substantive wrong in the "system".

The claim which *must* be stated in a Civil Rights violation by a particular state government—federal or local agency of any level or kind—is a claim that a right *expressed by the U.S. constitution had been violated*. This case against this "system" of mechanized production of prisoners by extracting confessions by mild and highly diffused forms of mental and physical pain was not clearly couched as a specific violation of a right. All they needed to have said to correct this in the complaint was "our Fourteenth Amendment right to due process was violated", and link every claimed action or failure to act by the State to that constitutional right, and the infirmity of the action would have been cured. The second infirmity was that the plaintiffs sought financial-monetary damages, which could have been cured by withdrawing that claim for relief by Amendment.

The complaint asks for specific relief against specific defects in the prisoner production system in Oregon. The list we derive from the written finding by the judge in this case is a claim of *conspiracy* to produce "easy convictions" by which the plaintiffs probably mean "judicial confessions". This case twenties years after the *Miranda* case discussed in Part One,, so by this time the complaint is no longer about the mental and physical torture which had moved into the police "interrogation rooms" and produced, extracted and extorted confessions. This case is talking about an *accidentally* transformed kind of torture which results in *plea bargains*.

The plaintiffs alleged:

1. Improper behavior of prosecutors.
2. An unacceptable manner of plea-bargaining.
3. Use of calumnious false charges.
4. Impotent public defenders appointed by judge.
5. Case abandonment by appointed defenders.
6. Deliberate refusal by defenders to raise issues.
7. Political pressure to seek "easy convictions".
8. Psychological ploys for information by officers of court on incarcerated accused to get "leads".
9. Use of false arrests of associates of accuseds to get phony information.

The remedy sought was surprisingly sophisticated:

1. An injunction requiring judicial review of all the case-load of the "system".
2. Establish criteria that would determine the propriety, eg. Throw out those calumnious and false charges.
3. Supervise the manner of plea bargaining.
4. Bring in attorneys not associated with the system at hand (old boy's network?) by importing "foreigners" from outside the county in question.

A third infirmity of the complaint, alongside the lack of direction by legal information, was its use of language that "suggested malice" on the part of the plaintiff prisoners, this is one of the hysterical euphemisms used:

"[This system] makes the Third Reich's assault on the Jews look like children's Saturday afternoon comedy show..."

Hitler's assault on the Jews included murderous genocide, and the judge is right to call the minimization of this to a comedy show an act of malice. However, the malice has a mitigating factor—invincible ignorance. The intuition that the United States' industrial justice system is a *totalitarian* as Hitler's fascistic system is correct and accurate. What the prisoner Mr. Lewis cannot be expected to have known is that the two countries *are* similar in the fact both operate on a *disintegrated theory of law* that excludes the moral dimension of law—natural law. This degenerate theory of law has its roots in the history of religion and theology of the West, and must wait to be expostulated in a future essay. Another fact which an indigent defendant cannot be expected to have known is that Hitler *derived* much of his positive law *from* the United States. For example, the eugenics laws of California which encouraged the forced sterilization of those less than Spartan-perfect were adopted nearly verbatim by Hitler, according Hugo Black in his exposé of the *War on the Weak*. The point is, this inmate legal action had every just reason to *feel* angry at a vaguely perceived system which pursued convictions, not merely justice in the abstract. However, given the gravity of the charge, the prisoner-plaintiff had even greater reason *not* to act out *unreasonably* on the anger. Filing a lawsuit is a reasonable response to anger at injustice. It is a form of civil resistance, a duty and right which makes Western civilization what it is. Making hysterical, irrational and false statements to the Court is not reasonable and destructive to the presentation of the case itself. Such statements are in themselves a descent to the sophism which is the hallmark of the modern tyrant, be they charismatic individuals, a faction of "expert" social engineers, or an aggressive district attorney climbing the political social ladder.

The encouraging aspect of this lost case was the careful consideration, if not flippant and over-hasty at times, of the *remedies* which were proposed. The financial damages was tossed out with one flip of the wrist asserting *sovereign immunity* of all the nodes in the production line of conviction, which is a concern which has risen to the level of public consciousness as shown in our previous discussion of the J.A.I.L political legal movement to create a grand jury oversight administration. The judge here is faced with precisely such a proposal, after a manner.

The judge complains that to issue an injunction for oversight of the plea bargaining, appeals, determining issues raised in motions and finding impartial and aggressive from out-of-district locales was both beyond his judicial duties and "a thouroughly unethical comingling of the activities of the bench". This discussion is important because the judge

sees the potential truth that the second prong of the test of viability of a civil rights action in equity. The first was, as we said earlier, a stated claim of U.S. Constitutional rights being trampled on; the second is that the trampling must have been done "under the color of law". In other words, the law is aimed at individual functionaries of the state who are hiding behind their badge, credential or title legally conferred to justify the violation of protected activities like free speech, religious practice, due process. The claim in this case is that *proper* due process was denied or improperly practiced—like the trumped charges. We saw in the Miranda case that it noted the ineffectiveness of positive law which prohibited the police from tortured confessions.. Antisweating laws were passed in the 1920's, and the practice only continued, perhaps *more surreptitiously*. The moral dimension of the law is preserved by equitable procedures and expressed by equitable maxims. Equity seeks the fairness which the law cannot ensure. The very process and rights of appeal are rights which presuppose and spring from the *duty* of the lawgiver (king or Senate) to adhere to principles of fairness which are laws *above* the law. The Title 42 civil rights proceedings are in essence actions in equity—they are designed to seek fairness of the legal system in operation, not merely apply a specific law. The burnt-out hippies who filed this unsuccessful action brought a morally outrageous situation to task. The court took the matter under serious consideration, and chose to defend the system, not those crushed by it. Those same men in no way had the money nor political networks, savvy and time to *politically* change the law—but they *did* participate in history by participating in the Anglo-American adversary court proceeding. They succeed in *recording* in history the complaint in the record that the system is "bogus". A more sophisticated elaboration of the meaning of "bogus" needs must be pursued in courts of law to change the systemic laws of prisoner production.

We have looked at the reformative critique of the modern criminal justice production system from two of the three dimensions of the law. First we looked from the positivistic *political dimension* which is the social movement for man-made legislation and the increase of administrative bureaucracy. The second dimension we used was the *moral dimension of natural law theory* which is exercised in the adversary proceedings, which utilizes natural law principles preserved in case law and tradition, as well as in statute itself, which often reiterates such law, giving the dangerous appearance that the traditional concept of law was created by some legislative act. The third dimension is the historical dimension of law. This time dimension implies the comparative analysis of law in a scholarly fashion. Of course these dimensions overlap in many ways. This essay is an exercise, perhaps, in this last dimension. However, being prisoners we have few resources readily at hand to do either longitudinal historical study, nor latitudinal sociological analysis within the western legal tradition and outside of it, which is the "law of nations". In the first part of this essay, we observed Justice Earl Warren utilizing in his analysis of the *Miranda* case the facts of the historical record not only of this country, but in the entire realm where Anglo-American jurisprudence had come to—as far away as India. This was a scholarly examination of both other cultures on norms and the norms as they have changed over time. The method used by Warren, scholasticism, is what we have made a weak attempt at here, and is the method we think men *need to start using* in the social construction of reality. The interdisciplinary form, which the scholastic *sic et non* approach really is, has long been abandoned as part of the industrial-economic revolutions under the color of an ideology of national development, freedom. This is because the scholastic method is a preservation of the notion of *authority* which has been rejected by the reformation movement and replaced by the calculus of power which underlies the totalitarian forms of governance which have risen up in opposition to Western civilization. We will reserve to the last the defense of this harsh judgment.

Meanwhile, we will try to trace highlights of the history of the current principles upon which the current "war on crime" is founded on. We find it appalling that a "liberal" politician can stand on a platform of vice opposing *clemency*, as Hilary Clinton, the

Secretary of State, did in her public remarks criticizing Scotland for releasing the convicted Lockerbie because of his terminal illness. He was returned to Algeria to die. It's necessary to explain how a powerful politician can, without the slightest compunction or shame, denigrate authority of our Western legal tradition, to which America subscribes to, at least in common law. The *Corpus Juris Secundum* notes the common law use of the executive power of pardon and clemency for reasons of health of the prisoner[vi].

The current war on crime might be considered to be centuries old, at least as far back as the late 1400's (at, interestingly, the beginning of the process of *globalization* of northern European economy over and against the Italian Lombard in the then dominant Mediterranean trade routes). We find, written originally in Latin, the reports of a crime wave in St. Thomas More's *Utopia*[vii]. A lawyer is speaking to Raphael at the Cardinal's residence, and recounted by More:

"We're hanging them all over the place... I've seen as many as twenty on a single gallows. And that what I find so odd. Considering how so few of them get away with it, why are we still plagues with so many robbers?"

Rafael opposes the lawyer:

"What's odd about it?... this method of dealing with thieves is both unjust and socially undesirable". (*Utopia*, 45)

No penalty on earth, says Rafael, will stop people from stealing if it's the only way of getting food, and calls the deterrence theory of punishment akin to a school master preferring the caning of students to the teaching of them. His proposal is to provide everyone some means of livelihood to remove the *necessity* of thievery. The lawyer attacks this suggestion by the logical fallacy *ad hominem*; he accuses the "class" of thieves to be lazy by implication, and proposes that Rafael accept the myth that all could easily earn a living, but refuse and choose instead crime.

"You can't get out of it like that" says Rafael, and goes on to make a sociological explanation of the economic facts which are the circumstances during which the war on crime began. He then describes the enclosure of their lands by eviction of the tenants—yeomen farmers put out of work, as well as a rise in the population of "retainers" of noblemen who were fired when such status-display of wealth led to bankruptcy. The scathing sociological passage uses the term, "systematic" ill-treatment by landlords until small landholders were forced to sell to bankrupt nobles who wished to produce wool in massive quantities to enter into the international business scene: trade with overseas or sell to a rapidly expanding military and merchant navy for clothing. It is no wonder *utopia* entered the language as a pejorative and is still used against those who are accused of not being realists—meaning positivists, and accepting what *is* over the weight of authority and traditional metaphysics and theology, and common sense. More has Rafael go on at great length describing an alternative program which literally foreshadows much of the penalogical practice today. Much of his ideas were derived from antiquity, especially Plato. For the "cause" end of the issue of land enclosure, he does not elaborate more than to say the situation should be halted, but does not attack with his imagination to foresee potential obstacles and problems and suggest was to get around them. It seems he trusts in the practice of noble virtues in the class of nobles who were the mediate cause of degrading the circumstances. He spends a great deal of time throughout *Utopia* on the moral dimension of law of a fictitious peoples.

The historian of Western law have noted that the Germanic law which the Roman empire found in its expansion north did not use the physical torture permitted in Roman law and did not use the death penalty as liberally as we find it being used in the 1500's. What written codes of law are found in the early Western civilization are schedules of

remuneration for damages for violence. Manslaughter, mayhem and the like which would put a man in prison for years or the death penalty, was dealt by payment in gold or in kind. There exists a strange paradox that the more civilized the Northern Christendom became, which means the more Christianized it became, the more systemized became its laws and more brutal became its penalties.

The great historian of law and religion, Harold Berman, notes that the investiture issue in the Germanic portions of the Empire was an issue of the power to appoint bishops. The empire everywhere maintained a two-swords theory of civilization; the church held supreme in the moral dimension of law, while the prince or parliament held supreme in the political dimension, while the courts represented the particular norms and practices of local tribes with a separate legal history within the larger civilization. In the conflictive tension between the moral authority of the visible Christian religion, the church, and the princes of the Germanic tribes which made up the civilization as they became Christianized,

"... each side, the ecclesiastical and the secular, needed its own system of law to maintain its own internal cohesion, and both sides needed a *common* legal tradition to maintain the balance between them. (Berman, 250)

In other words, the church, having not a right to a military, not directly, it ran to the laws of Rome, in the newly rediscovered Justinian Codex, to find its legal authority to assert its right to appoint its own Bishops to its own political structure. This did not seem to be an issue in Spain or Britain—apparently the lay prince picked better quality men for the clerical leadership of the Church. In essence, the secular prince was also looking for legal codes that would support the political involvement of the prince in Church affairs, a practice in the East since Constantine. The Latin West, Rome, had been left on its own politically and many times militarily, since Constantine created a "new Rome" in Constantinople. Berman's exhaustive work in the history of religion and law well support his unpopular thesis that the "separation of Church and state" is a religious idea, and not made up by the U.S. Constitution. The Vatican, argues Berman, in the first modern state after which the Western civilization eventually modeled its nation states.

This interplay of effects between dimensions of law is visible in contemporary times, as moral dimensions of law impinge on the historical reality of particular norms and customs of law by the political process of positive legislation. One example is the notorious forced "Christianization" of North American Indian tribal law. We believe it would be more accurate and scientific to say the "protestantization" of tribal law. In this case, much like ancient Germanic tribal law, a man named Crow Dog paid proper pecuniary restitution to the family who suffer the loss of a member at the murdering hands of Mr. Crow Dog. He is brought to "justice" by a morally outraged community of Christians. Mr. Crow Dog files a *habeus corpus* in 1883 and shows that the United States, in the form of a local magistrate, does not have jurisdiction over acts of a *sovereign* people, as the treaties with tribes by the United States recognized them as such. His tribal law was recognized as having authority by the U.S. Supreme Court. The victory enfuriates this protestant nation and the U.S. Congress passes laws in 1883 and 1885 which "criminalizes" many norms of pagan religious practices and asserts American jurisdiction, Federal inside the reservation and local outside the boundaries.

This kind of shift in operative norms and principles occurred in the research done by the church government and the princely governments. The discovery of Roman laws introduced the legal practice of torture to the German tribal law, such that by 1252 enough research and political pressure was applied by the secular governments seeking moral sanction for its usage that Pope Innocent IV issues Law 25 in his Papal bull *Ad extirpanda* which regulates conduct of the Inquisition in Italy:

"The *Pedesta* or *Rector* has the authority to *oblige* all heretics he may have in his power, without breaking limbs or endangering lives, to confess their errors and to accuse other heretics... just as robbers and thieves of temporal goods are *obliged*..."[viii].

The new law of torture *derived* from Roman law was based on a reluctance of Roman jurisprudence to convict anyone on the sole basis of circumstantial evidence. Testimony of low status slaves and gladiators was accepted *only* if it had been confirmed by torture, despite the advice of Aristotle's *Rhetoric* 1377 a, that "evidence under torture is not trustworthy". This new sanguinary approach to law and punishments seems to have developed and spread across Europe by the weight of the authority of the secular Roman Empire, which the Church preserved in a sense when it crowned Charlemagne the Emperor of the Germanic Holy Roman Empire. Thus it is that Gabriel in More's utopia can offer as an alternative to mass executions enslavement to the mines and galleys which was a common punishment of thieves by Roman law. The Roman law also influence the development of legal counterbalances to the negative aspects it brought to corrupt the rather benign aspects of Germanic criminal law.

For example, the Roman law renaissance which started in around 1000 AD introduced ideas such as equity—the idea of a law above the law which could be appealed to when norms and customs and man-made law fell short of, or violated the inner sense of justice and fairness. For example, Roman law gave to its *citizens* an option to the death penalty: one could accept exile. Similar laws are paralleled in ancient Hebrew law[ix] and primitive African law[x]. The virtue of clemency and equity seems to get expressed in England, where both the Roman military and the Church arrives extremely early, in the first century AD. The "right-of-citizenship" gets adopted by ecclesiastical law and called "benefit-of-clergy", or at least something strikingly similar to it manifests without any cause, which is highly unlikely. The legal action was a remedy to the action of the state to assert its right to establish courts that rendered decisions without input of the Church. Prior to the 1200's law courts had been *jointly* presided over. Henry II promulgated the Assize of Clarendon in 1166 which touched off the controversy whether the State had a right to try the clergy of the Church. St. Thomas Becket famously opposes the state and is murdered, which turns public sentiment against the king. The compromise of Arranches creates the right of clergy to be tried in ecclesiastical courts, except for crimes against the state such as high treason. The general principle became more and more lenient over time, and secularized so that by 1351, Edward III formalized the benefit in statute and extended to all lay persons who could *read*. By 1547 the privilege of claiming the benefit was extended to even illiterate peers of the realm. Women were given equal privilege in 1691. In 1706 the reading test was abolished and the benefit was universalized to all *First-time offenders* of lesser felonies.

During this same time the ambit of what constitutes a felony widened dramatically. In Roman times, a *crimen* was the tort against the state and a capital offense, which had loopholes for high status holders. All other torts were *delict*, harm of citizen upon citizen. *Crimes* worthy of death in the 1700's included housebreaking, shoplifting of more than 5 schillings, and cattle and sheep rustling. For the first-time, lesser crimes in which right-of-clergy was invoked, the convicted received 6-24 months at hard labor; and in the 1718 Transportation Act, seven years banishment was imposed. Ever since Henry II laicized the benefit, branding of the thumb had been included to make sure it was not invoked twice. This practice of branding was abolished formally in 1779, so the courts began to stop hearing the plea as an option, and Parliament abolished the right in 1827. The United States Congress removed the right from Federal Courts in 1790, and the common law courts stopped granting the benefit around 1855. So, as we see the year 1000 as a turning point in the growth of a common legal tradition in Western civilization, or Christendom, we see something unravel as well, as in the *right of clergy*[xi]. The early establishment in Anglo law of the Christian conscience as part of the courts in early England one can, in the reading

of the history of equity see the development of Courts of Equity in England that carried over into the American tradition. Courts of equity rose over that thousand year blending of Roman antiquity and Christian principles—then in the mid-1800's the courts were disestablished and "merged" into Courts of Law.

Harold Berman points out that this Western legal tradition that dates back to the early Middle Ages is in "danger of losing its identity". He thinks it is uprooted and no longer seen as *founded* in a universal reality. Of course many thinkers since Thomas More have observed something going awry. The first modern essayist Montaigne makes observations of the deplorable state of "justice" in France of the 1500's, in which the spirit of the law is sacrificed to the letter, leads judges to refuse to reverse its errors in sentencing based on new evidence.

"How many condemnations I have seen more criminal than the crime!"[xii]

Legal scholarship, says Berman, refuses to look for sources of the law and their own beliefs in the "pre-protestant, pre-humanist, pre-nationalist, pre-capitalist era of Western history". This a-historicism is tantamount to a conceptual blind spot without which, we argue, nationalist barbarism, or totalitarianism is the inevitable result. The Lutheran *theory of two kingdoms*, for example, when taken for granted and out of context of the ancient tradition of the *theory of two-swords*, cannot be "seen" as it plays itself out in the undeniable crisis of law in the industrial world. The positivist sees *only* what is, not the ground out of which it, and against which it stands, and can be *judged*. And it is this capacity to evade and disappear from view which makes totalitarian.

So, we are now obligated to defend that harsh, grating and perhaps strident, and perhaps calumnious charge. Lets answer the question "what is totalitarianism" and look to the brilliant expertise of Hannah Arendt for that answer[xiii].

Distinctions and Blurring:

Authoritarianism, tyranny and totalitarianism have come all to mean the same thing in the world we write this essay. Nothing could be further from the truth, and this blurring, we believe, is a hallmark of totalitarianism, as the following discussion should clarify. *Tyranny* and *totalitarianism* are both forms *egalitarianism*, according to the theory of Hannah Arendt. By the theory of egalitarianism it is meant all things are equal, the same; in an hierarchical sense it means leveled, de-verticalized, horizontalized. It is in this way we say language blurring is totalitarian—all words become the same, evolving towards a New Age state of bliss, perhaps, when the all language has conflated into the mantric "OM". Some have argued such a "plastic" language is a language of tyranny[xiv]. The language of authority might simply say egalitarianism is a denial of degrees of anything—excellence and evil are absolutized by the horde of "movements" all of whom speak the "newspeak" we were warned about by George Orwell.

Opposing the egalitarian manifestations of tyranny and totalitarianism is the ancient political form of *authoritarianism*. Arendt describes this suggesting we recall the idea of the triangle. Says Arendt:

"The source of authority in an authoritarian government is always a source external and superior to its own power... this external force that transcends the political realm, from which the authorities derive their 'authority', and against which this power can be checked". (Arendt, 97)

This triangle, of course, is known structurally as a hierarchy, a term which is attacked as a concept by those who favor images such as *systems, networks*, and other horizontal egalitarian images. The words of Arendt are inimitable:

"... a governmental structure whose source of authority lies outside of itself, but whose seat of power is at the top from which power is filtered down to the base in such a way that each successive layer has some authority, but less than the one above it.... All layers integrated into the whole but are interrelated like converging rays whose common *focal point* is the top of the pyramid as well as the transcending source of authority *above* it. This image, it is true can only be used for the Christian type of authoritarian rule as it developed through and under the constant influence of the Church during the Middle Ages, when the focal point above and beyond the earthly pyramid, provided the necessary point of reference for the Christian type of equality, the strictly hierarchical structure not withstanding". (Arendt, 98)

In other words, our traditional Western civilization incorporates *inequality* and distinction as all permeating principles. The discussion of Ms. Arendt falls short in two ways. First, she *blurs* the distinctions inherent to the word Christian; technically she is speaking of the *Catholic Church*, and the traditional hierarchy it constructed out of Greek, Roman and Christian concepts. Secondly, she sees the loss of religion and tradition as the source of the loss of authority in today's world, and fails to take the Western legal tradition under consideration. In the First case, the effects of Henry the II, Henry VIII, Luther and Calvin on the destruction of *hierarchy* as a key image and political idea and source of authority are swept under the rug unless such distinctions are maintained. When Luther, for example, utters,

"But where the soul is concerned, God neither can nor will allow anyone but Himself to rule".

He is proposing the destruction of the hierarchical authoritarian structure, and its replacement by the egalitarian principle, the principle that man needs no earthly mediator, and that each individual is equally capable, and equally *mandated*, to burst into the throne room and stand before the Creator. That is the upshot of the Lutheran revolt, and he lays the cornerstones for the anti-authoritarian forms of government that rules today. Luther's political support of the genocide of 100,000 German peasants should be evidence of the potential evils inherent to non-hierarchical structures! Luther's two-kingdom theory which supplants the Catholic two-swords theory could be argued to be a cornerstone of totalitarian structures. In the second case, Arendt's neglect of *law* in addition to tradition and religion as to what is the *source* of authority, is perhaps because she perceives law to be a *coercive* idea; this is an oversight filled in by the voluminous work of Harold Berman. It is contended by Arendt that the *authority* she believes has "vanished from the world" (Arendt, 91) *precludes* the use of external means of coercion *and* the persuasive-rhetorical means of coercion;

"... where force is used, authority itself has failed... where arguments are used, authority is left in abeyance." (Arendt, 93)

It is possible that Arendt's world view may have been infected by an anti-Trinitarian, anti-authoritarian view of law which is the *positive theory* which Berman calls the *political dimension* of law that does not see beyond itself, and is, we hope we will have made clear, a matrix for the egalitarian structures for totalitarianism and tyranny. To help make it clear, let's take into consideration Arendt's model images for tyranny and totalitarianism.

Tyranny, she says, is a hierarchy as well; but all the *middle* structures have been made to be equal, in terms of *power*—that is, nobody but the tyrant *has* any. The tyrant of course, comes in different groupings, but as Plato says, always a wolf, always with concerned with his own will, his own interests, and whatever law may exist, their source is not beyond him nor transcend him. He *is* the law. The groupings of powerful wolves can be one, (monarchy) a few (oligarchy) a whole class (aristocracy) or many (democracy). The bigger the pack of wolves, the more dangerous, because none of them have more than self

interest in mind, as an individual or special interest faction. The degree's of tyranny depend on the degree of abandonment of *a transcendent authority outside and external* to the tyrant. One might adhere to a religion that believes in a transcendent authority of God but cuts out the *middle portion* of the religion; the same goes with tradition: people might have a tradition that transcends the self and temporality, at least historically, and reaches back to the ancestors, let's say the celebration of holidays. But we argue that such a tradition becomes tyrannical if the other elements of the middle structures of the hierarchy are neglected. Arendt argues that what has disappeared from modern society is the Roman trinity, religion, authority and tradition as a *unity*:

"...wherever one of the elements... was doubted or eliminated, the remaining two were no longer secure. Thus it was Luther's error to think that his challenge of the temporal authority of the Church and his appeal to unguided individual judgment would leave tradition and religion intact". (Arendt, 128)

Finally, the subject of totalitarianism: the model for this, as an image, is the *onion*,

"... in whose center, in a kind of empty space, the leader is located; whatever he does—he does from within, and not from without or above... the great advantage of this system is that the movement provides for each of its layers... the fiction of a normal world along with a consciousness of being different and more radical than [the normal world]" (Arendt, 99)

This image of an unseen leader reminds us of Bentham's architectural apotheosis of an unseen power and authority in the central guard hub, around which are spoked the isolation cells to be watched. Arendt's idea of layers of power authority which are schizophrenic, appearing *tortious* to the accused, but "normal" to the outside world, remind us of the alteration and locomotion of the questionable practice of bloodless torture, the extraction of self-incriminating confessions. To the outside world, and to the torturer, it seems "normal". The tortured are in the throes of disintegration of being psychically split in two—one who experiences the useable process of being worked on, as a low grade pain, on one hand and the consciousness of that process being "normal", which is the more maddening of the two experiences. In the system of industrial justice, authority is lacking absolutely: authority has been *subsumed* by the notion of power; justice is no longer a transcendent ideal external to the cranks and pulleys: justice is a *product* of an industrial mechanism, a production system. The modern concept of law degenerated to term of power: it is what the democratic sovereign *says* it is. Our sovereign is alienated from all transcendent notions of law, historic or supernatural. It is for this reason we feel justified in identifying the industrial justice system *totalitarian*.

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[i] Carlson, Allan. *From Cottage to Work Station: The Family's Search for Social Harmony in The Industrial Age*. San Francisco: 1993, Ignatius Press.

[ii] Article 6§1 "The Judicial power of the state shall be rested in a court system, Supreme, District and Justices of the Peace. The Legislature also may establish as a part of this system, Courts for municipal purposes only in incorporated towns and cities".

[iii] James, G.W.. *The Lake of the Sky*. Charles T. Powner and Co., Chicago 1956, cites the *Nevada City Bulletin* of Sept. 6, 1912 as a source of this story.

[iv] Berman, Harold. "Religious Foundations of Western Law". In *Faith and Order: The Reconciliation of Law and Religion* pg. 41 Publisher: Scholars Press, 1993.

[v] Pordum, Matt. *Las Vegas Sun* "J.A.I.L. group goes after judges". Pg 3, Feb. 20, 2006

[vi] *67 AC.J.S* "Pardon and Parole" Section 11. The pardoning power of the executive is derived from the constitution of the state, but would reveal a rich legal history upon study; it "is to be exercised on the ground the welfare of the public will be promoted by the release of the prisoner", or on the ground it will correct an unjustice, but *is not a matter of right*. It has been used in regards to the health of prisoners, *In reChain, 49 S.2d 722*.

[vii] More, Thomas. *Utopia* London: Penguin Books 1965 [1516].

[viii] "Aquinas on Torture". Posted by Catholic Sensibility under Church History. http://catholicsensibility.wordpress.com/2006/04/29/114633381931140970.

[ix] Numbers 35:9 describes the arrangement for "cities of asylum", serving as protection against blood vengeance and safety until trial.

[x] Achebe, Chinuaw *Things Fall Apart.* NY: Anchor Books, 1994 (1959)., describes the practice of indemnity which Hebraic law prohibits.

[xi] http://en.wikipedia.org/wiki/Benefit_of_clergy.

[xii] Montaigne, Michel de "On Experience", *Essays*. Editor/ Trans. J. M. Cohen London: Penguin Books 1958, pg. 351.

[xiii] Arendt, Hannah. *Between Past and Future: Eight Exercises in Political Thought*. NY: Viking Press, 1

[xiv] Poerksen, Uwe. Plastic Words, Language of Tyranny. Germany: circa 1995.

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