THE SEDUCTION OF LYDIA BENNET
AND THE JURISPRUDENCE OF THE JURISTIC SOCIETY

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“The family is the natural and fundamental group unit of society
and is entitled to protection by society and the State.”

-- Universal Declaration of Human Rights 2

Lydia Bennet was but sixteen years of age when, one dark summer night, Mr. Wickham carried her off to London with false assurances that they were soon to be married. 3 The events which ensue upon her abduction are recounted with particularity throughout the last third of Pride and Prejudice and deeply affect the lives of all concerned. These episodes should hold a special fascination for students of jurisprudence.

The most intriguing aspect of the affair concerns the identity of the applicable normative order. In a different time or place events might have depended primarily upon the government and the courts. The Benet family might have invoked the legal rights of parents, complained to a Department of Social Services, or secured Mr. Wickham’s indictment for statutory rape. 4 But in Jane Austen’s world, no one dreamed of

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3 Lydia is identified as “not sixteen” in PRIDE AND PREJUDICE, II THE NOVELS OF JANE AUSTEN 165 (R.W. Chapman, ed., rev. ed. 1965)(the Oxford Illustrated Jane Austen)(hereinafter referred to as “Pride and Prejudice”). This identification of Lydia’s age is made (by Elizabeth to Lady Catherine) during a conversation which took place in late March. See the Chronology to id. at 402. Lydia’s flight with Wickham took place about four months later. Id. at 404.

4 Cf. LAWRENCE STONE, ROAD TO DIVORCE: ENGLAND 1530-1987 at 83-95 (1990) for a discussion of civil actions for seduction of a daughter and breach of promise of marriage.
summoning a constable or of bringing the matter before a Justice of the Peace. (Nor, it seems, did anyone contemplate bringing the matter before the ecclesiastical authorities or invoking the teachings of the Church of England.). The episodes of *Pride and Prejudice* unfold under the guidance of another system of rules and principles.

Front and center in Jane Austen’s England, invoked at every crucial turn of events and never successfully flaunted, stands not the governmental or the religious system but the *social* order, whose components are neighborhood, village, town, and city; manor house, cottage, and castle; family, friendship, and social rank. This order sustains roles, defines relationships, and establishes what can reasonably called “social offices.” It acknowledges the authority and defines the obligations which accompany various social positions. It calls upon people to perform their duties and it registers the fulfillment or the neglect of responsibility. It confers credit and it casts blame; it honors and it disgraces. For those who severely offend, it applies sanctions which at the greatest extreme may involve ostracism or even death in a duel. For those who repent and make restitution, it offers a chilly sort of rehabilitation.

A social order which makes a prominent place for obligations, rules, principles, and the like is in this paper referred to as a “Juristic Society.” *Pride and Prejudice* portrays one instance; but peoples far removed from Jane Austen’s England sustain Juristic Societies as well. The Ibo people portrayed in Chinua Achebe’s novel *Things Fall Apart* maintained a Juristic Society.5 The Irish population portrayed in Walter Macken’s novel *The Silent People* maintained one.6 The United States of the present day maintains one.

This paper presents a fundamental, definitional account of the term “Juristic Society.” It proposes that, when well constructed and just, a juristic social order is a fundamental component of the well-being of its members. It is part of what makes them what they are and it is a field for the exercise and strengthening of certain basic virtues. This paper proposes that the family and marriage are normally and appropriately components of such a social order. It proposes that government and the law appropriately function as partners with the Juristic Society, working as joint fiduciaries for the good of the country. It avers that governments should seldom attack or undermine a Juristic Society or seek to detach the family or realign it in inconsistent ways.

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5 (1958)(hereinafter referred to as “*Things Fall Apart*” and cited to the Everyman’s Library edition (1992)). The term “Ibo” is used in *Things Fall Apart* and therefore in this paper even though modern scholarship usually uses the spelling “Igbo.” The account of the segment of Ibo society given in *Things Fall Apart* is accepted as accurate for purposes of this paper. See Kwame Anthony Appiah, “Introduction” to *id.* at ix, xv. See generally ELIZABETH ISICHEI, A HISTORY OF AFRICAN SOCIETIES TO 1870 (1997), especially at 378-79.

6 (1962)(hereinafter referred to as “*The Silent People*” and cited to the 1965 Pan Books edition (1992)).
PART ONE: THE JURISTIC SOCIETY: ITS ELEMENTS AND PROJECTS

A. Towards a Definition of “Juristic Society.”

The term “Juristic Society” is here used to identify approximately what Aristotle refers to as a polis and to refer to a basic component of what we refer to as a “country.” It is not a government. It often is protected and supported by a government, but it is not the same thing. Rules and principles (those establishing the authority of a father-in-law, for example, or those governing duelling) may be sustained by the social order while lacking any recognition in the legal system, and people (Lady Catherine de Bourgh, for example) may hold well defined social positions which are not government offices.

A Juristic Society may perdure through changes in government and survive when constitutional orders pass away. A Juristic Society (the Ibo society in Things Fall Apart, for example, and the social order of Aristotle’s Athens) may subsist among a people which does not maintain a government in the modern sense. A Juristic Society (that of Nineteenth Century Ireland, for example) may manage to sustain many of its elements even under a hostile governmental regime. The Juristic Society of the United States -- that “union” which is celebrated on July Fourth – is not the same as the government.

B. What is a Society?

A society is an affiliational order. It involves “philia.” It is, in other words, a sort of multi-personal friendship: “philia” is almost always translated “friendship.” Of

7 “Igbo enwero eze, the Igbo have no kings. Though a few Igbo polities did in fact have kings, it is a core statement of Igbo identity.” ELIZABETH ISICHEI, A HISTORY OF AFRICAN SOCIETIES TO 1870 at 378 (1997). See CHINUA ACHEBE, ARROW OF GOD (1969 )(Nwaka states at 27 that “Igbo people knew no kings” and Captain Winterbottom states at 37, “Unlike some of the more advanced tribes in northern Nigeria . . . the Ibos never developed any kind of central authority.”).

8 This section develops an account of society based on its purposes: based, in other words, on the goods at which it aims. It is a normative account. An aggregation of people with no purpose or random activities or which was exclusively evil in its intentions, if such a thing can be imagined, would not be a society according to the views advanced in this paper. Choice alone – the choice to interact or interconnect – does not suffice. This is to reject a definition based on preference utilitarianism.

The account here presented is not empiricist or behaviorist. Nor is it reductionist. It does not conclude with Prime Minister Thatcher that “there is no such thing as society. There are individual men and women, and there are families.” Quoted in Douglas Keay, “Aids, Education and the Year 2000!” WOMAN’S OWN, October 31, 1987, at 8, accessed online on June 27, 2005 at www.margaretthatcher.org/speeches. Nor does the account here presented discern the fundamental ordering of society to be a matter entirely of power, sanctions, and threats. Nor is it deeply cynical and overready to discern exploitation at the heart of the social order. It does not conclude that “modern civil society is composed only of individualized strategists engaged in a struggle of each against all, pervaded by power and politics understood as war carried on by other means.” JEAN L. COHEN & ANDREW ARATO, CIVIL SOCIETY AND POLITICAL THEORY 290 (1994)(characterizing the views of Michel Foucault).
course members of a society are not generally friends of one another in an intimate sense. But they are not entirely strangers the way a citizen of one country may be a stranger to a citizen of another. They have a connection; they have a national history and culture in common; they have expectations of one another; they do certain things together, such as paying taxes and voting and, in wartime, fighting. They have common aspirations. They are in these respects affiliates. To understand the nature of society it helps, therefore, to consider the elements of affiliation.

There are, it seems, at least three principal elements in any affiliation – as indicated by Aristotle and as common experience will confirm. The elements are those of benevolence, knowledge, and reciprocity. Benevolence is easy to discern: friends wish well to one another. You could hardly be friends if you wished each other ill. Knowledge, similarly, is easy to confirm. You certainly are not someone’s friend unless you “know him,” if not directly then at least in the way that citizens of the same country know about one another and about their common heritage. Drawing these two elements together, Aristotle observes that “[t]o be friends, [people] must be mutually recognized as bearing good will and wishing well to each other.” There is a back and forth and a give and take to affiliations. Aristotle observes that friendship involves “reciprocal choice of the absolutely good and pleasant.” It involves reciprocal reasoning and judging and “sharing in discussion and thought.”

A society, then, should display similar characteristics. One of the things that distinguishes it from a group of strangers or enemies is the element of mutual benevolence. A society is, as Aristotle says of the polis, “a communio . . . in living well.” It is bound together by “concord,” or a degree of sameness of mind and concurrence of practical reason as regards how to live together and conduct common affairs.

“Concord also seems to be a feature of friendship. . . . A city is said to be in concord when [its citizens] agree on what is advantageous, make the same decision, and act on their common resolution. Hence concord concerns questions for action, and, more exactly, large questions where both or all can get what they want. A city, for instance, is in concord when ever all the citizens resolve to make offices elective . . . . Concord, then, is apparently political

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9 NICOMACHEAN ETHICS 1156a 3-4 (hereinafter referred to as “Nicomachean Ethics”). Here and throughout this paper the translation of the Ethics quoted is that by W. D. Ross (revised by J.O. Urmson) in II THE COMPLETE WORKS OF ARISTOTLE (J. Barnes, ed., 1984).


11 Since choice involves “consideration and deliberation.” Id. 1226b 8. “Choice arises out of deliberate opinion.” Id. 1226a 8-9. “[C]hoice is deliberate desire . . . I call it deliberate when choice is the source and cause of the desire . . . .”. Id. 1226b 18-20.

12 NICOMACHEAN ETHICS, supra n. 9, 1170b 11-12.
friendship, as indeed it is said to be; for it is concerned with advantage and with what affects life [as a whole].”\textsuperscript{13}

A society involves a continuous, developing reciprocity of thought about the good. It involves thinking and acting together for the common good.\textsuperscript{14}

A society is an affiliational order of a general nature rather than of a subsidiary kind. The League of Women Voters and the United Way are not “societies” in the sense in which that term is used in this paper, as those groups would make no sense at all and could not pursue their purposes except as components of a wider affiliational system. A “society” as that term is used here is capable of functioning successfully on its own. It is self-directing and it is independent: either in fact or, as in the case of Nineteenth-Century Irish society, by reasonable aspiration.

A society is an affiliational order whose aims are high and wide. The Boston Red Sox and the American College of Physicians are not societies in the sense here used because, although they could continue without the support of a wider order, their purposes are specific rather than general. A society aims, as Aristotle says of the polis, at “living well” in general and not only at some smaller component of the good such as athletic excellence or health, or commerce and profit.

Many communities and institutions which are too small or particular or limited to be considered societies can reasonably considered to be components of society.\textsuperscript{15} The family is a component of society, as often is the village, the guild, the neighborhood association, the charity, and the hospital. A group is a component of a society if it contributes to the fulfillment of some aims of the society, participates in its goods, and reflects and participates in its normative structure.\textsuperscript{16} A religious sect which insulates itself from the wider community so as to live according to a divergent set of norms is therefore not a component of the society. (That would be the case with the Shakers, for example, or the

\textsuperscript{13} NICOMACHEAN ETHICS, supra n. 9, 1167a 21- 1167b 4 (Irwin translation).

\textsuperscript{14} Compare Michael Walzer, Equality and Civil Society, in ALTERNATIVE CONCEPTIONS OF CIVIL SOCIETY 34, 37-38 (Simone Chambers & Will Kymlicka, eds., 2002)(“[W]hat Aristotle called the ‘friendship’ of citizens is highly attenuated in the modern state, and participation is reduced, for most citizens … to the bare minimum of voting at election time. The actual experience of solidarity and cooperation with other people … takes place largely in the groups that make up civil society.”).

\textsuperscript{15} The discussion in this paragraph of how and when an institution may be a component of society is not meant to imply that society is comprised entirely of institutions. Compare JEAN L. COHEN & ANDREW ARATO, CIVIL SOCIETY AND POLITICAL THEORY x (1992)(“x” is the actual page reference) (stating that “civil society refers to the structures . . . of the lifeworld to the extent that these are institutionalized or are in the process of being institutionalized” and distinguishing the “sociocultural lifeworld, which as the broader category ‘the social’ includes civil society.”).

\textsuperscript{16} Thus this paper diverges from works which exclude the family from the definition of “society” or at any rate from “civil society.” E.g. Michael Walzer, Equality and Civil Society, in ALTERNATIVE CONCEPTIONS OF CIVIL SOCIETY 34, 35 (Simone Chambers & Will Kymlicka, eds., 2002). But see Anne Phillips, Does Feminism Need a Conception of Civil Society? in id. at 71, 75.
A business company is a component of a society when it contributes to prosperity and a strong economy within a society which identifies those as goods, and when it acts consistently with society’s moral order. A heroin smuggling confederacy is not a component of society, as it undermines what society believes -- what every reasonable society believes -- to be the welfare of its people.

C. What is Meant by “Juristic.”

Certain societies are here called “juristic” in order to emphasize their law-like characteristics. A Juristic Society is one which operates in major part through the medium of rules and principles. It forms judgments as to compliance or violation, it rewards or punishes, and it incorporates facilities for rectification, restitution, and repentance.

But a branch of an American business company in Malaysia or Thailand, for example, might not be a component of the host country’s society, as it derives its normative structure from abroad and may be incongruous with the social order around it. Some might reach the same conclusion about an American company in America, noting the “insulated” quality of company normatively. Cf. JEAN L. COHEN & ANDREW ARATO, CIVIL SOCIETY AND POLITICAL THEORY ix-x (1992)(observing that “the actors of . . . economic society . . . cannot afford to subordinate strategic and instrumental criteria to the patterns of normative integration and open-ended communication characteristic of civil society” and noting that “under capitalism, economic society has been . . . successfully insulated from the influence of civil society.”). This is plainly an inaccurate description of the ma and pa grocery store: the family business and local shop or craft operation which constituted the staple of the economies of the societies portrayed in Jane Austen, Chinua Achebe and Walter Macken’s books and which continue to constitute a major portion of economic activity even in modern America. Organizations like that are included within the concept of “society” as that term is used in this paper. They are not and could not afford to be insulated from the wider normative order; and the fact that they employ “instrumental criteria” (viz. they try hard to make money) does not deprive them of the status of components of society where as is frequently the case the wider society aims at a thriving economy. The same logic probably extends to Fortune 500 companies, even though they are culturally differentiated from much of the rest of the host society. They get their specialized normativity through specialized systems in the wider order: business schools, for example, and Delaware courts of chancery, applying social concepts such as “fiduciary” and contract to their relations with officers and employees. They pursue aims – profit and efficient production – which the host society embraces.

The distinction between Juristic Societies and nonjuristic ones does not mirror Max Weber’s distinction between legal authority and traditional authority (as set forth in THE THEORY OF SOCIAL ECONOMIC ORGANIZATION 329-45 (A.M. Henderson & Talcott Parsons, trans., Talcott Parsons, ed., 1947)). Both of Weber’s categories display juristic elements. Legal authority proceeds through “a consistent system of abstract rules” (rules “intentionally established”) (p. 330) and thus is thoroughly juristic. Traditional authority involves “traditionally transmitted rules” (p. 341). These rules may limit the scope of authority (id.), and lower administrators may hold defined, “stereotyped” positions such as steward and chamberlain and marshal (p. 343). In these ways the system of traditional authority also seems to be thoroughly juristic. Important nonjuristic elements are identified in the account of the traditional system when Weber maintains that the commands of the person in authority are “legitimized” not only by traditional rules but also by:

“the chief’s free personal decision, in that tradition leaves a certain sphere open for this. This sphere of traditional prerogative rests primarily on the fact that the obligations of obedience on the basis of personal loyalty are essentially unlimited.”
Perhaps all societies display a juristic character to a degree, but some do so more than others. Western Melanesia, anthropologists tell us, contained fluid societies where leadership roles were not tightly defined or closely distinguished from personal characteristics. A leader was called a “big-man” and acquired his position not according to established principles of descent but through a not-closely-defined range of impressive and generous conduct.\(^{19}\) (The social order among American undergraduates might bear close comparison, as reflected in the phrase “big man on campus.”). In Polynesian societies, by way of contrast, a leader was called “chief” and held a more highly defined position, as did many other members of society.\(^{20}\) It seems Western Melanesian societies were not very juristic whereas Polynesian ones were juristic. Jane Austen’s England was highly juristic.\(^{21}\)

Several elements deserve special attention:

**Obligation.** -- Obligation, a synonym for duty, is the condition of “being tied, required or constrained to do (or from doing) something”\(^{22}\) and is a fundamental element

\(^{19}\) See Marshall Sahlins, *Poor Man, Rich Man, Big-Man, Chief: Political Types in Melanesia and Polynesia*, 5 \textit{COMPARATIVE STUDIES IN SOCIETY AND HISTORY} 285 (1963), passim, e.g. at 289: “big-man authority is … \textit{personal} power. Big-men do not come to office; they do not succeed to, nor are they installed in, existing positions of leadership . . . . In particular Melanesian tribes the phrase might be ‘man of importance’ or ‘man of renown, ‘ ‘generous rich-man’ . . . .”

\(^{20}\) \textit{Id}.

\(^{21}\) See generally NAOMI TADMOR, \textit{FAMILY AND FRIENDS IN EIGHTEENTH-CENTURY ENGLAND: HOUSEHOLD, KINSHIP, AND PATRONAGE} 278-79 (2001)(finding that in the middle classes of England during those periods, a characteristic life involved “cooperation and reciprocity . . . . through close networks of household and kinship, credit and commerce, friendship and patronage, politics and conviviality . . . . dense networks composed of family and household members, friend and kin. * * * Labour relations, for example, were often mediated among ‘friends’, linked closely to patronage, and negotiated in terms of the household-family and its roles and relationships. Similarly, trade networks and credit relations existed also among ‘friends’, were bound closely with kinship and patronage . . . .”).

\(^{22}\) \textit{OXFORD COMPANION TO PHILOSOPHY} 632 (Ted Honderich, ed., 1995)(the quoted phrase continues: “by virtue of a moral rule, a duty or some other binding demand.”). See GERMAIN GRIEZ, \textit{CHRISTIAN MORAL PRINCIPLES} 255 (vol. I of \textit{THE WAY OF THE LORD JESUS}) (1983)(“Not all morally good acts are obligatory — for example, feeding the hungry is good yet not obligatory. The reason is that an act of this kind can have an alternative itself morally good.”). Justinian’s Institutes define the term, for legal purposes, as follows: “An obligation is a tie of law, by which we are so constrained that of necessity we must render something according to the laws of our state.” D.J. IBBETSON, \textit{A HISTORICAL INTRODUCTION TO THE LAW OF OBLIGATIONS} 6 (1999)(translating \textit{INSTITUTES III, 13 pr.: “obligatio est juris vinculum, quo necessitate adstringimus alius solvendae rei secundum nostrae civitatis jura .”}). For some history and etymology of this definition, see REINHARD ZIMMERMAN, \textit{THE LAW OF OBLIGATIONS: ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION} I (1990).
of a juristic order. “Obligation” derives from “obligatio,” a binding up, and accordingly to be under an obligation is to be bound firmly rather than just nudge gently. The obligatory norm is not supererogatory. It is a “must” rather than a “perhaps you should.”

Juristic Societies amply recognize obligations. They define them and impose many. In the development of the relationship between Elizabeth and Darcy, so prominent does the matter of obligation and its fulfillment become that their courtship takes on some of the characteristics of a lawsuit, in which she defends against her suitor by allegations of his injustice to others (Jane and Wickham), he “demand[s] it of [her] justice” that she read his defense (“Two offences … you last night laid to my charge”) and in the end he satisfies her of his innocence. In the remarkable passages which ensue upon Elizabeth’s accepting Darcy’s proposal of marriage, the happy couple indulge their new intimacy by discussing the extent to which, during a social visit two months previously, either may have violated obligations to the other. Elizabeth accuses herself of having abused Darcy (“abominably to your face”). Darcy replies:

“’What did you say of me, that I did not deserve? For, though your accusations were ill-founded, formed on mistaken premises, my behaviour to you at the time, had merited the severest reproof. It was unpardonable. I cannot think of it without abhorrence.’

“’We will not quarrel for the greater share of blame attached to that evening,’ said Elizabeth. ‘The conduct of neither, if strictly examined, will be irreproachable; but since then, we have both, I hope, improved in civility.’”

They further discuss the intensity of their pain in recollecting these encounters. (“Your reproof, so well applied, I shall never forget: ‘had you behaved in a more gentleman-like manner.’ Those were your words. You know not, you can scarcely conceive, how they have tortured me.”) Having exhausted these topics, Elizabeth and Darcy proceed to discuss the extent to which they may have violated obligations to their friends.

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23 See generally DAVID HEYD, SUPEREROGATION: ITS STATUS IN ETHICAL THEORY (1982); GREGORY MELLEMA, BEYOND THE CALL OF DUTY: SUPEREROGATION, OBLIGATION, AND OFFENCE (1991). Cf. THE OXFORD DICTIONARY OF THE JEWISH RELIGION 211 (R.J. Zwi Werblowski & Geoffrey Wigoder, eds., 1997)(“DUTY (Heb. hovah), an obligation or due . . . . Hovah is distinct from mitzvah, which can also signify a commendable, but not necessarily obligatory, action . . . .”).

24 Pride and Prejudice, supra n. 3, at 196.

25 Id. at 367.

26 Id. (Darcy speaking). The quoted passage actually ends with a semicolon after “tortured me.” It continues: “—though it was some time, I confess, before I was reasonable enough to allow their justice.” Id. at 367-68.
Among the Ibo of *Things Fall Apart*, “[i]t is an abomination for a man to take his own life. It is an offence against the Earth, and a man who commits it will not be buried by his clansmen.”

Promissory obligations are often specially emphasized in Juristic Societies. When Lydia, in her immaturity and moral confusion, breaches a promise by revealing the doings of Mr. Darcy, her sisters consider themselves honor bound not to ask her to tell them more. They consider themselves bound not even to discuss the matter between themselves, so strongly do they feel the bond of the promise of confidentiality.  

*Office.* – Another recurrent element of Juristic Societies is that they define and acknowledge offices: not of course only government offices like judge and Senator, but rather social offices. In Jane Austen’s England Master of the Foxhounds and perhaps village squire were offices, as were many of the positions occupied by servants in great houses from chaplain and steward down through footman and “groom of the chambers.” Perhaps Lady Catherine exercised office:

 “[T]hough this great lady was not in the commission of the peace for the county, she was a most active magistrate in her own parish . . . and whenever any of the cottagers were disposed to be quarrelsome, discontented or too poor, she sallied forth into the village to settle their differences, silence their complaints, and scold them into harmony and plenty.”

In the Ibo society portrayed in *Things Fall Apart*, village crier and medicine man were offices. In the Valley of the Flowers in *The Silent People* the schoolteacher (retained and compensated, not by the government, but by the parish priest and the students’ parents)
held a social office\textsuperscript{33} and the reclusive bard struggled to perpetuate the office of poet as it had been recognized during earlier periods of Irish history.\textsuperscript{34} In modern America, a doctor, a tutor, a nanny, an executor and a guardian hold offices.\textsuperscript{35}

D. Honor and Disgrace; Restitution and Rehabilitation: The Remedial Modalities of the Juristic Society

Members of Juristic Societies make obligation and its fulfillment a matter of general concern and take common note of office and the performance or neglect of official duties. They do not always conclude, “it’s none of my business.” Social morality is Juristic Society’s business.\textsuperscript{36} “As the [Ibo] elders said, if one finger brought oil it soiled the others.”\textsuperscript{37} “The world was made of community cells. This valley [in the Ireland of 1826] was a small one, but . . . [a]ll were complementary.”\textsuperscript{38} Henry in \textit{Northanger Abbey}, putting the matter rather strongly, characterized England as a country where “every man is surrounded by a neighborhood of voluntary spies.”\textsuperscript{39}

Juristic Societies apply obligation and sustain office through a system of honor and disgrace. When a person fulfills his obligations and exercises his office successfully the

\textsuperscript{33}See supra n. 6, at 125-38.

\textsuperscript{34}See id. at 139-43.

\textsuperscript{35}This category – “office” – bears some comparison to the term “role” which has been prominent in sociological scholarship. For citations, see George Arditi, \textit{Role as a Cultural Concept}, 16 \textit{THEORY \\& SOCIETY} 565 (1987)(available on i-stor). But “role” derives from theater and from “value-free” social sciences thinking, whereas “office” derives from classical thought and has much to do with obligation and the good. Troublemaker and ne’er-do-well are roles but not offices. FitzGibbon, \textit{Marriage and the Ethics of Office}, supra n. 1, offers a definition which emphasizes the normative side.

\textsuperscript{36}See generally Suzanna Last Stone, \textit{The Jewish Tradition and Civil Society}, in \textit{ALTERNATIVE CONCEPTIONS OF CIVIL SOCIETY} 151-153 (Simone Chambers & Will Kymlicka, eds., 2002)(“One cannot ignore one’s obligations without endangering others. This is the meaning of the Talmudic legal principle that ‘all Jews are responsible [literally, sureties] for one another.’ Each Jew is held accountable for the preventable transgressions of another and is responsible for the other’s fulfillment of the commandments.”)(the bracketed material is present, bracketed, in the original).

\textsuperscript{37}\textit{Things Fall Apart}, supra n. 5, at 111.

\textsuperscript{38}\textit{The Silent People}, supra n. 6, at 108.


“Does our education prepare us for such atrocities? Do our laws connive at them? Could they be perpetrated without being known, in a country like this, where social and literary intercourse is on such a footing; where every man is surrounded by a network of voluntary spies, and where roads and newspapers lay everything open?”

\textit{Id.} at 197-98.
community gives him credit for his achievements.\textsuperscript{40} When he does so consistently and under difficult circumstances, the community accords him respect, renown, praise, applause, and a generally high reputation.\textsuperscript{41} Mr. Lucas in \textit{Pride and Prejudice} was knighted owing to a meritorious speech before the King and became Sir William Lucas;\textsuperscript{42} leading figures in Ibo society gave great feasts, shared their wealth, and in that way earned titles and rank. When a person violates the rules he pays a social price. Lydia’s family stood in peril of ostracism. Okonkwo was exiled for a time to another cluster of villages.

Juristic Societies often afford faculties for setting things straight. They often identify courses of conduct through which a party may acknowledge wrongful conduct, apologize, rectify the damage, and achieve some measure of rehabilitation.\textsuperscript{43} On the other side of the equation, they may establish norms pertaining to the appropriateness of accepting an apology and letting bygones be bygones. Lydia and Wickham set things

\textsuperscript{40} Whereas in an imperfect system of honor the community might primarily honor “high birth . . . wealth . . . a great house, a grand procession of slaves and clients on the street, expensive clothes” a “proper accent” and “elegance.” J.E. Lendon, \textit{Empire of Honour: The Art of Government in the Roman World} 36-37 (1997)(describing the “system of aristocratic honour” in ancient Rome). The system of honor in Jane Austen’s England suffers from these defects to no small extent.

\textsuperscript{41} “[T]hat Honour which ys said to be in any ys not only in him as yf yt depended wholy on him, but also in others, whoe must loue and commend that vertue in him . . . . Therefore the cause of bestoweing the honour which draweth vnto yt and requireth approbacion ys in the man which is honored, but the accommodating thereof in those which allow of him for his vertues sake.” Robert Ashley, \textit{Of Honour} 52 (1596-1603), quoted in Peter A. French, \textit{The Virtues of Vengeance} 144 (2001). See generally Christie Davies, \textit{The Strange Death of Moral Britain} 43 (2004):

“[I]n the past to have a good name and a good character were both necessary and sufficient for self-esteem and for gaining the respect of others. However, that respect depended on remaining respectable; if you lost your respectability others ceased to respect you. This kind of respect was available to everyone, but it had to be earned. Respect was not the cheap and impudent demand of today for automatic acceptance regardless of qualities of character or patterns of behavior.”

\textit{See generally Nicomachean Ethics, supra} n. 9, 1095b 21-26 (Ross trans. at 1731):

“[P]eople of superior refinement and of active disposition identify happiness with honour; for this is, roughly speaking, the end of the political life. But it seems to be too superficial to be what we are looking for, since it is thought to depend on those who bestow honour rather than on him who receives it, but the good we divine to be something of one’s own and not easily taken from one. Further, men seem to pursue honour in order that they may be assured of their merit; at least it is by men of practical wisdom that they seek to be honoured, and among those who know them, and on grounds of their excellence . . . .”

\textsuperscript{42} \textit{Pride and Prejudice, supra} n. 3, at 30.

\textsuperscript{43} See V.G. Kiernan, \textit{The Duel in European History: Honour and the Reign of Aristocracy} 139 (1988)(“It was an accepted part of the duty of seconds to examine the facts of the case, and co-operate in seeking a peaceful solution . . . . [T]he seconds could constitute small court of honour * * * “A disagreement between two Scottish lairds over hare-shooting rights lasted until the pustles, or pistols, made their appearance, when one of them ‘not relishing the thought of half an ounce of lead in his thorax, accepted a very slim apology.’” Kiernan is here quoting C. Tennant, \textit{The Radical Laird: A Biography of Géorge Kinloch} 1775-1833 at 36 (1970).
straight by getting married. Okonkwo was permitted to return to his home village and take up the strands of his life again once he had served his years of exile.


Constituting as it does a sort of friendship, a society often develops special dimensions in its juristic order.

Discussion and debate: the institutions of public opinion. Members of a Juristic Society often, through discussion and debate, modify and develop its system of obligations and offices. Public opinion during the Nineteenth Century turned against dueling, for example, thus abolishing the obligation to take to the field of honor against the seducers of daughters. The Ibo community of Things Fall Apart debated at length whether its morality of conflict precludes a “war of blame.”

The search for moral foundations. – Members of Juristic Societies often explore the foundations of their rules and principles, considering their groundedness (or not) in morality and religion. An Ibo nation which launches an unjust war is compared by one of its leading priests to a man of myth who tried to attack his own chi or personal spirit. This grounds the discussion and debate and the institution of public opinion.

Full participation in a Juristic Society is therefore inconsistent with a philosophy of “social positivism”: inconsistent with the belief, in other words, that duty is only “what


45 Nineteenth Century England presents a leading example of self-reflectivity in a sector of a Juristic Society, instantiating as it did a “moral eagerness” which demanded and achieved a high degree of coherence in manners and morals. See ROY PORTER, ENGLISH SOCIETY IN THE EIGHTEENTH CENTURY (rev. ed., 1991), especially at 306 et seq. The phrase “moral eagerness” appears at 306.

46 See CHINUA ACHEBE, ARROW OF GOD 18 (1969)(“our fathers did not fight a war of blame.”). See id. at 15 (the priest of Ulu “told the men of Umuaro that Ulu would not fight an unjust war.”).

47 See ANNE CRIPPIE RUDERMAN, THE PLEASURES OF VIRTUE: POLITICAL THOUGHT IN THE NOVELS OF JANE AUSTEN 4 (1995)(hereinafter referred to as Pleasures of Virtue)(noting that Austen suggests “that there is a natural content to virtue” and does not embrace the view that duty is “whatever you want it to be.”).


“Once there was a great wrestler whose back had never known the ground. He wrestled from village to village until he had thrown every man in the world. Then he decided that he must go and wrestle in the land of the spirits, and become champion there as well. . . . [H]e gave a challenge to the spirits to bring out their best and strongest wrestler. So they sent him his personal god, a wiry little spirit who seized him with one hand and smashed him on the stony earth. * * * [O]ur fathers told us this story because they wanted to teach us that no matter how strong or great a man is he should never challenge his chi Umuaro is today challenging its chi.”
you want it to be” or something which should be taken as given and not subject to reconsideration. It is inconsistent with the views taken by Wilcocks, the ascendancy landlord in *The Silent People*:

> “Principles to him were things that you stood for, and if necessary died for. It didn’t matter if the principles were faulty. Principles were what you yourself held to be the rule of life as you saw it. You stuck to those.”

For similar reasons, it is inconsistent with a view which finds no ground for rule and principle other than the *fiat* of the self-authenticating individual. Duties are grounded in the virtues, and in Jane Austen’s understanding “virtue has a permanent, objective content that defines what the best sort of character and actions are.”

*Reason as the Basis of the Juristic Society.* – At the foundation of discussion, debate and the search for moral foundations must lie firmness of judgment and clarity of mind. We can be as pessimistic about political affiliation on another basis as Elizabeth is of marital affiliation in the case of Lydia: “[H]ow little of permanent happiness could belong to a couple who were only brought together because their passions were stronger than their virtue . . . .”

*Self-Esteem; Shame; Repentance: The Participation of the Soul in the Juristic Society.* – Members of Juristic Societies may participate with their hearts and minds. The honorable, honor-bearing man or woman is a sufficiently solidaristic member of the community to understand its normativity, respect its opinion, and appreciate its high regard. The delictual member may experience shame: an experience of dislocation from one’s community, arising when the miscreant is sufficiently solidaristic to acknowledge and respect the judgment of the Juristic Society and to take it to heart.

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49 See generally *Pleasures of Virtue*, supra n. 47 (noting that Austen rejected this belief).

50 *Supra* n. 6, at 99. “He was kind, thoughtful (except where the sacred rights of private property might be in danger), generous (within the spoken limits set by the order of landlords, so you didn’t raise your workers by a penny a day if a more feckless member of the class couldn’t afford it).” *Id.*

51 *The Pleasures of Virtue*, supra n. 47, at 4.

52 *Pride and Prejudice*, supra n. 3, at 312.


> “Shame may be defined as pain or disturbance in regard to bad things . . . which seem likely to involve us in discredit; and shamelessness as contempt or indifference in regard to these same bad things. If this definition be granted, it follows that we feel shame at such bad things as we think are disgraceful to ourselves or those we care for. These evils are, in the first place, those due to badness. . . . [Examples include] having carnal intercourse with forbidden persons . . . .

> * * * Now since shame is the imagination of disgrace, in which we shrink from the disgrace itself and not from its consequences, and we only care what opinion is held of us because of the people who form that opinion, it follows that the people before whom we feel shame are those whose opinion of us matters to us. Such persons are: those who admire us, those whom we
Honor and shame lead on to repentance, reconciliation, rehabilitation, and the recovery of honor. Shame leads on to redemption. Darcy’s shame at his apparently ungentlemanlike conduct leads to his intervening to retrieve the disaster of Lydia’s escapade. This project of reparation and repentance leads on to his reconciliation with Elizabeth and the improved socialization of his haughty and arrogant character.

admire, those by whom we wish to be admired, those with whom we are competing, and those whose opinion of us we respect.”

Compare JOHN RAWLS, A THEORY OF JUSTICE 443 (1971): “We may characterize shame as the feeling that someone has when he experiences an injury to his self-respect or suffers a blow to his self-esteem.” This definition seems not, as it might at first appear, to extend to cases of entirely private, secret delicts, because Rawls states a couple of pages previously that self-regard rests in part on the appreciation of others. See id. at 440-41. See generally Martha Craven Nussbaum, Shame, Separateness, and Political Unity: Aristotle’s Criticism of Plato, in ESSAYS ON ARISTOTLE’S ETHICS 395, 398 et seq. (Amélie Oksenberg Rorty, ed., 1980).

Of course, people often experience shame-like feelings for very different reasons. A mugger might experience shame as a result of having failed to steal a wallet – ashamed, in other words, of not having violated an obligation; and many people seem to become ashamed about things that are not disgraceful such as being poor or unemployed. These seem to be instances of distorted shame arising from misguided solidarities, as when the thief aims for the good opinion of other miscreants or the member of a society which overemphasizes wealth aims to impress the prosperous.

Another class of problematic cases -- involving shame at the conduct of family or friends or of our country, for example -- can be explained as vicarious, since they involve violations of obligation by affiliates: those who are to some extent “another self” and whose actions are considered by the social order to reflect on ourselves. Another class involves shame in regard to sexual things, since we are sometimes ashamed even when nothing illicit is involved. Aristotle attempts this explanation: “We are … ashamed of having done to us, … acts that involved us in dishonour and reproach, e.g. when we submit to outrage (we yield to lust voluntarily and involuntarily), for unresisting submission to them is due to unmanliness or cowardice.” ARISTOTLE, RHETORIC 1384a 17-21 in II THE COMPLETE WORKS OF ARISTOTLE 1729, 2205 (W. Rhys Roberts, trans., J. Barnes, ed., 1984).
PART TWO: THE BASIC GOODS OF THE JURISTIC SOCIETY.

Membership in a Juristic Society is a fundamental component of the good of its members, and constitutes much of what makes them what they are.\(^\text{54}\) You cannot imagine Elizabeth Benet raised by wolves or in a hermitage. Okonkwo cannot imagine himself as other than what he long was, a man with a high title in the independent Ibo society of his youth, and when it fractures and loses its independence with the coming of the British Empire, he hangs himself.

*The Formless City of Plato’s Republic.* -- To discern the good of the Juristic Society, imagine a world in which its elements are almost entirely absent. A situation like this is vividly portrayed by Plato in the *Republic*, where he describes a stage in the decay of a city in which it descends from oligarchy into a condition of “formlessness.” Reacting against the unjust rule of the oligarchs -- corpulent and avaricious rich men -- the people expel them or kill them off, and thereafter enjoy -- for a time -- a “rainbow-hued” social situation, richly variant in diversity: a “beautiful” city, charmingly multicolored where all sorts of differences are accepted, and none is preferred.\(^\text{55}\)

“[There is] license in it to do whatever one wants\(^\text{56}\) . . . And where there’s license, it’s plain that each man would organize his life in it privately just as it pleases him. . . . [T]he absence of any compulsion to rule in this city . . . even if you are competent to rule, or again to be ruled if you don’t want to be, or to make war when the others are making war, or to keep peace when the others are keeping it, if you don’t desire peace; and, if some law prevents you from ruling or being a judge, the absence of any compulsion keeping you from ruling or being a judge anyhow, if you long to do so -- isn’t such a way of passing the time divinely sweet for the moment? . . . And . . . [i]sn’t the gentleness toward some of the condemned exquisite? Or in such a regime haven’t you yet seen men who have been sentenced to death or exile, [nonetheless] staying and carrying on right in the middle of things; and, as though no one cared or saw, stalking the land like a hero? . . . And [this city] spatters with mud those who are obedient, alleging that they are willing slaves of the rulers and nothings . . .

\(^{54}\) Thus the insight of critical theorists that civil society is “a sphere of identity formation” has a certain amount in common with the views advanced in this paper. See Simone Chambers, *A Critical Theory of Civil Society*, in *ALTERNATIVE CONCEPTIONS OF CIVIL SOCIETY* 90, 91 (2002) “[C]ritical theory . . . sees civil society as a sphere of identity formation, social integration, and cultural reproduction . . .”.


\(^{56}\) This is actually in the form of a question in the original (“And isn’t there license in it to do whatever one wants?”). But it is clear from the context that Socrates expects an affirmative answer. He receives one and builds on it.
while it praises and honors . . . the rulers who are like the ruled and the ruled
who are like the rulers. . . . [A] father . . . habituates himself to be like his child
and fear his sons, and a son habituates himself to be like his father and to have
no shame before or fear of his parents . . . . and metic is on an equal level with
townsman . . . . [T]he teacher . . . is frightened of the pupils and fawns on them,
so the students make light of their teachers . . . . [T]he old come down to the
level of the young; imitating the young, they are overflowing with facility and
charm, and that’s so that they won’t seem to be unpleasant or despotic.

“Then, summing up all of these things together . . . do you notice how
tender they make the citizens’ soul, so that if someone proposes anything that
smacks in any way of slavery, they are irritated and can’t stand it? And they end
up, as you well know, by paying no attention to the laws, written or unwritten,
in order that they may avoid having any master at all.” 57

It is a Woodstock of a city. Not only has it overthrown its government, it has
dissolved the basic components of the juristic social order. It is a city without nomos; a
city without the normal bonds between citizens; a city without duty. It is a city without
what Plato calls, in a telling passage, the “necessary”:

“[F]or the sake of a newly-found lady friend and unnecessary concubine [an
inhabitant of this city] . . . will strike his old friend and necessary mother . . . [and]
for the sake of a newly-found and unnecessary boy friend, in the bloom of
youth, he will strike his elderly and necessary father . . . .” 58

“Necessary” – “anankaion” -- here is used in a special sense. It does not refer to what
you need to keep yourself alive such as food and water, nor does it refer to what you
must do to avoid trouble. That man no longer finds his mother and father necessary for
purposes like those. Rather, the term refers to a bond or tie within a friendship or a
family. The root of “anankaion” may be “ankon” -- “arm” -- so perhaps the underlying
concept is that your “necessary” people are those who grip you by the arm, obliging you
to honor their wishes and to help them when they are in distress. 59

57 THE REPUBLIC OF PLATO (Alan Bloom, trans., 2d ed., 1968)(hereinafter referred to as “Plato,
Republic”). This quotation is collated from 557 b through 563 d (pages 235-42 of the Bloom translation).
The excerpts here quoted appear in the same sequence as in the original, but with several long elisions.
Dots identify the elisions even where the usual canons of style would call for asterisks. Here and
throughout passages are attributed to Plato when he himself attributes them to Socrates.

58 Id. 574b-c (Bloom translation at 255). This assertion is actually posited as a question by
Socrates (“is it your opinion that . . .?”). But it is clear in context that Socrates expects to receive
an affirmative answer and that he approves of it once he receives it.

59 Or perhaps it refers to those whom you have grasped or embraced. See I CESLAS SPICQ, O.P.,
treatment of the term in METAPHYSICS V: “Aristotle’s contribution . . . resides in his having signalled . . .
that need [necessity] is a modal concept of a special kind and imports the linked ideas of a situation and
a non-negotiable . . . good, which together leave no alternative . . . .”). In another passage, close by in the
The city has ceased to define and respect office. Its inhabitants refuse to participate in government and its students cease to respect teachers. Its denizen lacks the self-discipline required for the fulfillment of difficult offices. Going in for politics, “jumping up, [he] says and does whatever chances to come to him; and if he ever admires any soldiers, he turns in that direction; and if it’s money-makers, in that one . . . .”60

The city’s system of honor has broken down.61 Persons who would normally exercise authority, rewarding merit with honor and punishing delictual conduct with disgrace, no longer command respect and perhaps eventually they no longer expect it. The rulers try to be like the ruled. “[T]he teacher . . . is frightened of the pupils and fawns on them . . . . [T]he old come down to the level of the young; imitating the young, they are overflowing with facility and charm.”62

Public opinion decomposes to the extent that people no longer care whether some avoid service when the city is at war or behave belligerently when the city is at peace or whether persons who have been convicted of crimes take their places in the public square without distinction from those who are innocent. Public reason deteriorates. Disciplined philosophical discourse declines. Hearts are weakened and no longer sustain shame. “A son habituates himself to . . . have no shame before or fear of his parents.” Normally a person who is ashamed holds his head down, but the denizen of the Formless City “throws his head back.”

The city’s entire juristic order has dissolved in a wash of dreams; and things may have reached the point where it no longer can be called a polis at all, no longer sustaining a that degree of commonality of thought and belief – that homonoia or “concord” -- which defines a society and stands as its central element.

Republic to those quoted above, Socrates discusses necessary and unnecessary desires and identifies two kinds of unnecessary desires: “those we aren’t able to turn aside” and “those whose satisfaction benefits us.” “The desire for bread . . . is presumably necessary on both counts, in that it is beneficial and in that it is capable of putting an end to life.” Plato, Republic, supra n. 57, 558d-e (Bloom trans. at 237). See generally Jerry S. Clegg, Plato’s Vision of Chaos, 26 THE CLASSICAL QUARTERLY (New Series) No. 1 at 52 (1976)(discussing the account of necessity in the creation myth in the Timaeus).

60 Plato, Republic, supra n. 57, 561 c-d, at 239-40.

61 Honor is often signaled by the attitude of the head. The honoring person may bow his head. The honorable person “holds his head up” whereas the dishonored person holds it downwards. The denizen of the Formless City, caring neither about his own honor nor that of anyone else, “throws his head back.”

62 Id. at 563 a-b (Bloom trans. at 241).
Beyond the Formless City: the good of constancy and steadiness of character. -- Plato describes a denizen of the “Formless City” as follows:

“[H]e . . . lives along day by day, gratifying the desire that occurs to him, at one time drinking and listening to the flute, at another downing water and reducing; now practicing gymnastic, and again idling and neglecting everything; and sometimes spending his time as though he were occupied with philosophy. Often he engages in politics and, jumping up, says and does whatever chances to come to him; and if he ever admires any soldiers, he turns in that direction; and if it’s money-makers, in that one. And there is neither order nor necessity in his life.”

He is “human being lite.” There is no order in his life. “Jumping up,” he “says and does whatever chances to come to him.” This is why he seems to be so “lite”: to be fully human, a person must acquire a certain gravitas.

This points to an aspect of the good and its promotion by the Juristic Society. To possess and exercise any virtue in its wholeness, a person must enjoy a certain steadiness. To be fully virtuous, an action must, Aristotle states, “proceed from a firm and unchangeable character.” Only the self-governing, steady person, steadily reflecting and firmly choosing, "is at one mind with himself" when he acts and so to speak puts his entire self behind each action. Only the steady man acts "with an eye to [his] life in its entirety" and so embeds his action in a "complete life."

To participate fully in the Juristic Society: to recognize obligation, especially when appetite protests; to fulfill the requirements of social office; to seek and achieve honors and avoid disgrace; to be appropriately ashamed when need be and apologize and seek to set things straight: these lines of conduct involve the subordination of the passions and the firm governance of the mind and will. Shirk them and you stand to strengthen the appetites and weaken the will. The Juristic Society is a field for the instantiation of self-command.

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63 Plato, Republic, supra n. 57, 5611 c-d (Bloom trans. at 239-40)

64 Nicomachean Ethics, supra n. 9, 1105b-1 (Ross trans. at 1729).

65 Not so the wicked, who are "at variance with themselves" (id. at 1166b 6-7); their souls are "rent by faction" (id. at 1166b 19). For a discussion of the unity of the self in Aristotle, see SUZANNE STERN-GILLET, ARISTOTLE’S PHILOSOPHY OF FRIENDSHIP (1995).

66 A.W. Price, Aristotle’s Ethical Holism, 89 MIND, NEW SERIES No. 355, 338, at 342 (1980)("it must take a lifetime to display [ firm and unchangeable character] fully.").

67 That a "complete life" is a condition of eudaimonia is stated in Nicomachean Ethics, supra n.9, 1098a 18 & 1100a 5 (Ross trans. at 1735 & 1738).

68 Compare SAINT THOMAS AQUINAS, SUMMA THEOLOGICA II-II q. 88 a. 6c (Fathers of the English Dominican Province trans., 1947)(1265): “[A] vow fixes the will on the good immovably and to
Further, a system of honor adds dimensions to firmness of character. It invites you to fulfill your community’s obligations. It offers you participation in your community’s strengths. It adds a social aspect to firmness of character; a condition that Pericles sought to instill when he advised the wartime Athenians:

“[Y]ou must yourselves realise the power of Athens, and feed your eyes upon her from day to day, till love of her fills your hearts; and then when all her greatness shall break upon you, you must reflect that it was by courage, sense of duty, and a keen feeling of honour in action that men were enabled to win all this, and that no personal failure in an enterprise could make them consent to deprive their country of their valour, but they laid it at her feet as the most glorious contribution that they could offer.”

Beyond the Formless City: The good of clarity of mind and the exercise of the faculties of reason. – Plato describes the denizen of the Formless City as “all-various, full of the greatest number of dispositions, fair and many-colored . . . like the city.” He is a dreamer. Or, more precisely, “what [he] had .. been in dreams, [he becomes] continuously while awake”:

“[T]hose opinions he held long ago in childhood about fine and base things . . . are mastered by the opinions newly released from slavery, now acting as [the bodyguards of eros] . . . . These are the opinions that were formerly released as dreams in sleep when, still under laws and a father, there was a democratic

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do anything of a will that is fixed on the good belongs to the perfection of virtue according to the Philosopher, just as to sin with an obstinate mind aggravates the sin, and is called a sin against the Holy Ghost . . . .” See JOHN FINNIS, AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY 198 n. 68 (1998) (in a promise, an intention is affirmed in the sense of "asserted" and also in the sense of "made firm."). See id. at 199 (promissory obligations are "exercises of self-mastery"). Cf. SAINT THOMAS AQUINAS, op. cit. II-II q. 88 a. 6 ad 2: “According to the Philosopher, necessity of coercion, in so far as it is opposed to the will, causes sorrow. But the necessity resulting from a vow, in those who are well disposed, in so far as it strengthens the will, causes not sorrow but joy.” In these passages, Thomas uses the term “vow” to mean a promise to God, but may imply similar points about promises generally.

69 THUCYDIDES, THE PELOPONNESIAN WAR II, 43 (Crawley, trans., Modern Library ed., 1951, at 107). The passage continues:

“For this offering of their lives made in common by them all they each of them individually received that renown which never grows old, and for a sepulchre, not so much that in which their bones have been deposited, but that noblest of shrines wherein their glory is laid up to be eternally remembered upon every occasion on which deed or story shall fall for its commemoration. For heroes have the whole earth for their tomb . . . .”

70 Plato, Republic, supra n. 57, 561e (Bloom trans. at 240) (“[T]his man is all-various and full of the greatest number of dispositions, the fair and many-colored man, like the city.”).
regime in him. But once a tyranny was established by [eros], what he had rarely been in dreams, he became continuously while awake.”

When a city loses its juristic quality, people stand to suffer a deterioration, not only in constancy but also in reason. Knowledge itself, and wisdom -- orderly, clear, insightful thought -- the most basic component of the human good there is according to Aristotle -- falters and fails in the Formless City.

It would not be accurate to say that denizens of the Formless City lose their minds altogether, but their cognition displays a disordered and episodic quality. Their thinking resembles feeling. If they attempted to account for their lives theoretically they might produce the philosophy of G.E. Moore and might identify the good with “states of consciousness.” If they tried to compose their intellectual biographies they might depict

71 Id. 574d-e (Bloom trans. at 255). Cf. id. 563d (Bloom trans. at 242)(“You’re telling me my own dream.”). Their dreaminess aligns the denizens of the Formless City with the “lovers of sights” discussed previously in the Republic:

“The lovers of hearing and the lovers of sights . . . surely delight in fair sounds and colors and shapes and all that craft makes from such things, but their thought is unable to see and delight in the nature of the fair itself. * * * Is the man who holds that there are fair things but doesn’t hold that there is beauty itself and who, if someone leads him to the knowledge of it isn’t able to follow – is he in your opinion, living in a dream or is he awake? Consider it. Doesn’t dreaming, whether one is asleep or awake, consist in believing a likeness of something to be not a likeness, but rather the thing itself to which it is like?”

Id. 476 a-c (Bloom trans. at 156). See TERENCE IRWIN, PLATO’S ETHICS 664-71 (1995) for a discussion of Plato on knowledge, dreaminess, and the sight-lovers.

72 As in the life of Bertrand Russell:

“Ever since my marriage, my emotional life had been calm and superficial. . . . Suddenly the ground seemed to give way beneath me . . . . Within five minutes I went through some such reflections as the following: the loneliness of the human soul is unendurable; nothing can penetrate it except the highest intensity of the sort of love that religious teachers have preached; whatever does not spring from this motive is harmful . . . . it follows that war is wrong, that a public school education is abominable . . . . and that in human relations one should penetrate to the core of loneliness and speak to that. * * * At the end of those five minutes, I had become a completely different person. For a time, a sort of mystic illumination possessed me. I felt that I knew the inmost thoughts of everybody that I met in the street . . . . Having been an imperialist, I became during those five minutes a pro-Boer and a pacifist . . . . A strange excitement possessed me, containing intense pain but also some element of triumph . . . . * * *

“ . . . I went out bicycling one afternoon, and suddenly, as I was riding along a country road, I realized that I no longer loved Alys. I had had no idea until this moment that my love for her was even lessening.”

I THE AUTOBIOGRAPHY OF BERTRAND RUSSELL 220-222 (1951)(describing events in 1901). Alys had been his wife for six or seven years at that time.
a series of swoops into one cluster of emotional experiences after another. Their lives find striking parallels in Bloomsbury.  

Participation in the Juristic Society is an occasion for sustained thought about the civic order. The Juristic Society, if you belong to one, presents judgments which you can consider when ruminating upon your own conduct. Its economy of honor holds up a mirror in which you can see yourself reflected. Through its eyes, you can see yourself as others see you, “from the outside,” reflected in the eyes of others. You can understand yourself as they do, and assess your achievements as they might. You may assess your shortcomings as they do, and be led on to shame, apology, and rehabilitation. You care how you look and how they judge of your conduct if you are a solidaristic member of a community which maintains an economy of honor.

73 See MARRIAGE AND MORALS AMONG THE VICTORIANS: ESSAYS BY GERTRUDE HIMMELFARB 23-49 (1975)(offering some penetrating observations on the characteristics of this movement; noting the dominance of the philosophy of G.E. Moore).

74 Cf. Nicomachean Ethics, supra n. 9, where Aristotle observes that those who pursue honor do so “in order that they may be assured of their merit”: – that is, to secure a certain sort of knowledge or belief (“at least it is by men of practical wisdom that they seek to be honoured, and among those who know them, and on the ground of their excellence . . . .”) (1095b 26-29; Ross trans. at 1731-32). But this reference to something cognitive -- “to be assured of their merit” -- seems to refer only to a very limited and specific kind of knowledge, the sort that might be acquired by receiving a high grade on an examination. Well developed systems of honor communicate more than high scores: they articulate the qualities of the meritorious conduct as well (like a teacher’s comments or a book review). They give the honored person a good look at himself from another point of view; from the outside. See generally A.W. PRICE, LOVE AND FRIENDSHIP IN PLATO AND ARISTOTLE 122 (1989)

“[When I pursue projects alone] my projects are . . . transparent on to their objects, so that my focus is upon the objects, not my pursuit of them; but joining in those projects with a friend I become conscious of his pursuing them, and so conscious in a new way of pursuing them myself (for we are pursuing them together). I thus . . . achiev[e] . . . a real self-knowledge.”

75 Shame participates in the good of knowledge in one of its most painfully difficult forms, namely knowledge of oneself as delictual, imperfect, and morally flawed. A social order which imposes standards and detects violations – a society which develops an economy of honor and shame – holds up a mirror to fallen mankind. It provides the external point of view which is necessary for the development of full self-knowledge. See GABRIELLE TAYLOR, PRIDE, SHAME, AND GUILT 60 (1985), quoted in PETER A. FRENCH, THE VIRTUES OF VENGEANCE 152 (2001) (“in feeling shame the actor thinks of himself as having become an object of detached observation, and at the core to feel shame is to feel distress at being seen at all.”). See French, op. cit.:

“What is crucial in shame is that the agent achieve . . . a ‘higher order’ critical point of view with which he or she can identify. The concept of the audience, whether real or imagined, affords the agent access to that point of view. . . . It is that point of view – of seeing oneself as being seen or possibly being seen in a certain way, as exposed – that motivates the self-critical and self-directed judgment that produces shame reactions.”

76 Compare JOHN RAWLS, A THEORY OF JUSTICE 440-43 (1971):

“. . . [P]erhaps the most important primary good is that of self-respect. . . . [S]elf-respect . . . includes a person’s sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. * * * . . . [U]nless our endeavors are appreciated by
Beyond the Formless City: steadiness in reasoning; reason about steadiness. –
Society, as has been stated, is characterized by what Aristotle calls homonoia: by concord in thought and intentionality.77 Citizens agree on basic things; and here it can be added that they agree steadily. Their concord involves understanding and constancy:

“[T]hey are unanimous both in themselves and with one another, being, so to say, of one mind (for the wishes of such men are constant and not at the mercy of opposing currents like a strait of the sea) . . . .”78

Further, social discourse in the Juristic Society is often about the common experience of steadiness or courage itself. Thus Pericles in the Funeral Oration:

"[W]hereas [the Spartans] from early childhood by a laborious discipline make pursuit of manly courage, we with our unrestricted mode of life are nonetheless ready to meet any . . . hazard. . . . If, then, by taking our ease rather than by laborious training and depending on a courage which springs more from manner of life than [from] compulsion of laws, we are ready to meet dangers, the gain is all ours, in that we do not borrow trouble by anticipating miseries which are not yet at hand, and when we come to the test we show ourselves fully as brave as those who are always toiling . . . .

"For in truth we have this point of superiority over other men, to be most daring in action and at the same time most given to reflection upon the ventures which we mean to undertake; with other men, on the contrary, boldness means ignorance and reflection brings hesitation. . . . [T]hey would rightly be adjudged others it is impossible for us to maintain the conviction that they are worthwhile . . . . * * * . . . [T]he conditions for persons respecting themselves and one another would seem to require that their common plans be both rational and complementary: . . . they fit together into one scheme of activity that all can appreciate and enjoy. * * * Thus what is necessary is that there should be for each person at least one community of shared interests to which he belongs and where he finds his endeavors confirmed by his associates. * * * This democracy in judging each other’s aims is the foundation of self-respect in a well-ordered society.”

Rawls says “sense of his own value” and “self-respect” where the thesis of this paper would instead refer to knowledge of the virtue of one’s own actions and of the good at which they have successfully aimed. Rawls’ terminology is differently focused and seems to point in an intuitive – emotional? – direction. See Martha Craven Nussbaum, Shame, Separateness, and Political Unity: Aristotle’s Criticism of Plato, in ESSAYS ON ARISTOTLE’S ETHICS 395, 398 (Amélie Oksenberg Rorty, ed., 1980), noting Rawls’:

“insistence on the subjectivity of these phenomena. Shame is a feeling or emotion, self-respect a sense of worth . . . . Rawls thus implicitly denies that the objective (or inter-subjective) value of my pursuits and the truth of my beliefs about them are at all relevant to the issue of self-respect or shame. He later makes the denial explicit.”

77 See pages 4-5, supra.

78 Nicomachean Ethics. supra n. 9, 1167b 6-8 (Ross trans. at 1845).
most courageous who, realizing most clearly the pains no less than the pleasures involved, do not on that account turn away from danger.\footnote{THUCYDIDES, THE PELOPONNESIAN WAR (Loeb edition).}

Elizabeth Benet, for example. -- Elizabeth affords a keen illustration of a personality quite the reverse of that of the feckless denizen of the Formless City. Her character personifies the great Austenian attitude of satirical contempt for romanticism of the self-deluding sort. She is precisely the antidote for the dreaminess of the Formless City. She is a lover of good form and a respecter and enforcer of obligation. She firmly refuses Mr. Darcy, the richest and most attractive of the men in her world, owing to evidence that he has violated his duties as a gentleman.

Though not yet twenty-one years of age, she has the mettle to duel successfully with Lady Catherine. Though sheltered and inexperienced in the ways of the world, she repeatedly displays superior insight, for example in seeing more clearly than her father allows himself to do the probably consequences of sending Lydia to Brighton. Though unlikely to have been a student of Aristotle, she is reflective enough to look upon her self-command “as from the outside” and to be pleased with it. She is the opposite of a shameless person: she is self-critical and ready to regret her faults.

Lydia Wickham, on the other hand. -- Lydia Benet – subsequently Lydia Wickham - - “[v]ain, ignorant, idle, and absolutely uncontrouled”\footnote{Pride and Prejudice, supra n. 3 at 231 (Elizabeth speaking).} -- is throughout a type of the unsteady and unreliable person, and also the person whose mind is a constant whirl. Just listening to her account of her marriage makes your head spin:

“’La! . . . . I must tell you how it went off. We were married, you know, at St. Clement’s, because Wickham’s lodgings were in that parish. And it was settled that we should all be there by eleven o’clock. My uncle and I were to go together; and the others were to meet us at the church. Well, Monday morning came, and I was in such a fuss! I was so afraid you know that something would happen to put it off, and then I should have gone quite distracted. And there was my aunt, all the time I was dressing, preaching and talking away just as if she was reading a sermon. However, I did not hear above one word in ten, for I was thinking, you may suppose, of my dear Wickham. I longed to know whether he would be married in his blue coat.

“’Well, and so we breakfasted at ten as usual; I thought it would never be over; for, by the bye, you are to understand, that my uncle and aunt were horrid unpleasant to me all the time I was with them. If you’ll believe me, I did not once put my foot out of doors, though I was there a fortnight. Not one party, or scheme, or anything . . . . Well, and so just as the carriage came to the door, my uncle was called away upon business to that horrid man Mr. Stone. . . . Well, I was so frightened I did not know what to do, for my uncle was to give me away; and if we were beyond the hour, we could not be married all day. But, luckily,
he came back again in ten minutes time, and then we all set out. However, I recollected afterwards, that if he had been prevented going, the wedding need not be put off, for Mr. Darcy might have done as well.”

She exhibits of the destabilized mind of someone who has become detached, if she ever was attached in the first place, from the Juristic Society. (Note how her narrative veers wildly back and forth along the time line.). The last-quoted sentence constitutes a breach of a promise of confidentiality she had made to her husband.

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81 *Id.* at 319.
PART THREE: MARRIAGE AND THE FAMILY

AS COMPONENTS OF THE JURISTIC SOCIETY

“The family is the natural and fundamental group unit of society”

-- Universal Declaration of Human Rights

Juristic Societies generally understand the family to be a component institution, rather than some entirely personal refuge or “home for the heart.”

James Q. Wilson reports that:

“In every community and for as far back in time as we can probe, the family exists, and children are expected, without exception, to be raised in one. By a family I mean a lasting, socially enforced obligation between a man and a woman that authorizes sexual congress and the supervision of children.”

Marriage is, Wilson finds, universally integrated into the kinship system. To become a spouse is to assume additional roles and shoulder additional responsibilities: son-in-law, daughter-in-law, sister-in-law, sometimes family business partner. Family has a public, social, and economic side.

“Until recently . . . . [a] family was a political, economic, and educational unit as well as a child-rearing one. It participated in deciding who would rule the community and (except in wandering hunter-gatherer groups) control or have


83 See generally E.J. GRAFF, WHAT IS MARRIAGE FOR? 251 (2004)(“Western marriage today is a home for the heart: entering, furnishing, and exiting that home is your business alone. Today’s marriage – from whatever angle you look – is justified by the happiness of the pair.”).

84 JAMES Q. WILSON, THE MARRIAGE PROBLEM: HOW OUR CULTURE HAS WEAKENED FAMILIES 24 (2002) (footnote omitted)(emphasis added). A small exception to Wilson’s element “man and a woman” has recently been uncovered. See Chuan-Kang Shih, Genesis of Marriage among the Moso and Empire-Building in Late Imperial China, 60 J. ASIAN STUDIES 381 (2001)(reporting that some Moso establish matriarchal households which do not include the father).

85 See WILSON, op. cit., at 30 (identifying “another universal feature of all human societies, the kinship system.”).

privileged access to land that supplied food and cattle. Until the modern advent of schools, families educated their children, not with books, but by demonstrating how to care for other children, perform certain crafts, and mind cattle and agricultural fields. . . . These tutorial, educational, and economic families were linked together in kinship groupings that constituted the whole of the small society – often no more than two hundred people, and sometimes even fewer – that live together in a settlement.**87**

That is why marriage and the family are generally recognized as a foundation of the civil order.88 To raise children is to form the next generation of members of society.

Different societies and religious traditions have emphasized different aspects of marriage and the family, but these solidarities recur. John Witte Jr. identifies a “core insight of the Western tradition”:

“[M]arriage is good not only for the couple and their children, but also for the broader civic communities of which they are a part. The ancient Greeks and Roman Stoics called marriage variously the foundation of republic and the private font of public virtue. The church fathers called marital and familial love ‘the seedbed of the city,’ ‘the force that welds society together.’ Catholics called the family ‘a domestic church,’ ‘a kind of school of deeper humanity.’ Protestants called the household a ‘little church,’ a ‘little state,’ a ‘little seminary,’ a ‘little commonwealth.’ American jurists and theologians taught that marriage is both private and public, individual and social, temporal and transcendent in quality . . . a pillar if not the foundation of civil society.”89

One of the most important works in the Confucian tradition, called the Great Learning, states:

“It is only when things are investigated that knowledge is extended; when knowledge is extended that thoughts become sincere; when thoughts become sincere that the mind is rectified; when the mind is rectified that the person is cultivated; when the person is cultivated that order is brought to the family; when

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88 See, e.g., The Second Council of the Vatican, Gaudium et Spes [Pastoral Constitution on the Church in the Modern World] (1965), reprinted in Vatican Council II: The Conciliar and Post Conciliar Documents 956 (Austin Flannery ed., Roman Lennon et al. trans., 1975) (“The family is the place where different generations come together and help one another to grow wiser and harmonize the rights of individuals with other demands of social life; as such it constitutes the basis of society.”).

89 John Witte Jr., The Tradition of Traditional Marriage, in Marriage and Same-Sex Unions: A Debate 47, 58 (Lynn D. Wardle et al. eds., 2003). See also John Witte, Jr., From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition (1997).
order is brought to the family that the state is well governed; when the state is well governed that peace is brought to the world."  

The extent of family is often wide in Juristic Societies, reaching out to encompass in-laws and other connections. In Jane Austen’s England:

“members of nuclear families, united by marriage, were likely to recognize one another as ‘father’ and ‘mother’, ‘son’ and ‘daughter’, ‘brother’ and ‘sister’. . . . [T]he principle of incorporation could extend further to include uncles, aunts, and cousins. * * * * The obvious result of these naming practices was that kinship groups were considerably enlarged.”

Engaged to Jane, Bingley claims from Elizabeth “the good wishes and affection of a sister.” Engaged to Darcy, Elizabeth asks Jane “shall you like to have such a brother?”

The analogy of family is widely employed in many Juristic Societies:

“The term ‘father’, for example, could also be used as an appellation for any old man, particularly one ‘reverend for age, learning and piety’, as Samuel Johnson explained in his Dictionary of the English Language. * * * [W]hen King George II died, … Thomas Turner described him in his diary as ‘King and Parent of this our most happy Isle.’ * * * {W}e can see that [these usages] . . . all draw on a certain moral understanding of the quality of ‘fatherhood’, which included attributes such as authority, seniority, care, and tenderness.”

Because his mother came from the village of Okeri, an emissary from a hostile village is greeted by the Okeri town crier as “son of our daughter” in one of Chinua Achebe’s narratives; and the emissary in turn addresses the crier as “father of my mother.” These extensions of kinship by direct and analogical usage operate to extend the scope of kinship obligation to a wider social network.

The obligations of family and household mirror and extend those of the Juristic Society. The father of a seduced daughter like Lydia might have been expected to risk death in a duel with the seducer. A schoolteacher in the opening passages of The Silent

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90 Quoted in I SOURCES OF CHINESE TRADITION FROM EARLIEST TIMES TO 1600 at 331 (2d ed., Wm. Theodore de Bary & Irene Bloom, compilers, 1999).

91 NAOMI TAMDOM, FAMILY AND FRIENDS IN EIGHTEENTH-CENTURY ENGLAND: HOUSEHOLD, KINSHIP, AND PATRONAGE 137 (2001)((giving examples from Jane Austen’s novels).

93 Id. at 157-58 (2001)(citations omitted).


95 In the Aristocratic portion of the English world, elaborate and detailed requirements governed mourning for the death of a kinsman, reducable to a table of mourning periods in one modern study. See RANDOLPH TRUMBACH, THE RISE OF THE Egalitarian Family: Aristocratic Kinship and Domestic Relations in Eighteenth-Century England 35 (1978)(e.g. 12
People suffers the destruction of his cottage and flight into exile rather than assist the bullies of the landlord in their efforts to hunt down his nephew. Okonkwo’s tragic downfall in Things Fall Apart dates from his betrayal of a boy who had lived in his own household and taken to identify Okonkwo as “father.”

The good of the family mirrors and extends the characteristic goods of Juristic Societies. Families demand a steady character. A parent knows how much his kids depend and a spouse knows how much the other spouse relies on consistency and constancy and holding down a job in difficult times. Recent studies establish that married people are steadier employees: less likely to miss work, less likely to show up hung-over or exhausted, more productive, and less likely to quit. Married persons are less likely to overindulge in alcohol, drive too fast, take drugs, smoke or get into fights.

Mr. Benet’s inappropriately nonjuristic, self-involved attitude lies at the root of the tragedy which nearly engulfs the Benet family. He is guilty (in the surprisingly blunt conclusion of Elizabeth herself) of “continual breach of conjugal obligation and decorum.” His attitude towards his wife is that of a disappointed epicurean:

“[C]aptivated by youth and beauty, and that appearance of good humour, which youth and beauty generally give, had married a woman whose weak understanding and illiberal mind, had very nearly in their marriage put an end to all real affection for her. Respect, esteem, and confidence had vanished for ever: and all his views of domestic happiness were overthrown. . . . [But he] was fond of the country and of books; and from these tastes had arisen his principal enjoyments. To his wife he was very little otherwise indebted, than as her ignorance and folly had contributed to his amusement. This is not the sort of happiness which a man would in general wish to owe to his wife; but where other powers of entertainment are wanting, the true philosopher will derive benefit from such as are given.”

This deplorable attitude of amused disengagement is the root cause of the downfall of Lydia:

months for a spouse, 6 months for a parent, 3 months for a brother or sister, 1 week for a cousin). See id. at 34: “The rules of mourning reveal that spouses, parents and siblings formed the central core of one’s kindred; that husbands and wives were incorporated into each other’s kindred by marriage; that the parental tie was stronger than the avuncular . . . .”).

96 The Silent People, supra n. 6, at 16-23.


98 See WAITE & GALLAGHER, op. cit., at 47–64.

99 Pride and Prejudice, supra n. 3, at 236.
“Mr. Bennet’s improprieties . . . are chiefly displayed in his disrespect for his daughters and especially his wife. It is the fact that he exposes his wife to the contempt of her own children that Elizabeth sees as ‘reprehensible’ . . . . Nor does he believe his daughters need the protection of his respect. They are ‘all silly and ignorant, like other girls’ . . . a dismissal that makes him not bother to ever guide or restrain Lydia . . . .”

Elizabeth warns him how unwise it would be to allow her to sojourn to Brighton where Mr. Wickham and his regiment are encamped. Benet interprets Elizabeth’s attitude as one of concern for her own comfort and he himself thinks principally of his own:

“Do not make yourself uneasy, my love. Wherever you and Jane are known, you must be respected and valued; and you will not appear to less advantage for having a couple of – or I may say, three very silly sisters. We shall have no peace at Longbourn if Lydia does not go to Brighton.”

“With this answer Elizabeth was forced to be content . . . . She was confident of having performed her duty.”

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100 The Pleasures of Virtue, supra n. 47, at 152.

101 Pride and Prejudice, supra n. 3, at 231-32.

102 Id. at 232.
PART FOUR: GOVERNMENT AND THE LAW AS
JOINT FIDUCIARIES WITH THE JURISTIC SOCIETY

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”
Universal Declaration of Human Rights103

A. The Fiduciary Concept.

1. Government and law as fiduciary. -- In ON DUTIES, Cicero compares the government to a trustee for the citizens:

"For the administration of the government,104 like the office of a trustee,105 must be conducted for the benefit of those entrusted106 to one's care, not of those to whom it is entrusted."107

Professor Neal Wood comments:

“It is significant that Cicero uses the abstract legal conception, tutela, guardianship or trust, to describe the proper relationship of government to citizens . . . . By Roman law a guardian was required for children under puberty . . . . {T]he father of the family . . . in case of premature death, would specify in his will the name of a guardian (tutor), not necessarily a kinsman. Originally tutela functioned to maintain the family property intact and secure, but later entailed the public obligation for the well-being of the children.108

104 “Procuratio rei publicae."
105 “tutela."
106 “qui commissi sunt."
107 I, 85, translated in WOOD, CICERO'S SOCIAL AND POLITICAL THOUGHT 132.
108 Wood, loc. cit. at 134.
St. Thomas uses a similar metaphor in the Summa, identifying the lawgiver as one who has “care of” the people, using the term “curam,” a noun which means “management, administration … a guardianship.” In the Roman juristic writings, the term refers to “the management of business for a minor”; “trusteeship”; again, “guardianship.” Burke, for somewhat similar purposes, uses a comparison to the life tenant of an estate.

As these authorities indicate, the fiduciary metaphor is a compelling basis for social and political thought. It makes trust a central element. Fiduciaries -- the guardian, the life-estate holder -- must in all they do attend primarily not to their own good but of the wellbeing of others: the ward, the beneficiary; the future generations of holders. To identify an official as a fiduciary is to place him firmly in a position of ethical responsibility, and to account for his position based not on chance or power or fiat but on the wellbeing of the those whom he affects and towards whom he acts.

2. Juristic Society as well as government and the law as fiduciary. – Cicero and Thomas and Burke were doubtless thinking primarily of the government, but their metaphors can be well extended to the social order. There, after all, is the ground from which the fiduciary metaphor emerged in the first place (and bore fruit as a set of legal concepts.).

The holder of the social office, the steward, the schoolteacher, the Lady Catherine who takes her responsibilities seriously, even the Ibo village crier is what her or she is because of the good that can be achieved for the people. The obligations and offices of the Juristic Society are also expressions of fiduciary morality.

3. Joint fiduciaries; Government supportive of the Juristic Society; Juristic Society supportive of government. – It follows fairly closely that government and the social order are joint fiduciaries, and ought as joint fiduciaries often do to support one another as partners in their efforts. It is the repeated insight of many great countries and cultures is that they do their work best together. Edmund Burke:

“”[W]e have given to our frame of polity the imager of a relation in blood; binding up the constitution of our country with our dearest domestic ties; adopting our fundamental laws into the bosom of our family affections; keeping inseparable, and cherishing with the warmth of all their combined and mutually reflected charities, our state, our hearths, our sepulchres, and our altars.”

109 SAINT THOMAS AQUINAS, SUMMA THEOLOGICA I-II q. 90 a. 3c (Fathers of the English Dominican Province trans., 1947) (1265)：“condere legem vel pertinet ad totam multitudinem, vel pertinet ad personam publoicam quae totius multitidinies curam habet.”


111 Id.
The leaders of Juristic Society; its members; those who hold social office, ought, and commonly do, support government and the law by example and, in the case of parents, by the way they order their households and bring up their children. Government and the law, for their part, have in their care not only the health and safety of the people, and not only their houses and lands, but also, like the guardian of a large household or the elder of a village, its traditions; its rules and principles; its relationships; its family structure; its social forms; its marriages; its other family and kinship relationships. Government “for the people,” properly understood, should refer not only to each individual person in the population considered separately, but also for the people as they are formed up into affiliations and bonded together by ties of duty and office. Where the people of a country are formed up into a just Juristic Society, an appropriate mission for government, perhaps its central mission, is to recognize the forms of the Juristic Society, to honor them, and to give effect to social obligations, rather in the way that the law of contract gives effect to the social practice and civil morality of keeping your promises and paying your debts, and in the way that the laws of trusts and estates reflects the social practice and morality of preserving funds which have been entrusted to your care and honoring the wishes of the deceased. And rather in the way in which family law gives effect – or did at one time – to the socially accepted morality of family relationships.

A government is at the very least under a duty not to attack the elements of a just Juristic Society: a duty not, without grave cause, to prohibit the fulfillment of its (just) obligations, to embarrass or retard its establishment of social offices and the performance of their duties by officeholders; and not to suppress the discourse which lies at the heart of public opinion. Perhaps in addition government has a duty in many instances to respect the social economy of honor and disgrace and must hesitate, at least, to honor those who have incurred justifiable social disgrace or to disgrace those who at the social level have earned a share of honor.

B. The Modern Divergence.

One modern trend is in marked contrast to the classical tradition. A current trajectory in some segments of government and the law, as regards the Juristic Society, is to take little heed of it; not to specially protect it or further its aims or adopt its principles. Guided by the Lockean principle that government and the law are “constituted only for the procuring, preserving, and advancing . . . [of] life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like”\textsuperscript{112} – and influenced by strains in social thought which identify the social order

\textsuperscript{112} John Locke, “A Letter Concerning Toleration” (1689), in THE SECOND TREATISE OF GOVERNMENT (AN ESSAY CONCERNING THE TRUE ORIGINAL, EXTENT AND END OF CIVIL GOVERNMENT) AND A LETTER CONCERNING TOLERATION 123, 128 (J.W. Gough, ed., 1976)(emphasis added). Departing from normal canons, asterisks have been omitted where the elision is shown.
merely a nexus of individual forces\textsuperscript{113} or, more darkly, as a zone of conflict and exploitation\textsuperscript{114} -- affected by these philosophies, a current trajectory of government leads it to ignore many forms of the social order; or perhaps even to denigrate them. It leads it along towards developing a resemblance to regimes familiar from British imperial history: efficient regimes, builders of railways and shipyards, promoters of hygiene and modern medicine, but brittle, suspicious, and sometimes incomprehending as regards the ways of the natives.

This path leads government on to the point where it may attack the forms of the Juristic Society over which it presides and attempt to sweep them out of the public sphere altogether, judging them to be inefficient or oppressive, hierarchical, and irrationally discriminatory.

Government which follows that path stands to do harm in various ways. First, it puts the individual and his social arrangements “on the rack,” obliging him to live simultaneously in two divergent moral orders, on the one hand for example in a community and among people who think paying your debts is important; on the other had under a regime of bankruptcy law which allows some to file a few simple papers and get out from under almost all debt; on the one hand taking an oath at the time of getting married to be true to his wife for better or for worse, for richer for poorer, in sickness and in health, and on the other hand experiencing a no-fault legal regime which allows divorce on demand by one spouse without the consent of the other, over the objections of the other, and indeed at the behest of an adulterous or abusive spouse over the objections of the innocent one. We may be experiencing the emergence of a situation in Massachusetts and Canada where you may be married to one person in the eyes of the law but not in the opinion of your parents or your neighbors.

The dislocation passes beyond confusion as to this or that doctrine or relationship and becomes at a certain point a dislocation between conflicting social philosophies, imposing on the citizen an experience not unlike what may be imposed by exile or a state of migration; depriving the citizen of the consistency of civic friendship “homonoia,” concord, and public order which make for steadiness of character and nurture the development of clear-minded discernment of the political good.

A further sort of harm arises when the political class may come to rely for its membership on those who are disaffected or infirmly rooted in the social order around them. Misunderstanding the social forms which it has reprehended, and fearing what it

\textsuperscript{113} E.g. that “there is no such thing as society. There are individual men and women, and there are families.” Prime Minister Margaret Thatcher, \textit{quoted in} Douglas Keay, “Aids, Education and the Year 2000!” WOMAN’S OWN, October 31, 1987, at 8, \textit{accessed online on June 27, 2005} at www.margaretthatcher.org/speeches.

\textsuperscript{114} “[M]odern civil society is composed only of individualized strategists engaged in a struggle of each against all, pervaded by power and politics understood as war carried on by other means.” JEAN L. COHEN & ANDREW ARATO, CIVIL SOCIETY AND POLITICAL THEORY 290 (1994)(characterizing the views of Michel Foucault).
cannot understand, such a regime may even come to the point of attacking the virtues that underpin the Juristic Society, denigrating the sense of responsibility, and praising and commending instead the Whitmanesque pursuit of the wild and the free.

And still further along near the terminus of its trajectory such a regime might come to the point of attacking the theoretical bases of ethical thought which make the Juristic Society or any society composed along orderly lines justifiable and coherent, doubting the rationality of authentic benevolence and, nihilistically, denying the possibility of sound knowledge, assigning to government and its law the tasks, not of supporting the Juristic Society but of cutting paths through the forest of the social order along whatever widening courses the autonomous self may choose to speed, led by a disorderly spirit and a Nietzschean intellect. Does this seem fanciful? Our own Supreme Court has repeatedly in recent years struck down established law and derogated from the forms of the American Juristic Society based on its intention to foster “liberty” defined in the following way:

“At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”

Ultimately a government which pursues that course, unless it draws back before inflicting irreparable damage, undermines the concord or homonoia—that union at the heart of the social order--for which it depends for its own stability and strength.

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