

# The Jewish Origins of the Western Disobedience Tradition

*Yoram Hazony*

On October 1, 1946, an Allied court sentenced to death by hanging the men who until a few months earlier had operated the machinery of the German state and its public culture, including the foreign minister of Germany, the minister of the interior, and the minister of the Eastern Territories; the German chief of staff, the chief of operations of the armed forces, the head of the security services, and the commander of the air force; as well as the governor of Austria, the president of the Academy of German Law, and the publisher of the weekly newspaper *Der Stürmer*. None of them had been accused of violating the laws of Germany. They had been accused of *obeying* them. And it was for committing this crime—the crime of obeying the laws of Germany—that they were convicted and subsequently executed.

From the outset, when the International Tribunal for the Trial of German War Criminals was commissioned, it was evident that the law of the German state could not serve as a basis to try the German leadership for their crimes, since it had been these very same men who had composed the

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laws in order to legitimate their acts. The “international law,” as it stood in various treaties signed by Germany, would likewise fail to speak unequivocally on many of the issues before the court. For these reasons, the charter which established the Tribunal empowered it to try and punish individuals for violating various “laws” not necessarily to be found on the books of the German state at all: The ministers and generals were to be tried for committing (i) “crimes against peace,” defined not only as “war in violation of international treaties” but also, more generally, as any “war of aggression”<sup>1</sup>; for (ii) war crimes, defined as violations not only of the laws of war, but also of an unspecified body of “customs of war”; and for (iii) “crimes against humanity,” defined as “murder, extermination, enslavement, deportation and other inhuman acts,” but also including “persecutions ... in execution of or in connection with” any of these, “whether or not in violation of the domestic law of the country where perpetrated.”<sup>2</sup> Acting on this mandate, the court incorporated into its rulings such considerations as “rules ... recognized by all civilized nations,” “customs and practices of states,” “the general principles of justice,” and even “the elementary dictates of humanity”—all in order to establish that obedience to unjust law could “never” be required of government agents, and that a servant of the German regime “cannot now shield himself behind a mythical requirement of soldierly obedience at all costs as his excuse...” Indeed, the “essence” of the court’s finding, as declared by the judges themselves in their ruling, was “that individuals have international duties which transcend the national obligations of obedience imposed by the individual State.”<sup>3</sup>

The recognition that it is not the dictates of the state but “the general principles of justice” and “the elementary dictates of humanity” which ultimately govern the innocence or guilt of men represents the highest political teaching of Western civilization; just as the rejection of this teaching and the promulgation of its opposite—the belief that the laws and commands of the state are the ultimate arbiters of human innocence and guilt—represents the highest teaching of the corporatist ideal which was Nazism.

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Thus while the material World War II was fought in fire and blood on the beaches of Normandy and in the forests of the Ardennes, these titanic struggles were in an important sense only the physical expression of the war of ideas which ended only at Nuremberg—the death-struggle between the two most fundamental of human political teachings, that of *obedience to the state*, and that of *obedience to right*.<sup>4</sup>

That an Allied court would base its decision on an unequivocal choice of right over the dictates of the state is hardly surprising. The idea of the predominance of right had long been simmering in Western political thought, and especially that of the United States, which had been born of disobedience to British tax laws, and whose Civil War had been nothing short of a war *against* its own written constitution, which had protected the “right” to hold slaves. But it was only after the horrors of World War II and the Nuremberg judgment that the implicit assumption of Western democratic theory came to be understood as its cornerstone: If the citizens of a free society were not prepared to protect their freedoms against the evils which are always possible even under democratic government—Hitler himself had, after all, come to power through the democratic processes of Weimar—then the enterprise would sooner or later come to ruin just as Germany had. And it was in this way that the lessons of Nuremberg eventually found expression in a national holiday in the United States honoring the civil disobedience leader Martin Luther King, Jr., whose explicit message is the endorsement of resistance to unjust state law; in the reading of Henry David Thoreau’s “Civil Disobedience” in schools as one of the enduring achievements of America’s national literature; and in the use in the schools and popular media of the expression “I was just obeying orders”—the claim of the defendants at the Nuremberg trials—as the epitome of moral abdication. Indeed, these cultural artifacts and others like them amount to no less than a policy of the American state and its ideological allies, alone among the great powers in history, of officially indoctrinating their children in the belief that the pursuit of right ultimately must take precedence over obedience to law—even if it is their own law.<sup>5</sup>

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Yet if one asks where this teaching came from, and how it was that the Western nations came to teach their children that right must take precedence over blind obligation to obey the state, then one is confronted by a hidden irony, which, given the fate of the Jews of Europe at the hands of the German regime, takes on no small measure of bitterness. For while the disobedience teaching of the West is well-known, virtually forgotten is the fact that this teaching is itself the essential *Jewish* political teaching, whose appearance in the world and ultimate triumph in the philosophy of the Western democracies are due almost exclusively to the influence on the West of the Hebrew Bible—that is, that it was Jewish political philosophy which was ultimately pitted against that of Germany at Nuremberg, and determined by America and her allies to be the truer idea. (There is a second, more gruesome, irony hidden here as well, since the Jewish origins of the Western disobedience teaching have been obscured, down to our own day, by an academic history of ideas which is built, almost in its entirety, on the historiography of nineteenth-century *German* academia, which—one is hardly shocked to discover—systematically denied that any significant Western ideas had their origins in ancient Israel, invariably crediting them to Greece instead.<sup>6</sup>)

What is the Jewish disobedience teaching which has had such a fantastic impact on the ideas of the Western democracies? It is my intention here to review those most fundamental things which many have apparently forgotten: That unqualified obedience to the state is *the* fundamentally pagan idea, the essential political teaching of the great idolatries of antiquity; that freedom of conscience and disobedience to unjust law are the *core* of the biblical political teaching, which arose as a rejection of pagan statism; and that the adoption of the Jewish disobedience teaching by the West—and the victory of the biblical principle of obedience to right over the pagan principle of obedience to the state—represents the highest triumph of the Jewish political idea in history, a triumph which allowed the West, the great bearer of this idea before humanity, to defeat the pagan Nazi state, not only militarily, but on the battlefield of ideas as well.

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## II

The biblical account of the emergence of the Jewish people begins with a refugee problem: The flight of Abraham, the first Jew, from the Mesopotamian metropolis of Ur in the very heart of the civilized world—a flight which ends with his beginning life anew, at the age of seventy-five, as a herder of goats and sheep on a stretch of land along the trade route to Egypt, the undeveloped and culturally irrelevant wilderness of Canaan. What would drive a civilized human being to flee the world of science and technology, culture and art, law and power, which Mesopotamia had been for a millennium—in short, to become a refugee from all that mankind had strained to achieve for so long—in order to carve out a harsh existence in the lawless hills and gorges of Canaan? The narrative itself tells us little about the reasons for Abraham's escape from the civilization of the Euphrates.<sup>7</sup> Yet it is clear from his turbulent stay in Egypt, which likewise results in a hasty retreat, that there is no love lost between the Hebrew patriarch and the great Nile civilization either. It is therefore no sudden distaste for the particular fetishes of Mesopotamian culture, no warrant for his arrest in the hands of the Mesopotamian police, which drives Abraham to break with the world he has known his entire life. Instead, he leaves behind the glory of the world-empires of his day because he believes that in this way he and his descendants, and with them the entire world, "will be blessed"<sup>8</sup>—a conclusion predicated on the recognition that in Mesopotamia and Egypt nothing resembling the blessing he wished for his children would ever be found. And one need only consider the civilizations which Abraham fled in order to understand that he was right.

For more than a thousand years before Abraham, the Nile and Euphrates rivers had given rise to the most advanced cultures mankind had known. The great might of these rivers had been harnessed for massive irrigation projects and a flourishing waterborne trade, allowing the rise of the Sumerian states and their successors in Mesopotamia, and of Egypt of

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the Pharaohs. Both empires, like those of China, India and Persia, engaged in public works on an unprecedented scale to increase the land available for farming, employing their entire populations as slaves for periods of weeks or months when important projects were under way. This enforced management of millions of people was considered to be a form of taxation, and necessitated the establishment of a huge bureaucracy capable of keeping records of the entire population and its contributions to the public weal. Needless to say, it also enabled the spectacular enrichment of the king and his family, as well as necessitating the creation of a colossal military apparatus capable of enforcing the impressment and defending the public works against nomadic peoples who coveted the wealth and power being built in the river valleys.

The political consequences of such wholesale efforts on the part of entire civilizations were of the first degree. In order to bring an entire empire into the service of building mammoth physical structures such as the pyramids in Egypt, the ziggurats of Mesopotamia and the Great Wall of China, every source of fear and authority which could be devised had to be brought to bear in securing beast-like submission—even where, as with these undertakings, this submission would mean the inevitable ruin of a certain portion of the people. To coerce the bodies of every person capable of physical labor, the king would employ a vast police apparatus, relying for information on the bureaucracy which read the mails and tracked legions of internal informers. While the tentacles of the state coerced the body, man's mind too was brought under heel by a religious system which ordained that the will of the gods was identical to the will of the ruler: The king was a descendant of the gods, their principal servant and chief priest, wherever he was not himself a deity. Direct evidence of the divine powers of the state was provided by the official priesthood, which generally maintained a monopoly on science, astronomy, engineering and mathematics. Besides the intimidation inherent in this control of knowledge, these skills were applied to the erection of gargantuan towers and astronomical observatories, connecting the state to the heavens in a way that was obvious to any with eyes to see. Under such

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a system, religion was nothing more or less than the cosmic ideology of the state, the intellectual and spiritual mortar which fused the masses into a single tool in the hand of the ruler. Law as issued by him was therefore a reflection of the unchallengeable law of the universe, to be obeyed on pain of an earthly hell that was but a down payment of what was coming after death.<sup>9</sup>

It follows that there was not much discussion of a right of disobedience in the ancient world. Neither in Egypt nor in Mesopotamia, nor anywhere else, did ancient mankind struggle with questions of what limits there might be to what government may require of men. And the notion that there might be a right of the individual to defy unjust law was without foundation in the thought of any people. This does not mean there were no law-breakers, of course. In every civilization there have always been rogues and thieves willing to break the law for their own gain. Likewise, every tyranny of the ancient world sired its fair share of putsches and assassinations, usually the brainchild of a would-be usurper whose concern was to bring the machinery of absolute rule under his own control. And while a successful usurpation might be rationalized as demonstrating that the new ruler had the support of heaven—and could therefore claim absolute obedience as had his predecessors—under no philosophical, moral, ideological or religious system were such actions considered legitimate *in principle*.

A cursory glance reveals that while the details varied, the great empires followed this formula for total rule with remarkable consistency. The rule of the Egyptian Pharaohs was constructed around the belief that they were the incarnation of the god Horus, as well as the offspring of Ra, the sun god, and they regularly mated with their own sisters and daughters to avoid diluting the divine blood in their veins. Pharaoh was understood to command nature, including the seasons which regulated the agricultural cycle and the workings of the heavens.<sup>10</sup> He was omniscient, and all he willed was believed to come to pass.<sup>11</sup> He was high priest, chief justice and commander of the armies and government; justice itself was defined as “what Pharaoh loves,” while wrongdoing was “what Pharaoh hates.”<sup>12</sup> For over three

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thousand years, the king of Egypt was depicted on wall inscriptions as the “smasher of foreheads,” a helpless captive being dragged along in his left hand, a mace in his right with which to crush the man’s skull<sup>13</sup>—a ruler whose word was absolute law, and who punished transgressions by cutting the nose and ears off his subjects, impaling them through the rectum, or opening wounds on their bodies. After death, the souls of Pharaoh’s subjects were believed to stand trial, accused of forty-two “sins” almost all of which were infractions of state laws, and to be torn to pieces by a crocodile-lion monster if found guilty.<sup>14</sup> The relationship of the subject to his king can be glimpsed in the words of a high Egyptian official around the time of Abraham, who wrote of the king Amenemhat III: “He is Ra whose beams enable us to see.... He brings into being him who is to be. He is the god Khnum who fashions all flesh. He is the goddess Bast who defends Egypt. Whoever worships him is under his protection. But he is [the lion terror-goddess] Sekhmet to those who violate his command.... Fight for his name, be pure for his life; and you will be free from trace of sin. He whom the king has loved will be an Honored One [in the afterlife], but there is no tomb for the rebel. His body is thrown into the river.”<sup>15</sup>

Despite the innumerable differences between Mesopotamian and Egyptian civilization, the bottom line of life along the Euphrates was much the same. The Sumerian city-states were originally organized as personal “households” of the local gods and their retainers, with much of the population living out their lives as servants in the deity’s temple, or in the palace of its chief “servant,” who was at once the earthly ruler of the city, chief justice, high priest and commander of the military. In a text from the period when southernmost Iraq, where Abraham originated, was at the height of its power, the people are told: “The command of the palace, like the command of the sky god Anu, cannot be altered. The king’s word is right. His utterance, like that of a god, cannot be changed.”<sup>16</sup> Later, the Sumerian kings came to identify themselves with Enlil, the storm god, whose essence was compulsion and terror. Sargon and the Akkadian kings likewise called themselves “king of the four regions of the world” or “king of the universe,” and some were considered gods themselves.<sup>17</sup>



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The Babylonian kings who seized the Euphrates basin in the time of the Hebrew patriarchs also asserted their kinship to Enlil, Hammurabi claiming to have been “called” by the terror god, and to have been “of the royal seed which Sin [son of Enlil] has created ... the powerful king, the sun god of Babylon who makes the light rise on the land of Sumer and Akkad, the king who brings the four quarters of the world to obedience....”<sup>18</sup> Their Assyrian rivals likewise called themselves “king of the universe,” serving as high priests of the god Ashur, whose supremacy in heaven was demonstrated by imperial conquest on earth, fuelled by annual campaigns of aggression almost without respite for three hundred years.<sup>19</sup> Foreigners standing in the way of Ashur’s universal dominion were understood to be “wicked devils,” while Assyrian citizens, including high officials, were considered the servants or “slaves” of the king.<sup>20</sup> As everywhere else, the principal virtue in Assyria was submission, which the state ensured through terror. As Erishum I, who ruled Assyria perhaps a century before Abraham, warned those who contemplated disobedience: “He who tells lies in the Step Gate [i.e., the Assyrian government building], the demon of ruins will seize his mouth and his hindquarters; he will smash his head like a shattered pot; he will fall like a broken reed and water will flow from his mouth. He who tells lies in the Step Gate, his house will become a house of ruin.... He who obeys me when he goes to the Step Gate, may the palace deputy assist him.”<sup>21</sup>

After the Persian conquest of Babylonia and Egypt, Darius similarly claimed divinity for Persian laws.<sup>22</sup> And in India, the divinity of the king was an unquestioned tenet of Hinduism.<sup>23</sup> The Hindu king had sole authority to make law or repeal it as he saw fit,<sup>24</sup> and his religion taught the absolute necessity of the terror with which he ruled over his subjects: “The whole world is kept in order by punishment.... If the king did not, without tiring, inflict punishment on those worthy to be punished, the stronger would roast the weaker like fish on a spit: The crow would eat the sacrificial cake and the dog would lick the sacrificial viands, and ownership would not remain with anyone, and the lower ones would usurp the place of the higher ones.... Punishment alone governs all created beings, punishment

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alone protects them, punishment watches over them while they sleep.... Punishment is ... the king."<sup>25</sup> In China the emperor was the "Son of Heaven," signing his correspondence: "The most powerful of all monarchs on this earth, who sits on the Dragon Seat to expound the word of God."<sup>26</sup> Believed to be ruler of the entire earth, he maintained a monopoly on executive, legislative and judicial authority, in addition to performing all major religious rites on behalf of the people.<sup>27</sup> Living roughly a millennium after Abraham, Confucius enshrined the principle of obedience to the ruler as a cardinal virtue in Chinese philosophy and religion; while he granted that government officials were supposed to judge the actions of the king, even resigning in protest, all others were to be "made to follow" the law for lack of understanding.<sup>28</sup>

In pre-democratic Greece, the king was considered to be of divine origin and was also the chief priest.<sup>29</sup> His godly powers were described by Ulysses as bringing forth wheat from the earth and fruit from the trees, as well as inducing the sheep in the fields and the fish in the sea to multiply without bound.<sup>30</sup> It is true that some of the Greek city-states for a period managed to rid themselves of the institution of the king, but these "democracies" were nevertheless absolutist states in the full sense. They contemplated virtually no limits on the power of government over non-citizens, who were always the great majority of the population, and these were brutally tortured if suspected of disobeying the laws of the state;<sup>31</sup> and citizens, too, could suffer unchecked cruelty if, as in Socrates' case, their fellow citizens felt they had misbehaved. Moreover, whatever wisps of a disobedience teaching one may have been able to detect among particular Athenian thinkers were doomed to leave no trace of an influence on Greek civilization: No religious or political tradition of a right of disobedience ever emerged, and any hope of such a tradition was destroyed root and branch with the relapse of Greece into totalitarianism under Alexander of Macedon. Alexander, like the other world-emperors of antiquity, claimed to have been descended from the gods. He referred to his father, King Philip, as "my so-called father," and when a friend chided him for his disrespect, Alexander

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remedied the situation by thrusting a spear through his stomach.<sup>32</sup> After the dissolution of Alexander's empire, both of the rival dynasties, the Seleucids and the Ptolemies, claimed absolute authority in both secular and religious matters.<sup>33</sup>

Roman tendencies toward worship of the emperor go back to the earliest kings of Alba and Rome, who declared themselves to be descended from Jupiter.<sup>34</sup> And despite the existence of a republic with an extended patrician citizenship (as in the Greek city-states, an absolutist oligarchy leaving the vast majority without rights against the state), by the time of Julius Caesar the idea of the ruler's divinity had returned to the fore. It was officially adopted under Augustus, and those refusing to participate in the imperial cult were put to death.<sup>35</sup> The power of the emperors rapidly became perfect, and perfectly arbitrary. According to the Roman historian Dio Cassius, the emperors were able "to collect taxes, to declare war or peace, to rule citizens and foreigners alike, always and everywhere, even to the extent of condemning senators and equites to death.... By virtue of holding the office of Censor they were able, apart from conducting the census, to investigate our private lives and morals, to enroll or expel senators and knights. By virtue of being chosen as High Priest ... the Emperor came to concentrate in his own hands all power, both sacred and profane."<sup>36</sup> Indeed, senators were killed by the emperor for smiling at the wrong time, or for an ill-advised silence. The emperors were called by the titles God Manifest, God and Master, Savior, Benefactor, Creator.<sup>37</sup> Virgil and Horace, the great Roman poets, were no better, lauding the emperor Augustus in similar terms.<sup>38</sup> In the face of the demonic rages of Emperor Nero, the moral spine of Stoic philosophy collapsed like a house of cards, the leading Stoic philosopher, Seneca, becoming no more than an apologist for the psychotic despot's power lust.<sup>39</sup> And Justinian's *Institutes* codified the principle that "the whim of the prince has the force of law."<sup>40</sup>

These words were set down two thousand years after Abraham's escape from Ur, yet even then the ideas that were promulgated and preached, sung and dreamed from one end of humanity to the other, remained at root

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unchanged. Everywhere, philosophy and religion joined hands with the threat of physical annihilation to ensure that wherever a different thought, a different truth and a different way might come forth, it would be stillborn. And it was this stillborn world from which Abraham became a fugitive. An old man when finally his searches were answered and his way clear to him, he turned his back on this cosmos of slave labor and terror gods, claiming as his own a rough piece of high-ground where he could shake off the yoke of what man had achieved. It was here, in Canaan, that Abraham and his children's children, shepherds all, learned to gaze deep into their desert world and the night sky beyond it, free from the corrupt will of corrupted men, seeking right. The Bible is the story of this decision, and its consequences for mankind.

### III

**I**n all of antiquity, the Hebrew Bible is the single document that consistently advances the essential ideas which comprise the contemporary belief in "civil disobedience," unequivocally articulating principles which, when they were first advanced, were alien to the entire world: That there is an absolute of right and wrong that transcends the decrees of the state; that the state has no right to rule if it rules unjustly; that conscience and not the state must be the ultimate arbiter of the actions of every man; that individual disobedience is justified and obligatory in the face of state injustice; and that resistance and even the overthrow of the state are justified and obligatory in cases of unbearable tyranny. Indeed, the biblical narrative consists in large part of explicit indictments of both Jewish and non-Jewish governments for the injustice of their laws and the unjust behavior of their rulers—accounts in which those who are capable of acting independently and offering resistance are in every case depicted as the heroes.

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Remarkably, this message of Jewish resistance to state idolatry and injustice has been consistently misread and ignored by those—both opponents of religion and its “friends”—who have sought to characterize the Bible as a book of submission. Such interpretations invariably point to Abraham’s willingness to sacrifice his son Isaac at God’s command.<sup>41</sup> But this reading distorts the plain import of the text, which is that Abraham was willing to sacrifice that which was most precious to him in the world, the son for whom he had waited all his life, in the service of a higher cause. The call for submission to God does not in any way connote a call to submit to *human* authority; indeed, it is the exact opposite. For God’s will in the Bible can be considered similar to what is referred to in secular terms as higher law or universal justice. To equate obedience to the dictates of justice with obedience to injustice is to miss the point of the entire Bible, which is that the individual must obey only the dictates of moral truth, even when these violate the dictates of the state.

The background for the disobedience teaching of the Jewish Bible is its message of individual moral responsibility, which is the cornerstone of the Jewish faith. Unlike the heroes of other ancient narratives, the figures of the books of Moses are neither royalty nor nobility; nor, after the fashion of modern literature, are they democratic figures at the bottom of the social structure. Instead, Abraham and his descendants are shepherds, who view civilization from outside, looking down from the hills at the doings of society and state as they chart their own independent course through the wilderness. The splendor and lies of urban life are of little worth to them; even less so the beast-life of the farmers in the valleys, living out their days in toil that they may provide their human lords with bread. Indeed, when the Jews later dream of returning to Canaan from their Egyptian prison, it is to “a land flowing with milk and honey” that they long to return<sup>42</sup>—a land of sweet freedom and the shepherd’s life, rather than one of grain and enslavement. For in Canaan, Abraham and his people have found what is more precious to them than all else, political and ideological independence: Political independence in that they live as nomads, ungoverned, their labor

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and their property and their actions unregulated and untaxed by anyone other than themselves; ideological independence in that their vantage point and the freedom of their work allow them to focus on what truly matters: The proximity of all men to danger, error and death, and the consequent responsibility they must take for discovering the true course and acting on it.

The degree to which the Bible values conscience as the very heart of such moral independence is dramatized perhaps most forcefully by the fact that the biblical heroes do not, as might have been expected, submit passively even to the will of God: Abraham, the first Jew, is depicted as a man with the conscience and strength to challenge God himself: “Will not the judge of all the earth do justice?” he argues before the divine decree against Sodom, and God himself accepts the argument.<sup>43</sup> Moses, the archetypal Jewish national and religious leader, argues with God and alters the course of his judgments.<sup>44</sup> And, in case the message is somehow missed, the books of Moses inform us that the very name of the Jewish people, Israel, is derived from this most crucial of qualities, the ability to struggle with the world as it has been decreed: “Your name will no longer be Jacob, but Israel, for you have struggled with God and with men and have prevailed”—Israel meaning “will struggle with God.”<sup>45</sup> What in other cultures would have been sacrilege is therefore elevated into a national symbol and the crux of Jewish belief: The refusal of the shepherd-hero to accept the order of the universe as it has been ordained, and the demand of his conscience to know why it cannot be improved.

The suspicion of the worldly order of states and rulers can be felt as a common thread running through the entire biblical narrative, beginning with the earliest reference to them, the description of the Mesopotamian ruler Nimrod: “He began to be mighty on the earth. He was a mighty hunter before the Eternal”<sup>46</sup>—that is, a man of spirit, power and violence. The narrative then presents the results of the accumulation of power in the hands of the Mesopotamian state: The construction of “a city, and a tower reaching to the sky, and we will make a name for ourselves.”<sup>47</sup> From the per-

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spective of the shepherd, the establishment of the tyrannical world-empires and their monuments of ego and stone is in its essence vanity, the pursuit of glory and power to no productive end, and God is subsequently depicted as dividing the Mesopotamians into disparate nations and scattering them abroad—the none-too-subtle message being that this is the fate of all states built on the craving for fame and power. The same wariness of earthly rulers appears in the stories told of the Jewish patriarchs who, with uncanny consistency, are each introduced in terms of their resistance to the worldly powers of their time and place. Other than his actual arrival in Canaan, the first event we learn of in Abraham's life is thus his resistance to the will of the Egyptian Pharaoh, whom he has reason to fear will murder him to take his wife.<sup>48</sup> A similar account has Isaac deceiving a Canaanite king; later, when he finds his father's wells being destroyed by the same local ruler, we are told that he resists the ruler by redigging one well after another.<sup>49</sup> Likewise, when Jacob travels back to Canaan, the first event reported is his purchase of a plot of land on which to encamp, a peaceable act which ends with his daughter Dina being raped by the local prince—in response to which Jacob's sons Simeon and Levi destroy his city and all its inhabitants.<sup>50</sup> Perhaps most tellingly, it is as a result of the Hebrew shepherds' greatest misdeed—the plot to murder their brother Joseph—that they receive the ultimate punishment: They are forced to come under the totalitarian rule of the Egyptian Pharaoh.

The subsequent story of the Jews in Egypt is a paradigm of resistance to oppressive government, to which resisters and revolutionaries throughout history have turned for inspiration. Like the other tales of the books of Moses, this one opens immediately with an act of resistance against the state. The Egyptians have come to fear the strength of the foreign Jewish population, and Pharaoh determines to submit the Jews to slavery—the making of the bricks with which he builds his edifices—in order to strip them of the capacity to rise up against him. Having done so, he then summons the Jewish midwives and orders them to kill every male child born among the Jews, the intention being to absorb the women into the Egyptian population

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and so eliminate the Jews as a people. But the midwives, Shifra and Pu'a, refuse the command:

But the midwives feared God and did not do as the king of Egypt commanded, keeping the children alive. And the king of Egypt called in the midwives and said to them: "Why have you done this thing, keeping the children alive?" And the midwives said to Pharaoh: "Because the Hebrew women are not like the Egyptian women, but vigorous, and they give birth before the midwives can arrive."<sup>51</sup>

Seeing that the midwives will not cooperate, Pharaoh seeks a different method of enforcement, ordering his people to slaughter any Jewish boy that is born. Jochebed, a woman from the tribe of Levi, decides she must resist the law, giving birth in secret and hiding her son for three months as the killing of the other Jewish babies takes place all around her. When she cannot hide the child any longer, she sets him adrift on the Nile, hoping for a miracle. And she receives one: Pharaoh's daughter, finding the ark and pulling the baby from the water, immediately understands what has happened, and decides that she, too, will risk her life for the child by violating her own father's decree—in so doing, according to the later rabbinic tradition, becoming a Jew in that she renounces her servitude to the state-idol to do what is right.<sup>52</sup> Jochebed's daughter Miriam is also implicated: Standing by the river and watching the entire scene, she asks Pharaoh's daughter if she would like a Jewish wet nurse for the child. She brings Jochebed, who cares for the boy until he is weaned and adopted by Pharaoh's daughter as a son.<sup>53</sup>

It is by means of this conspiracy that two Jewish women and an Egyptian princess defy the Egyptian law and together manage to save a single Jewish boy from the holocaust: Moses. Neither does the narrative leave any question as to what kind of an education the Levite child received from Pharaoh's daughter. Before we learn anything else about Moses as a grown man, we find that he, too, is unafraid to shatter the Egyptian law for the sake of what he believes to be right: "It came to pass that when Moses was



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grown, he went out to his brothers and saw their suffering; and he saw an Egyptian man beating a Hebrew man, one of his brothers. He looked this way and that, and when he saw that there was no man, he slew the Egyptian and buried him in the sand.”<sup>54</sup> Although raised in Pharaoh’s court, there is no question that Moses retains his shepherd’s eye for resistance, and it is this, no less than his upbringing as a leader among the Egyptian nobility, that prepares him to become the first political and religious leader of the Jewish nation—and the one who will lead them to revolution.

Having fled Egypt for fear of the king’s anger, Moses becomes a shepherd like his forefathers. It is while tending his flock in the wilderness that he has his first encounter with God, an encounter which sends him back to Egypt seeking an end to the oppression of his people. The grueling rounds of Moses’ confrontation with Pharaoh—each punctuated with the demand that the Egyptian king “let my people go, that they may serve God”—are the mold from which is cast the entire subsequent tradition of the Hebrew prophets and the unprecedented belief in their authority to chastise the wielders of state power. Of course, the Jewish slaves are not necessarily built for such a bruising battle, and some of their leaders even blame Moses for the wrath which is visited upon them.<sup>55</sup> Nevertheless, Moses does not end up with sole responsibility for the revolution when it comes: Before the Jews gain their freedom from Egypt, on the night of the final plague, Moses requires that every one of them publicly defy the state by slaughtering a sheep, the god of Egyptian might, roasting and eating it “so that nothing remains of it in the morning,” and then smearing its blood on the doorposts of the house for all to see. It is made clear, moreover, that only those who do so can expect salvation and freedom.<sup>56</sup> In this way, disobedience, by which Moses came into the world, also becomes the act by which each Hebrew slave turns his back on the house of worldly power and accepts the higher law which makes him a Jew.

One of the most overt of the disobedience teachings in the books of Moses is the story of Balaam, to which the narrative of the wanderings in the desert devotes a full three chapters. Balaam is a non-Jewish seer who is

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summoned by the king of Moab to curse the Jews, in return for which the king offers to promote him to great honor and power. But Balaam responds that right and wrong take precedence over worldly inducements: “Even if Balak [the king] were to give me all of the silver and gold in his house, I would not be able to transgress the word of the Eternal, my God, in anything small or great.”<sup>57</sup> And in fact, despite repeated orders and rantings from the king, the seer nevertheless refuses to issue anything but blessings for that which he believes should be blessed.<sup>58</sup> Even more graphic is the accompanying tale of Balaam and his donkey, which serves as an allegory for the confrontation with the king. In this narrative, Balaam is riding on his donkey, when his way is blocked by an angel with a sword seeking to kill him. Balaam cannot see the angel, but the donkey can, and it repeatedly disobeys his commands to take him towards his doom—despite a series of blows from its master. Finally, the donkey revolts completely, lying down in the road and refusing to move. Then:

The Eternal opened the donkey’s mouth, and it said: “What have I done to you, that you have beaten me these three times?” Balaam said to the donkey: “You have made a fool out of me. Would there were a sword in my hand so I could kill you.” The donkey said to Balaam: “Am I not your donkey, which you have ridden all your life until this day? Have I ever done such a thing to you before?” He said: “No.” Then the Eternal opened Balaam’s eyes, and he saw the angel of the Eternal standing in the way with a sword drawn in his hand.<sup>59</sup>

The point is that the ruler, blinded by his habit of being obeyed, may at times be unable to see that his course is suicidally misguided, even when this fact is readily apparent to any jackass. In such a case it is the right and duty of even the humblest of servants to disobey and do what is right, saving the ruler from the consequences of his own policies.

This suspicion of ruling authority pervades the thought of the Jews even once they have entered Canaan and have no choice but to wield political power themselves. The first effort on the part of the Jews to erect a

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centralized state fails because Gideon, whom they have chosen to be king, refuses to take part, declaring: "I will not rule over you, and my son will not rule over you. The Eternal will rule over you."<sup>60</sup> Only after further generations of civil war and humiliation on the battlefield does the determination of the Jews to establish a strong centralized state such as those of other nations reach an irresistible pitch, and even then the people find themselves opposed by the prophet Samuel, who objects to the state on account of the oppression that will inevitably follow such an accumulation of power:

And Samuel told all the words of the Eternal to the people who asked him for a king. And he said: "This will be the custom of the king who will reign over you: He will take your sons and post them for himself on his chariots. And he will appoint officers over battalions and officers over platoons, and he will set them to plowing his ground and reaping his harvest, and to making his instruments of war. And he will take your daughters for perfumers and cooks and bakers. And he will take your fields and your vineyards and your best orchards and give them to his servants. And he will take a tenth of your seed and of your vineyards to give to his officers and to his servants. And he will take your male and female servants and your best young men and your asses and put them to his work. He will take a tenth of your sheep, and you will be his servants. And you will cry out on that day because of the king that you have placed over you; and the Eternal will not hear you on that day." But the people refused to heed Samuel's warning, and they said: "No, we will have a king over us so we may be like other nations: That our king may judge us and go out before us and fight our battles."<sup>61</sup>

The book of Samuel's account of the founding of the first Jewish state amounts to a "social contract" theory like that of Hobbes or Locke, but one which posits that government, an institution inevitably built on expropriation and coercion, is inherently flawed: Samuel warns that despite the benefits that the state may offer in the form of law enforcement and victory on the battlefield, it is perforce an instrument of coercion whose

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aggrandizement and success will be at the people's expense—just as was the case under the imperial states they had fled.

Although the Jews ignore Samuel's warning, crowning Saul as the first king of Israel, and even securing divine acquiescence for the erection of a Jewish kingdom, the spirit of Samuel's critique is accepted nonetheless. From the outset, the Jewish tradition had insisted that the ruler is no god, and that his absolute rule is unacceptable. The books of Moses themselves had laid down laws specific to the Jewish king, limiting his right to amass wealth and luxury, and insisting that the duration of his rule was dependent on his adherence to God's law:

But he should not acquire many horses for himself... Neither should he acquire many wives that his heart not turn away, nor should he acquire great quantities of silver and gold. And when he has ascended to the throne of the kingdom, he should make a copy of this Teaching in a book, from that before the Levite priests. It should be with him, and he should read from it all the days of his life, that he may learn to fear the Eternal, his God, to keep all the words of this Teaching and observe these statutes, that his heart may not be lifted up above his brethren, and that he not turn away from the commandments, to the right or to the left, in order that he may prolong his days over his kingdom, he and his children in Israel.<sup>62</sup>

And in subsequent accounts, the narrative repeatedly emphasizes the Jews' rejection of the laws of their own kings when they deem them unjust. In one case, Saul orders his men to fast in preparation for battle with the Philistines and threatens death should anyone disobey. When his son Jonathan is found to have violated his decree, Saul orders him executed for transgressing his law, but the king's men reject his authority to issue such an order:

And Jonathan told him, saying: "I tasted some honey with the end of the staff that was in my hand; therefore I must die." And Saul said: "So will God do and more. For you will surely die, Jonathan." And the people said to Saul: "Is Jonathan to die who has brought this great victory to Israel?"

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Absolutely not. As God lives, no hair will fall from his head, for he has done God's work today." So the people rescued Jonathan, and he was not killed.<sup>63</sup>

Similarly, when Saul determines to have David killed, it is Jonathan and his sister Michal who resist the dictates of their father in order to save his life.<sup>64</sup> Thus Saul may have been king, but it was in a very different sense from the kings of other nations: The lives of his subjects were never his playthings, and if his laws were not just, he would quickly find his own people lined up to oppose him.

Indeed in the biblical histories, it is precisely the inability of the Jewish kings to accept the limits of their own authority which is recorded as the cause of the downfall of the Jewish state. When Solomon succeeds David, it is once again "the people," led by the prophet Nathan, who are recorded as accepting Solomon's rule over that of his rivals;<sup>65</sup> a Jewish king cannot hope for greater legitimacy than to begin his rule with the support of the prophet and the people. Yet Solomon's worldliness and wisdom translate into a fluency in the ways of the despotic ancient world: He wins diplomatic success by keeping a harem of a thousand women, might through accumulating tens of thousands of horses, prestige by drinking from gold and being seated on gold, and becomes a great builder at the expense of imposing a labor tax on his subjects as did other oriental kings<sup>66</sup>—in short, violating nearly every constraint on Jewish kingship brought down in the books of Moses. In the end he succumbs to the political temptation to honor foreign gods as well, and right gives way to corruption in the Jewish kingdom as everywhere else.<sup>67</sup> And when the people come to Solomon's son, Rehav'am, to implore him to ease the burden that the state has imposed on them, he answers with the distorted voice of the terror state: "My father burdened you with a heavy yoke, and I will add to your yoke; my father chastised you with whips, but I will chastise you with scorpions."<sup>68</sup> At this rejection of the Jewish concept of limited kingship, the narrative reports how the people kill the king's tax collector and reject his reign, creating a breach in Solomon's state which robs it forever of the splendor and power it has attained.

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But disobedience before unjust authority was not just a fact of the early Jewish kings' relations with their people. It was an institution of Jewish life throughout the period of the Jewish kings: The institution of prophecy, whose role was to declare the message of the deity in *opposition* to the actions of the king, his officers and the official priesthood. In this way, by publicly denouncing that which other nations endured in silence, the prophets sought to maintain—despite the establishment of a Jewish state—that freedom of unintimidated conscience, and that heritage of moral resistance, which had been bequeathed to the Jews by their shepherd forefathers.

Thus Isaiah speaks of a time when the devastation of the land will reduce the people once again to the “butter and honey” of life as a herdsman, and similar images are used by Jeremiah and Hosea—sometimes as longings and sometimes as threats.<sup>69</sup> Yet far from advocating an actual return to a life in tents, what the prophets sought was to inculcate an understanding of the truth in Samuel's teaching concerning the state: That the power of the state draws its legitimacy only from the good that it does; if its outcome is evil, men can and should live without it.

Of course, the prophets did not draw from this the conclusion that the state should risk dissolution over every wrong done; on the contrary, in most of the celebrated confrontations between the prophets and the Jewish kings, the intention was to humble the ruler and bring the behavior of the state back into line, thereby strengthening its claim to rule rather than undermining it. Such was the case when Nathan accused King David of arranging the death of one of his subjects in battle that he might have his wife; such too was the case in Elijah's crusade against the abominations of Ahab.<sup>70</sup> But some of the great prophets did in fact draw the ultimate conclusion when faced with irreparable tyranny and corruption, organizing active disobedience against the Jewish kings and even plotting revolution. Thus when Saul's rule becomes intolerable, the prophet Samuel declares David his successor, in effect overthrowing the ruling line.<sup>71</sup> The prophet Elisha goes further, pronouncing Jehu king during the villainous rule of Jehoram and Jezebel, thereby touching off the execution of the royal family and its priesthood.<sup>72</sup>

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Similarly, when the prophet Jeremiah believes that Jerusalem is about to be destroyed because of the suicidal policies of Zedekiah's government, he calls for the people to disobey the law and go over to the Babylonian enemy.<sup>73</sup>

Nor does the Jewish tradition of opposition to state injustice end with the destruction of Jerusalem. The biblical history of the Jewish nation closes with the exile of the Jews into Babylonia and then Persia, a turn of events which might have been expected to temper Jewish enthusiasm for uneven fights with authority. It is remarkable that even the biblical books which describe the period of Jewish humiliation and exile in Babylonia and Persia, are as unabashed as their predecessors in advocating disobedience: In the book of Daniel, three Jewish servants of the Babylonian king, Hanania, Mishael and Azaria, brazenly defy the law of the state requiring them to prostrate themselves before a gold statue, telling the king: "O Nebuchadnezzar, we have no need to answer you in this matter. For our God whom we serve is able to deliver us.... But even if he does not, let it be understood, O King, that we will not serve your gods, nor worship the golden image you have erected."<sup>74</sup> Daniel himself later refuses a similar order to worship the Persian king Darius, although the price of his disobedience is to be thrown to the lions.<sup>75</sup> The book of Esther is even more aggressive, not only sanctioning the violation of unjust laws, but establishing the effectiveness of abrogating other state laws in the pursuit of right. Thus Mordechai's repeated refusals to obey the king's edict and prostrate himself before the tyrannical vizier Haman<sup>76</sup> are only the opening rounds in a campaign against the king's edict to destroy the Jews—a campaign which includes an illicit court appearance by Mordechai in mourning attire,<sup>77</sup> his incitement of Esther to enter the throne room unsummoned despite the prohibition against such appearances,<sup>78</sup> and finally Esther's two separate decisions to break this law and come before the king to plead for her people, saying: "I will go into the king, though it is against the law, and if I perish, I perish."<sup>79</sup> Through their willingness to violate the law at the risk of their lives, Mordechai and Esther eventually manage to depose the vizier, legalize the arming of Jews throughout the empire, and conduct a violent purge of Haman's supporters

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which finally succeeds in lifting the threat of annihilation hanging over their people.<sup>80</sup>

The biblical history of the Jewish nation thus closes with Esther's disobedience, through which the Jews are saved from destruction—much as it begins with their being saved by the disobedience of Shifra, Pu'a and Jochebed. In between, the Hebrew Bible covers a period of nearly a thousand years of the history of the first Jews—as individuals and as a people, in their own land and in exile. And throughout this entire period, in all cases and in every possible context, its message was unambiguous: The laws of men can bind only when they are just. When they are not, the Jew, and every man, is obliged to break the law.

And it was this spirit, too, which animated the subsequent course of Jewish history—from the revolt of the Maccabees against the state-religious edicts of the Seleucid Greeks roughly three centuries after Esther, through the bitterest days of resistance to Roman rule, and on into the crystallization of the rabbinic tradition demanding disobedience to state laws which collide with the higher law. Indeed, never in the history of the Jewish tradition has the concept of disobedience in the face of the injustices of the state been challenged, and it remains as valid today as in the time of Abraham.<sup>81</sup>

#### IV

The fusion of the roles of king and high priest throughout the ancient world ensured that the dictates of government were everywhere considered identical with the dictates of justice. By contrast, the fundamental Jewish political innovation, and that which ultimately separated ancient Israel from the nations, was the understanding that no earthly power, no matter how well guided, can be the final measure of right and wrong. The



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prophets drew a line which had never been drawn before, declaring the king, whether he was God's anointed or not, to be only human, his actions prone to error and evil like those of any human being, and that there was nothing the state or its official priesthood could do to make an injustice right.

But the prophets, while wielding none of the institutional trappings of power, were not entirely powerless. The function which they undertook in Israel—to critique the state, to expose its excesses, to rally the people to oppose and violate unjust laws, and, in the extreme case, to take the lead in seeking the removal of evildoers from power—was supported by their unique status within the Jewish tradition as the guardians of the truth in the face of power, the first “watchdog” group. It was the support for this *institution* of the prophet among the populace, the recognition of what we would today call its “constitutional” standing, both in the marketplace and in the palace, which gave it the power it needed to persist from one generation to the next, sometimes in the face of merciless opposition from the king. And while it was never exactly safe to be a prophet in Israel, this “constitutional” status within the Jewish polity was sufficient to afford those individuals who determined to say the truth aloud a degree of freedom—freedom of speech, assembly and religious and political doctrine—never before mustered under any regime on earth. It was the institution of prophecy among the Jews which was the origin of the Western concept of freedom of conscience.<sup>82</sup>

Yet despite the repeated and overt calls for resistance against state injustice in the Hebrew Bible, scholarship on the subject has rarely sought to trace the disobedience teaching to its biblical source. Without being aware of it, most contemporary writers draw their understanding of the history of political ideas from nineteenth-century German historiography which, following Hegel—and often sliding into shameless anti-Semitism—sought to show that virtually anything of value which has come down to the West is directly descended from Greek philosophy;<sup>83</sup> the Hebrew Bible, on the other hand, “whose basic premise may be said to be the implicit rejection of philosophy,”<sup>84</sup> has been dismissed categorically as having been without

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significant influence. But in the case of the idea of disobedience, the Jewish influence is so in evidence—and any other possible competing claim so forced—that were this not the standard history, one would have to dismiss it as ludicrous.

In seeking the intellectual source for disobedience theory, writers generally turn to Greece, where three sources are mentioned again and again: Socrates, Aristotle and Sophocles' fictitious heroine, Antigone. These are sometimes said to have influenced the Roman thinker Cicero, who in turn inspired resistance theory to develop in the Church; some writers even skip the Church entirely, and go directly from Roman thought to Locke—in 1690 C.E.<sup>85</sup> But an interrogation of the Greek sources proves them to be devoid of unequivocal disobedience teachings, even as individual cases, and certainly to offer nothing similar to the vast tradition of disobedience embodied in the political institution of the Jewish prophets.

One must turn first to Socrates, whose systematic public humiliation of Athenian fetishes in his quest for truth is one of the great legacies of intellectual independence and courage bequeathed to mankind. Nevertheless, a crusader for disobedience he was not. Socrates spent almost his entire life within the confines of the city of Athens, and his relationship to that city was diametrically opposed to that of the Jewish shepherds, whose view of civilization was from the outside: That is, Socrates never swerved from the quintessentially Athenian view that the just man recognizes that he owes everything to the city-state—and submission to its laws, even if they be unjust, most of all. The great drama of Socrates' trial at the hands of his fellow Athenians, who charge him with heresy and "corrupting the youth," is a case in point. What Socrates actually did during his life was to teach the youth of Athens to see the city and its institutions critically and with brutal honesty, a calling not dissimilar to that of the prophets in Israel, and one which Socrates clearly did not believe to have been in violation of any law. On the contrary, at his trial he argues that Athens should be grateful for this service, and proposes that the city should pay him a stipend to pursue it. The Athenians are unimpressed by this proposal, and by a narrow margin

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the court sentences Socrates to death, a decision which resembles the injustices of Jewish kings depicted in the Hebrew Bible—Saul’s decision to have Jonathan killed for violating his law, or his murderous campaign against David, or Ahab’s vendetta against Elijah, all readily come to mind. As in the biblical narratives, Socrates receives moral support from individuals who believe the ruling of the state to have been unjust, and who offer to help him flee Athens rather than die at its hands. But whereas in the Bible these efforts to avert injustice are lauded and rewarded—Jonathan is saved by an open confrontation between his supporters and the king; David and Elijah both succeed in fleeing into the wilderness—Socrates refuses to accept assistance and escape the country. Instead, he takes the hemlock handed him by the jailer, servant of the state, and drinks it himself.<sup>86</sup>

In Plato’s *Crito*, Socrates explains his reasons for obeying the unjust command of the Athenian state, by envisioning the accusation that the laws themselves would level against him, should he choose to harm them by escaping execution. In a discourse which constitutes one of the classic *rejections* of disobedience on record, the laws of Athens tell Socrates:

Could you, in the first place, deny that you are our offspring and servant, both you and your forefathers? ... Do you think you have [a] right of retaliation against your country and its laws? That if we [i.e., the laws] undertake to destroy you and think it right to do so, you can undertake to destroy us, as far as you can, in return? ... Is your wisdom such as not to realize that your country is to be honored more than your mother, your father, and all your ancestors, that it is more to be revered and more sacred, and that it counts for more among the gods and sensible men, that you must worship it, yield to it and placate its anger more than your father’s? You must either persuade it or obey its orders, and endure in silence whatever it instructs you to endure, whether blows or bonds, and if it leads you into war to be wounded or killed, you must obey. To do so is right.... Both in war and in courts and everywhere else, one must obey the commands of one’s city and country, or persuade it as to the nature of justice.<sup>87</sup>

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Far from being a disobedience theorist, Socrates was in fact an unflinching supporter of the pagan idea that man is the “offspring and servant” of the state, and therefore must give up his life at the state’s request, even if the request be unjust.<sup>88</sup>

Aristotle is often mentioned in discussions of disobedience theory for his belief in an objective natural law to which state law should in theory conform. But as far as the Jewish claim of a right to disobey unjust law, Aristotle betrays no sympathy for it in either his works on politics or ethics. On the contrary, so committed was he to the Greek notion of the sanctity of the laws of the state, that he found it difficult to accept that even rulers should seek to alter them for the good of the city.<sup>89</sup> In fact, the source of the myth that Aristotle supported the concept of disobedience is in his *Rhetoric*, in which he advises lawyers that if they have “no case according to the law of the land,” they may nevertheless be able to win their case by arguing that the law is unjust<sup>90</sup>—a utilitarian piece of wisdom which offers nothing in terms of an a priori right to disobey the law. The same can be said for the Roman Stoic thinker Cicero, who in the first century B.C.E.—five centuries after the great Jewish prophets—actually did go so far as to argue that an unjust law did not properly deserve to be regarded as law; he therefore supports empowering the courts to sidestep the written rule in such cases.<sup>91</sup> But regarding an individual right of disobedience before state injustice, Cicero too is silent.

In fact, in the eight-hundred-year history of Greco-Roman antiquity before Christianity, *Antigone*, the third play in Sophocles’ Oedipus trilogy, stands out as the single genuine exposition of the case for disobedience before state injustice. In the tragedy, the king orders that Antigone’s dead brother, who is a traitor, be deprived of burial as a sign of disgrace. Antigone argues that the customary laws of the city demand that he be buried, and proceeds to bury him herself. It is typically Greek that while Antigone is depicted as being clearly in the right in defying the king’s decree, she nevertheless ends up paying for her heroism with her life—in stark contrast to the dramas of the Hebrew Bible, in which defiance of injustice is generally

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depicted as having a good chance of being carried out successfully. Typically Greek, too, is the fact that Antigone disobeys the king *in order to obey the law of the state*. Indeed, Athenian thought was so immersed in the belief that the just life consists of participating in the life of the city-state that even a radical work such as *Antigone* found the question of disobedience to the laws themselves untouchable. Only in cases where the ruler was himself in clear violation of the customary laws of the city could the question treated in *Antigone* even arise.

But as for the question of whether an individual may defy the state and its laws on the grounds of conscience—whether, for example, *Antigone* would have been right to go about freeing the slaves of Athens when the laws clearly forbade such an action—this issue was never raised by Greek thought. Justice was, for the Greeks, not determined by any conception of right independent of the state, but was itself possible only within the state. The result was that, as in the rest of the ancient world, disobedience to the Athenian state was held to be the ultimate ingratitude, and could hardly merit the name “justice.” In the absence of a separation of the sphere of right from that of worldly power, which was achieved in Israel through the independent “constitutional” standing of the prophet, the Greek moral sense remained stunted, unable to break free of the smothering gratitude each citizen felt towards his parent and creator, the city-state.

## V

Yet if disobedience to unjust laws is not a Greek idea—if it did not, as is claimed, follow a philosophical highway leading inexorably from Athens to Rome to the modern West, and instead originated in the thought of the Jews—how is it that such a revolutionary idea has come to be a cornerstone of the Western political heritage? How, indeed, did the decision

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at Nuremberg become possible? The answer lies in the thousand-year history of the Western mind's encounter with the Christian Church, which, despite the circumstances of its birth, eventually came to see the Hebrew prophets as the central model for its relationship to worldly rulers and their states.

Christianity arose in a world that was particularly inhospitable to Jewish ideas of individual disobedience to the state. Rome had become a world empire, succeeding the tyrannies of the Hellenistic Macedonian and Seleucid empires. It was now headed by a god-emperor like all the imperial tyrannies that had preceded it, any question of the rights and liberties of citizens all but dead. The state of the Jews, the last independent Mediterranean people, had been ruthlessly suppressed, and continued talk of defiance looked to be so much foolishness. But at the frontiers, the barbarian hordes moved and chafed, probing for the fault-line in the Roman defenses they knew they would one day find. The dread of the Emperor came to be regarded as the last hope of preventing the final collapse of civilization—and the arrival of far worse.

By the time that Christianity arose as a force, any aspect of Greco-Roman thought which might have been interpreted as allowing for individual resistance had been dead and unmourned for hundreds of years. Hellenistic political thought had jettisoned the individualistic implications of democratic Athens centuries before, and had largely reverted to promulgating theories of the ultimate beneficence of the dictator, whose power and wisdom were considered the sole forces by which society could be saved from its various afflictions. Thus in his *De Clementia* we find Seneca serving as a mouthpiece for that Roman emperor-god which presumes to be lord over life on earth: "All those many thousands of swords which my peace restrains will be drawn at my nod; what nations shall be utterly destroyed, which banished, which shall receive the gift of liberty, which have it taken from them ... this is mine to decree."<sup>92</sup>

It was under such conditions of complete submission to authority that Jesus' apostles rose to preach, their teachings adapted to a universal audience

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beset by a universal loss of hope. Certainly, some of the Jewish character of the early Christians was well in evidence in the New Testament writings, with many fundamentally Jewish ideas, such as the existence of a truth transcending the dictates of earthly power, remaining thankfully intact. But the political ideas of the Hebrew Bible could not be taught without being substantially revised. Rome was no Jerusalem—and the emperors were no Jewish kings, ready to suffer the indignities heaped upon them by the independent institution of the prophet. With the most powerful minds of the Roman world singing paeans to the atrocities of Tiberius and Caligula, the harassed and persecuted Christian sect was in no condition to take to the marketplaces and challenge state authority. No longer did Jewish promises of salvation in this world have much appeal; and the apostles began to speak of the next. No longer did the classical Jewish will to fight seem to have much point; and the apostles thought it better if one were to submit to earthly power and receive one's reward later.

Thus while Christianity remained thoroughly committed to the idea of an independent sphere of right, it was forced to abandon the personal activism which had made Jews and their ideas a thorn in the flesh of every despot who had come across them for over a thousand years. Instead, the New Testament struck a fateful compromise between the independent realm of right inherited from Judaism and the submissive power-worship prevalent in Greece and Rome: While insisting that the Emperor had no authority to determine right and wrong for his subjects, the New Testament fully acquiesced in the theory that so long as they were to live in this world, the relationship of men to worldly power should be one of submission. Jesus therefore urges the faithful not to resist evil, whether of the government, or of anyone else:

You have heard that it was told: "An eye for an eye and a tooth for a tooth." But I say to you: Do not resist evil. But if anyone strikes you on the right cheek, turn to him the other also; and if anyone would sue you and take your coat, let him have your cloak as well; and if anyone forces you to go one mile, go with him two miles.<sup>93</sup>

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The doctrine that made this stunning reversal of the Jewish ideology of resistance possible was a new metaphysic, which posited that while absolute justice did exist, it could not be achieved in the present world. Christians could therefore believe in the Jewish distinction between power and right, but should expect to see no right until the future world: "My kingdom is not of this world," Jesus tells his followers. "Let those who mix in the world live as if they were not engrossed in it, for this stage is passing to an end." Similarly: "For here we have no permanent home, but we are seekers after the city which is to come."<sup>94</sup>

The abandonment of the Jewish belief in the cause of justice within the present earthly city was developed by Jesus' apostles into an unequivocal doctrine of passivity in the face of the state, one tailored explicitly to the needs of the Roman masses for whom no philosophy other than subservience, and the quiet hope for a different age, would have made any sense. In his letter to the Romans, Paul makes the case explicitly:

Every person must submit to the supreme authorities. There is no authority but by act of God, and the existing authorities are instituted by him; consequently, anyone who rebels against authority is resisting a divine institution, and those who so resist have themselves to thank for the punishment they will receive. For government, [being] a terror to crime, has no terrors for good behavior. You wish to have no fear of the authorities? Then continue to do right and you will have their approval, for they are God's agents, working for your good. But if you are doing wrong, then you will have cause to fear them; it is not for nothing that they hold the power of the sword, for they are God's agents of punishment, for [taking] retribution on the offender. That is why you are obliged to submit.<sup>95</sup>

And lest this message be misunderstood, it was expressed even more clearly by Peter:

Submit yourselves to every human institution for the sake of the Lord.... Servants, accept the authority of your masters with all due submission, not only when they are kind and considerate, but even when they are perverse.



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For it is a fine thing if a man endure the pain of undeserved suffering because God is in his thoughts.... When you have behaved well and suffer for it, your fortitude is a fine thing in the sight of God. To that you were called, because Christ suffered on your behalf, and thereby left you an example; it is for you to follow in his steps. He committed no sin ... [yet] when he suffered he uttered no threats, but committed his cause to the One who judges justly.<sup>96</sup>

To Peter, obedience is of especial importance when the ruler is in the wrong, for if Jesus silently gave up his life to Roman injustice, such must be the way of God, to be emulated by all men. On earth, submission in the face of evil is the duty of men, but not because of any right of the ruler to do evil. On the contrary, the “One who judges justly” will bring about true justice eventually—in the next world.

Thus while the Jewish belief in universal justice remained in principle within the Christian teachings, the definition of this justice underwent a dramatic downshift in the process of becoming palatable to the non-Jewish audiences of the Empire. The Jewish life of active resistance had been based on the essential premise of the Hebrew prophets that justice was a feature of this world—that is, that by means of a human decision to mend ways and pursue justice, the good world could be brought into existence at the initiative of men. Such a view naturally places a premium on the deeds that men do, and the Jewish conception of heroism therefore consisted not merely in recognizing the injustices of the existing order, but in actively setting them right. In the New Testament, the struggles of Jeremiah and Job and the Psalms to understand why bad things happen to good people come to an eerie end. Peter accepts that bad things happen for no reason at all, that suffering is not the reward for wrongdoing but the reward for *right*doing as well, much as the Greek tragedians had always maintained. The present world is stripped of the promise of justice, and the “One who judges justly” becomes more coy, judging this world, but not meting out justice until another time and place. With the promise of success thus spirited away, the incentive of the individual to take action against overwhelming odds all but

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disappears, shrinking into a passive, inner sense of what is right that never bothers to break through to the world in terms of action, for the world is—irrelevant.

Under all of this it was still possible to see the Jewish teaching of the independent sphere of right. After all, it was Jesus himself who had exhorted to “render therefore to Caesar the things that are Caesar’s, and to God the things that are God’s.”<sup>97</sup> It was only that what belonged to Caesar had for the time being been defined to be the entire world, so that the role of the prophet and the disobedient hero had been virtually eliminated. As Origen, the third-century Neo-Platonist Church father summed it up, Jesus had come to the world to “restore to men the discipline of obedience, to the ruling powers the discipline of ruling.”<sup>98</sup> Tertullian, best known of the early Church fathers besides Augustine, had been even more blunt a few years earlier: “There is nothing more alien to us than politics.... What is Athens to Jerusalem, the Academy to the Church?”<sup>99</sup> The adoption of this position by the Church reached its peak in the sixth century with Pope Gregory, upon whose passionate insistence the Church held that the acts of rulers were not even to be criticized, even if they were wrong.<sup>100</sup>

In 333, the Emperor Constantine converted to Christianity, bringing to an end three centuries of bloody suppression of the Church. In elevating Christianity to the position of a privileged faith for the first time, Constantine inadvertently recreated something of the conditions that had permitted the independence of the Hebrew prophets a thousand years earlier. To be sure, there was at first nothing independent about the Church, which was only adopted by Rome as a replacement for the paganism which had enjoyed the sponsorship of the state up until then. But with the elevation of the Christian bishops to a position of official authority over the religious life of the entire empire, only the most absurd reading of Christianity would have insisted that they should continue to maintain silence in cases where the emperor, now supposedly a Christian, could be brought into line with the demands of justice. All that was needed was for there to arise a Christian leader with the determination to rekindle the direct confrontation with

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the state that had lain dormant in the prophetic heritage of Christianity for so long.

Such a leader Christendom found in Ambrose, Bishop of Milan and mentor to Augustine, in the late fourth century. Marking out the battle lines between the political powers and the Church for the centuries to come, Ambrose daringly resurrected the constitutional function of the Jewish prophets, claiming for the Church the right and the obligation to stand watch over the Christian kings to ensure that their rule was just. As Ambrose wrote in his commentary on the Hebrew Bible: "Prophets and bishops must not rashly insult kings, if there are no grave sins for which they deserve reproach; but where there are grave sins, the bishop must not spare to correct them by his just remonstrances."<sup>101</sup> And spare them he did not. While continuing to support the theory of complete obedience to the state, Ambrose nevertheless engaged the Roman Emperors in a series of public confrontations aimed at subjecting their unlimited authority to the criticism and influence of Christian moral teaching, on one occasion informing the Emperor that the ruler was "within the Church, not above it."<sup>102</sup> In 390, he refused to conduct a mass in the presence of Emperor Theodosius in protest over a massacre committed by his troops in Thessalonica. In a letter explaining his action, Ambrose dismissed the formal ritual of the communion as being insufficient, drawing on the example of the prophet Nathan's rebuke to David as a precedent to justify his claim that Theodosius should accept Ambrose's criticism and do public penance:

Are you ashamed, Sir, to do as David did...? He was told [by Nathan] of the rich man who had exceedingly many flocks and yet, when a guest arrived, took the poor man's ewe lamb and killed it; and when he [i.e., David] recognized that he was condemned by the story, he said: "I have sinned against the Lord." Therefore, do not take it ill, Sir, if what was said to King David is said to you: "Thou art the man."

After summoning additional examples, from Saul, David and Job, using the words of Saul's son, Jonathan, to demand of the Emperor, "Why do you

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sin against innocent blood...?” Ambrose concludes: “I have not written this to put you to shame, but to induce you, by royal examples, to put this sin away from your kingdom.... You are a man, and temptation has come to you. Conquer it.”<sup>103</sup> And Theodosius, though holding out for a few months, eventually gave in and complied with Ambrose’s order to do penance.<sup>104</sup>

By the end of the fifth century, the weakening grip of the Roman state had permitted the Church to come into its own, and what had been Ambrose’s assault on the monolith of state power had been institutionalized into a Church with independent constitutional standing. In keeping with Ambrose’s conception, both ecclesiastical assemblies and individual bishops of the Church gradually assumed the authority to watch over the rectitude of the state, making it their business to upbraid officials when either their public or personal conduct was deemed unworthy. And although the Christian Church, unlike the Hebrew prophets, did begin to wield political and material assets on a vast scale—thereby rendering itself vulnerable to the kind of abuses inherent in every accumulation of worldly power—it nevertheless succeeded in permanently implanting in the West the biblical idea of a spiritual leadership, independent of the political rulers of the state and constitutionally protected by tradition, whose mission is to be the organ of conscience within the body politic.

But it was not until 1075 that the full force of the contradiction between the Jewish and Roman teachings in Christianity exploded into the open, flinging the Church into full-scale revolt against the secular authority of the Holy Roman Empire (a Germanic “heir” to Rome which lingered on as the putative overlord of Europe until the seventeenth century) in its effort to reassert the independence of the religious right of dissent and disobedience. What is today known as the “Investiture Controversy” began as an attempt by the newly elected Pope Gregory VII to end the humiliating practice of state appointment of Church officials, which in many parts of Europe meant that a churchman could expect his moral and political pronouncements to be reviewed by secular officials who often could determine the course of his career. While Gregory’s proscription of state influence in

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the investiture of bishops was originally intended as a purely religious act, its effects were highly political in nature. The Holy Roman Emperor Henry IV responded to this threat to his authority by moving to have Gregory deposed, and the pope responded by excommunicating the Emperor and decreeing that all oaths of fealty taken by his vassals were null and void—in effect insisting on the right of the Church to depose rulers and instigate national disobedience to their decrees—much as the prophet Elisha had deposed Jehoram.

As the confrontation between the Church and the government unfolded over the subsequent decades, the rancor gave way to the first philosophical tracts seeking to ground the actions of the two sides in the authoritative political documents of the Christian tradition. While the writings of the Apostles could only be used by the churchmen by urging readings straying far from the simple meaning of the texts, they found a wealth of material to support their position in the confrontations between prophets and kings in the Hebrew Bible. Thus Honorius of Augsburg's *Summa Gloria*, written in the wake of the Investiture Controversy in 1123, argued that the right of the Church to oppose unjust actions of the state stems from the prophet Samuel's creation of the kingdom of Saul, whose rule was not absolute, but limited by Samuel's interpretation of divine justice even after Israel was ruled by an anointed king.<sup>105</sup> In 1159, a watershed was reached with the assertion of an even more radical position by John of Salisbury, the first systematic medieval political writer of Christian Europe. John followed prophetic theology directly in reviving the argument that the right of temporal power to oblige and coerce is derived ultimately from spiritual authority, invoking the limitations imposed on Jewish rulers in the book of Deuteronomy, and arguing that "the law which is enjoined upon princes by the Great King who is terrible over all the earth and who takes away the breath of princes.... Surely this law is divine and cannot be broken with impunity."<sup>106</sup> John draws the conclusion that while particular laws may have to be obeyed regardless of their content if they derive from a legitimate government, this legitimacy itself derives from the willingness of the ruler

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generally to govern justly and by law, being as the king “may not lawfully have any will of his own apart from that which the law ... enjoins, or the calculation of the common interest requires.”<sup>107</sup> One who does not govern in accordance with the dictates of justice, on the other hand, is nothing but a usurper of the power of the sword, a mere murderer, to be condemned as such by the spiritual authority, the Church: “He who usurps the sword,” he wrote, “is worthy to die by the sword.”

With this fateful step, John ushers in the modern age, insisting for the first time since the Jewish revolts against Rome on a moral right to disobedience and even rebellion in the face of unjust rule. It is little surprise that with such ideas abroad, it was not long before England, in 1215, experienced the great baronial revolt which at swordpoint foisted Magna Carta, and the first formal constraints on royal power in the West, on King John. And far from being a unique view, the essentials of John of Salisbury’s position were subsequently adopted by Aquinas<sup>108</sup> and other Christian thinkers, who opened the door for the first time to a politically activist Church bearing the right to urge the populace to resist unjust government—making it a genuine Western heir of the Jewish prophets, and the real forebear of all modern theories of disobedience before injustice.<sup>109</sup> And indeed, as the decentralization of the feudal system began to give way to the more absolute nationalisms familiar from contemporary Europe, there can be no disputing that it was the relentless attacks of the Church which sought to protect society against the very real threat of resurgent, and unchecked, tyranny. Thus it was against such unblushing absolutists as Dante, Jean Bodin and Thomas Hobbes that Catholic writers such as Robert Bellarmine, Juan de Mariana and Francisco Suarez, building on John of Salisbury and Aquinas, began constructing the modern theories of popular sovereignty, and of the right of popular resistance to tyranny from which contemporary disobedience theories were ultimately to spring. In fact, so unequivocal was the incitement of the Church to disobedience in cases of state tyranny, that by the sixteenth century, polemicists defending the unchecked power of the king had fallen into the habit of accusing the pope of being an anarchist.<sup>110</sup>

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But while the highest intellectual statements of the religious doctrine of popular sovereignty and the right of the people to resist were made by the Jesuits, the most effective purveyor of these ideas was Calvinist Protestantism. Despite an early flirtation with statism,<sup>111</sup> Protestant theories of disobedience quickly became indistinguishable from the theories being advanced by the Jesuits, with one difference: The Calvinist disobedience doctrines quickly succeeded in stirring formidable opposition to governments across Europe. In Scotland, the new legitimacy offered to disobedience to the existing state brought the ouster of the ruling authorities in 1560; in France, the demands of the Huguenots for religious toleration beginning in 1562 eventually led to armed rebellion and civil war; in Holland, beginning in 1566, Calvinism was a major force behind the protracted and ultimately successful revolt against Spain; and in England, Protestants were in the van of the rebellion against monarchical absolutism which led to the overthrow of King Charles I in 1648. And through it all ran the biblically inspired demand that the regime do justice. As the Estates-General in Holland declared in 1581, in determining to rid themselves of the Hapsburg monarchy: "All mankind know that a prince is appointed by God to cherish his subjects, even as a shepherd to guard his sheep. When, therefore, the prince does not fulfill his duty as protector; when he oppresses his subjects, destroys their ancient liberties, and treats them as slaves, he is to be considered, not a prince, but a tyrant. As such, the estates of the land may lawfully and reasonably depose him, and elect another in his room."<sup>112</sup>

## VI

While it was the Calvinist doctrine of predestination which imparted to Christians for the first time the steely resolve to act in active defiance of the state and make a world of justice as had been demanded by the

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Hebrew prophets, the final chapter in the evolution of the Western disobedience theory belongs to the ideas of the first Protestant, Martin Luther. For it was Luther's devotion to the liberty of the *individual* conscience which eliminated the need for resistance to be ordained by any church other than the unique church residing in the heart of every individual.

In urging that every man address the meaning of Scripture himself, Luther must certainly have believed that the true meaning of the Bible would be evident to anyone who would only look into it for himself. But the most dramatic effect of this idea was not the discovery of one true church, so much as the creation of a cascade of Protestant streams—Congregationalist, Quaker, Baptist—devoted to the doctrinal autonomy of the Christian congregation.<sup>113</sup> Some, such as the Quakers, went as far as even insisting that Church doctrines be set not by the clergy at all, but by the laity—thereby allowing every individual to have a say in the contents of the “official” doctrine of his church on the basis of his own personal understanding of Scripture. The conscience of the individual now became the highest authority in the Church, and papist disobedience theory was transformed into the theory of individual disobedience to injustice.

Nowhere in the world were the effects of this new freedom of conscience more in evidence than in the new American colonies, founded as they were by the various heterodox Christian sects as places of refuge from the various European autocracies. In Massachusetts, the Puritans and Congregationalists established a “New Jerusalem” built on the theory of popular sovereignty—as effected by an actual social compact into which the colony's members entered voluntarily<sup>114</sup>—imparting to that colony a quality of radical ferment which ultimately gave birth to the American Revolution, and which has characterized it ever since. Pennsylvania, too, was founded by the Quakers, making it the home not only of the “City of Brotherly Love,” but of the revolution as well. One of the American rebellion's earliest and most influential exponents was the Quaker Thomas Paine, who determined after the “massacre at Lexington” in April 1775 that Britain's rule could no longer be considered anything but a tyranny, and drew the relevant conclusions.



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Paine's pamphlets became the best known call for the dissolution of America's ties with the British state, forcefully transmitting disobedience ideas consciously based upon those of the Hebrew Bible. Written in Philadelphia in January 1776—six months before the declaration of American independence—Paine's most famous pamphlet, *Common Sense*, begins by reviewing the stories of the biblical Gideon and Samuel in order to demonstrate that the English king's claim to unlimited obedience was precisely that tyranny against which the ancient Jewish prophets had warned.<sup>115</sup> The pamphlet continues:

Britain, with an army to enforce her tyranny, has declared that she has a right ... "to bind us in all cases whatsoever," and if being bound in that manner is not slavery, then there is not such a thing as slavery upon earth. Even the expression is impious, for so unlimited a power can belong only to God.... Not all the treasures of the world ... could have induced me to support an offensive war, for I think it murder; but if a thief break into my house, burn and destroy my property, and kill or threaten to kill me, or those that are in it, and to "bind me in all cases whatsoever," to his absolute will, am I to suffer it? What signifies it to me whether he who does it is a king or a common man; my countryman or not my countryman? Whether it is done by an individual villain, or an army of them? If we reason to the root of things we shall find no difference....<sup>116</sup>

For Paine, the issue at stake in the American Revolution was not merely the particular injustice which had been committed by Britain, but the entire idea of unconditional submission to the will of the state—an absolutist approach to state law which necessarily entails acquiescence in injustice.

But while Paine and his compatriots fought and won the American Revolution in the name of constitutionally limited government, they continued to believe that disobedience to state law was a reasonable recourse only against tyranny. For if a government were just on the whole, and only in error on some subjects, fear of anarchy still dictated that even "bad law" should be obeyed so long as open discourse continued to permit legitimate efforts to

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change it.<sup>117</sup> It was not until the struggle against slavery in America decades later that the case for individual disobedience to injustice under *all* regimes was finally made in a manner which was fully consonant with the teachings of the Hebrew Bible. In this as in the rebellion against Britain, Massachusetts was at the forefront of the fight, its Congregationalist churches producing stiff-necked advocates of disobedience such as Henry David Thoreau, best known for his 1848 lecture, “On the Relation of the Individual to the State,” a published version of which was posthumously renamed “Civil Disobedience.” In it, Thoreau declared slaveholding America to be an unjust regime which must be brought down, and called on citizens to begin their disobedience by withholding taxes from the state, as he himself had done: “I do not hesitate to say,” he wrote, “that those who call themselves Abolitionists should at once effectually withdraw their support, both in person and property, from the government of Massachusetts, and not wait till they constitute a majority of one, before they suffer the right to prevail through them. I think that it is enough if they have God on their side....”<sup>118</sup>

But perhaps more important, and certainly more moving, was an essay Thoreau wrote in 1860, on the eve of the Civil War which was to end slavery in America and destroy much of the American South. In “The Last Days of John Brown,” Thoreau wrote of a Connecticut farmer named John Brown, who had for three years been staging cross-border raids into Southern states with the aim of “stealing” slaves, in direct violation of the law, and setting them free—operations which Thoreau and his circle of friends had supported with funds and other assistance.<sup>119</sup> Brown’s final raid in 1859, on Harper’s Ferry, Virginia, resulted in a siege by state troops, and Brown’s trial, which ended in his being sentenced to death by the state of Virginia. In his essay, published as a eulogy in the wake of Brown’s execution, Thoreau declared that the litmus test for whether one had grasped the real meaning of the Bible was whether one had sided with John Brown’s cause:

The more conscientious preachers, the Bible men, they who talk about principle, and doing to others as you would that they should do unto you—how could they fail to recognize him, by far the greatest preacher

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of them all, with the Bible in his life and in his acts, the embodiment of principle, who actually carried out the golden rule? All whose moral sense had been aroused, who had a calling from on high to preach, sided with him.... We made a subtle distinction, forgot human laws, and did homage to an idea.... It went behind the human law, it went behind the apparent failure, and recognized eternal justice and glory. Commonly, men live according to a formula, and are satisfied if the order of law is observed, but in this instance they, to some extent, returned to original perceptions, and there was a slight revival of old religion. They saw that what was called order was confusion, what was called justice, injustice....<sup>120</sup>

Looking back with some detachment, a hundred years and more after the passion and grief of Thoreau's eulogy, it is possible to understand that he was right: Brown's mission was the test that divided those Americans who understood the message of "old religion" and the Hebrew Bible from those who did not. For a mere nine months before the outbreak of the Civil War, in which a million people would die, how could anyone who was familiar with it have mistaken the horrible relevance of the prophet Jeremiah's call for the Jews to release their slaves, lest the injustice in their midst bring the slaughter of war upon them?<sup>121</sup> Indeed, in Thoreau's recognition that Brown had "the Bible in his life and in his acts"; and that the authority with which these acts had been undertaken was that of "revelation ... superior to our laws"<sup>122</sup>; and that the people of America in order to be truly Christian must also recognize them as such—in all these he was articulating no less a demand than that Christianity and the West once and for all reject the cruelty of their Roman heritage of unlimited submission to the laws of the state, and embrace the cries for resistance to injustice in this world which had been the "old religion," the demand of the Jewish prophets.<sup>123</sup>

Perhaps no man was as responsible for the fact that the "old religion" of disobedience is today accepted and taught throughout the United States, and for that matter, throughout the West, as the Baptist minister Martin Luther King, Jr., the architect of the disobedience movement that spearheaded the struggle for civil rights for American blacks in the 1960s—

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a century after Thoreau. While slavery as an institution had long been dead in the United States, King found that race laws, which set aside segregated places of education and employment for blacks throughout the South, continued to make a life of dignity impossible for the descendants of American slaves. For King, as for Thoreau before him, there was no question but that the resistance against such unjust laws was above all the heritage that the Bible had bequeathed to America:

The present upsurge of the Negro people of the United States grows out of a deep and passionate determination to make freedom and equality a reality “here” and “now”.... Oppressed people cannot remain oppressed forever. The yearning for freedom eventually manifests itself. The Bible tells the thrilling story of how Moses stood in Pharaoh’s court centuries ago and cried, “Let my people go.” This was the opening chapter in a continuing story. The present struggle in the United States is a later chapter in the same story.<sup>124</sup>

Indeed, in his famous “Letter from Birmingham City Jail,” King rallies the entire history of Judaism and Christianity to the support of the idea of resistance to injustice which had brought him into direct confrontation with the state of Alabama. Pointing to Amos and other Hebrew prophets, to the Jewish resistance to tyranny in the book of Daniel, to Jesus and Paul, to Augustine and Martin Luther, and without omitting the obligatory mention of Socrates, King repeats the ancient teaching for a generation which was far removed from appreciating the meaning of the ancient Jewish tradition:

One may well ask, “How can you advocate breaking some laws and obeying others?” The answer is found in the fact that there are two types of laws: There are just and there are unjust laws.... A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas, an unjust law is a human law that is not rooted in

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eternal and natural law.... So I can urge men to disobey segregation ordinances because they are morally wrong.<sup>125</sup>

And it was King, eighteen years after the end of World War II and the unimaginable horrors that had been committed in the name of obedience to the law, who brought home to every American that the lesson of the Nuremberg trials was not merely a theoretical teaching, not mere history, but a lesson that had to be absorbed and acted upon by every member of society:

We can never forget that everything Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was illegal to aid and comfort a Jew in Hitler's Germany. But I am sure that if I had lived in Germany during that time I would have aided and comforted my Jewish brothers even though it was illegal.<sup>126</sup>

In bringing the teaching of Nuremberg to bear on the immediate movement for civil rights, King transformed what for many had been a distant and abstract judicial event into a *personal* lesson of action, and of the responsibility to act against unjust law "here and now." It was by then too late to save the millions of Jews from Hitler and his state. But in accepting for himself the old Jewish religion of disobedience before injustice, and insisting that one could not be a good Christian without embracing this teaching in one's life, King explicitly denied men of all creeds the right to retain that pagan idea which had handed Hitler his unspeakable successes.

Six million Jews had died at the hands of the ideology of the Roman emperors, and nothing could be done to change this fact. But all across America and the free world, millions of men and women were, from that time forward, to learn that to do good was not, as Paul had instructed his followers, to submit to evil. King taught them that to do good in the world was to act as a Jew.

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## VII

Mankind has seen no end of attempts to render human laws inviolable in principle, usually on the grounds that one process or another has produced them: There have been those who claimed that the laws of the state were legitimate and binding because the earthly ruler was a god; those who claimed that the laws of the state were legitimate and binding because the ruler was appointed by God; and those who claimed that the laws of the state were legitimate and binding because the ruler was a hereditary monarch. Today it is the fashion to claim that the laws of the state are legitimate and binding because its leaders were chosen in democratic elections. And while democratic governments may indeed be the best steward of right that men have yet devised, this fact no more makes them the final arbiter of right than did the similar popularity of now outmoded political regimes in ages past. Even in a democratic age, it remains the case that right action cannot be deduced solely from the decisions of the state. All governments are, after all, composed of men. And as such, they are bound to err, and sometimes terribly so.

It is the great virtue of our present democratic states that the culture and tradition upon which they have been built—and which, indeed, make their existence possible—are the result of thousands of years of efforts to comprehend and take to heart the political teachings of the Hebrew Bible. There is no alternative Greek source for the idea that man may rise up against his rulers and against their laws in the name of higher truth. This is not the philosophy of the Athenian merchant, who well knew that all he possessed existed by virtue of the state and its laws. It is the philosophy of the Hebrew shepherd, the outsider whose patience for the arrogant yet enslaved metropolis was tried anew with every encounter, and who ultimately set his course by an entirely different compass than that of other men. True, the ancient Jews did eventually conclude—much as had their pagan neighbors—that men could not live forever in tents, and that in the end,

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life and death among the nations meant learning the art of statecraft. But precisely due to the Jews' past as a people of outsiders, the Jewish kingdoms of antiquity were from the first blessed with an internal opposition, consisting of men who at times lived within the city walls, but whose view of the state was always from the outside: From a vantage point which permitted them to judge it, and even to try and alter its course.

Today, we are left to operate the state without prophecy. But we do have the heritage of the prophets—a heritage in which individuals possess a “constitutional” standing as against that of the state, and which removes them a step or two beyond its reach. It is this distance from the dictates of men which affords us the freedom to judge and to abhor, to speak and to demand, and, when necessary, to disobey. Of course, for such a tradition to bear fruit ultimately depends on the strength of individual men. And there always exists the possibility that, when actually confronted with the injustice of the state, the many will simply turn their backs on the disobedience tradition of the West, submitting to the state and “just following orders,” as so many did in Germany not so long ago. Yet the political tradition of the democratic states of our time, as epitomized by their judgment at Nuremberg, continues to hold before us the alternate possibility: That even men who are not prophets can find strength in the disobedience tradition of the Hebrew prophets, and will prove worthy of its legacy when the terrible moment comes.

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*Dr. Yoram Hazony is the Director of The Shalem Center in Jerusalem. He is the author of The Dawn: Political Teachings of the Book of Esther (Genesis Jerusalem Press, 1995).*

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## Notes

1. Indeed, the tribunal found that “the defendants planned and waged aggressive wars against twelve nations, and were therefore guilty of this series of crimes. This makes it unnecessary to discuss the subject in further detail, or even to consider at any length the extent to which these aggressive wars were also ‘wars in violation of international treaties, agreements or assurances.’” Judgment of the International Military Tribunal of German Major War Criminals, p. 36.

2. This was the wording of the charter which established the Military Tribunal. Judgment, p. 3.

3. Judgment, pp. 65, 40, 40, 45, 118, 42. The extraordinary nature of the Tribunal’s findings is most evident in its finding in the case of Julius Streicher, publisher and editor of the German weekly *Der Stürmer*, who was sentenced and hanged despite having been accused of no crimes other than calling for the annihilation of the Jews of Europe. Streicher governed no territories or armies and gave no orders; he merely used his publication to repeat, time and time again, his demand for the murder of the Jews of Europe. But the court found that even the right of speech, protected by the democracies as perhaps the most fundamental of civil rights, must ultimately be limited by considerations of justice and humanity, like all other human actions. According to the Tribunal: “Streicher’s incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes persecution on political and racial grounds in connection with war crimes ... and constitutes a crime against humanity.” Judgment, p. 102.

4. It is important to notice that this victory of the idea of the independence of right from the decrees of the state at Nuremberg was by no means a clear-cut victory for democracy. Indeed, quite the opposite was the case: Germany had been a democracy not long before the war, and it was under this democratic regime that the Nazis had been catapulted to power. The rejection of the authority of the Nazi state at Nuremberg therefore entailed a none-too-subtle critique of the democratic processes which had brought the abominations of the German state into being.

5. In recent years, as the campaign for an unquestioning obedience to “rule of law” has gained steam in Israel—itsself a reaction to the contempt for law and government which had become ubiquitous under Israeli socialism—it has become painfully obvious how far the political and intellectual leadership of the Jewish state is from having understood, much less assimilated, this essential principle of contemporary democratic theory. For discussion of Israel’s adoption of the concept that state law, in particular that of the Supreme Court, should be considered unchallengeable, see Evelyn Gordon, “Is It Legitimate to Criticize the Supreme Court?” in *AZURE* 3 (Winter 1998), pp. 50-89.



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6. See, for example, George H. Sabine and Thomas L. Thorson, *A History of Political Theory*, fourth ed. (Hinsdale, Illinois: Dryden, 1973), p. 141f. This standard American textbook of the history of political ideas traces all the relevant moral-political teachings of Christianity to the Stoics. While noting that the Stoic school was less tied to Greece than were the other classical academies—and, indeed, that its founder, Zeno, was a “Phoenician”—Sabine and Thorson decline to speculate any further as to what these facts imply about the origins of Stoic thought.

7. In considering the reasons for Abraham’s departure from Mesopotamia, one frequently meets with the response that he left “because God commanded it.” Yet this only raises the parallel question of what it was that moved God to concern himself with Abraham’s place of domicile. And unless one is to claim that God’s commands as recorded in the Bible are arbitrary and without reason, there is no choice but to return to the circumstances surrounding them in order to discern their motive: What are the *reasons* for Abraham’s escape from Mesopotamia; what are the *reasons* for God’s instruction to Moses to smear the blood of a sheep on the doorposts on the night of the Jews’ departure from Egypt; and so forth.

8. Genesis 11:31-12:3.

9. See Karl A. Wittfogel, *Oriental Despotism: A Comparative Study of Total Power* (New Haven: Yale, 1957).

10. Henri Frankfort, et al., *The Intellectual Adventure of Ancient Man* (Chicago: University of Chicago, 1946), pp. 80-81.

11. Frankfort, *Intellectual Adventure*, pp. 76-77.

12. J.E. Manchip White, *Ancient Egypt: Its Culture and History* (New York: Dover, 1970), p. 16.

13. White, *Ancient Egypt*, p. 13.

14. White, *Ancient Egypt*, pp. 39-40.

15. Cf. Frankfort, *Intellectual Adventure*, pp. 85-86; White, *Ancient Egypt*, p.

18. These gods are a ram, a cat and a lioness, respectively.

16. Frankfort, *Intellectual Adventure*, p. 203.

17. Georges Roux, *Ancient Iraq* (New York: Penguin, 1980), p. 150.

18. G.R. Driver and John C. Miles, trans., *The Code of Hammurabi* (Oxford: Clarendon, 1955). Hammurabi was the sixth of eleven kings in the Old Babylonian (Amorite) Dynasty. He ruled from 1728 to 1686 B.C.E., and the code was apparently enacted at the beginning of his reign. James B. Pritchard, ed., *Ancient Near Eastern Texts* (Princeton: Princeton University Press, 1969), p. 163.

19. Roux, *Ancient Iraq*, pp. 239, 264, 320.

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20. Roux, *Ancient Iraq*, pp. 264, 320.

21. Albert K. Grayson, *Assyrian Royal Inscriptions* (Wiesbaden: Otto Harrassowitz, 1972), vol. 1, p. 13. Erishum appears on the king lists two entries before Sargon I, which places him roughly in the twentieth century B.C.E. Cf. Ashurnasirpal I (1049-1031 B.C.E.), describing his treatment of a city which had disobeyed his rule: "I built a pillar over against his city gate and I flayed all the chiefs who had revolted, and I covered the pillar with their skin. Some I walled up within the pillar, some I impaled upon the pillar on stakes, and some I bound to stakes round about the pillar.... And I cut off the limbs of the officers, of the royal officers who had rebelled.... Many captives from among them I burned with fire, and many I took as living captives. From some I cut off their noses, their ears and their fingers, of many I put out the eyes. I made one pillar of the living, and another of heads, and I bound their heads to tree trunks round about the city. Their young men and maidens I burned in the fire. Twenty men I captured alive and I immured them in the wall of his palace...." Roux, *Ancient Iraq*, pp. 269-270.

22. A.T. Olmstead, *History of the Persian Empire* (Chicago: University of Chicago, 1948), pp. 119-128.

23. G. Bühler, trans., *The Laws of Manu* (Delhi: Motilal Banarsidass, 1962), book VII, section 14f, p. 218f.

24. Wittfogel, *Oriental Despotism*, p. 102.

25. Bühler, *The Laws of Manu*, pp. 218-219.

26. Harold Nicolson, *Monarchy* (London: Weidenfeld and Nicolson, 1962), p. 43.

27. Wittfogel, *Oriental Despotism*, pp. 95, 102.

28. Confucius, *Analects*, book VIII, ch. IX, in James Legge, *The Chinese Classics* (Oxford: Clarendon, 1893-1895), vol. 1, p. 211.

29. Wittfogel, *Oriental Despotism*, pp. 90-91.

30. Homer, *Odyssey*, book XIX.

31. Wittfogel, *Oriental Despotism*, pp. 145-146.

32. Nicolson, *Monarchy*, p. 54.

33. Wittfogel, *Oriental Despotism*, p. 94.

34. Nicolson, *Monarchy*, p. 27.

35. Nicolson, *Monarchy*, p. 33.

36. Quoted in Nicolson, *Monarchy*, p. 72.

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37. Nicolson, *Monarchy*, p. 80; Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* (Boston: Little Brown & Co., 1960), p. 92.

38. Wolin, *Politics and Vision*, p. 92.

39. Seneca, *De Clementia*, quoted in Wolin, *Politics and Vision*, p. 93.

40. Justinian, *Institutes* I, 2, 6. Justinian's statements come despite the fact that he was a Christian, who did not claim divinity for himself.

41. E.g., Ernest van den Haag, "Civil Disobedience," in Ernest van den Haag, *Political Violence and Civil Disobedience* (New York: Harper & Row, 1972). A serious elaboration of the idea of the Bible as a book of obedience can be found in Hobbes' *Leviathan*, in which God is sovereign of the world and so deserves obedience, and through contract this sovereignty is passed to Abraham and his family, and likewise to Jewish and Christian monarchs. Thomas Hobbes, *Leviathan*, C.B. Macpherson, ed. (New York: Penguin, 1968), pp. 443-451, 499-512.

42. Exodus 3:8.

43. Genesis 18:25.

44. See, for example, Numbers 14:11-25.

45. Genesis 32:29 and Rashi ad loc.

46. Genesis 10:8-9.

47. Genesis 11:4.

48. Genesis 12:12.

49. Genesis 26:6-7, 26:18.

50. Genesis 34:1f.

51. Exodus 1:17-19.

52. Megilla 13a.

53. Exodus 2:1-10.

54. Exodus 2:11-12.

55. Exodus 5:21.

56. Exodus 12:3-11, 21-23. Amon, the god of the Egyptian capital of Thebes, was represented as a ram. By the time of the enslavement of the Jews, Amon had become the most powerful and prominent god in the pantheon, under whose standard the Egyptian armies waged war.

57. Numbers 22:18.

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58. Numbers 22:41-24:13.
  59. Numbers 22:28-31.
  60. Judges 8:23.
  61. I Samuel 8:10-20.
  62. Deuteronomy 17:16-20.
  63. I Samuel 14:43-45.
  64. I Samuel 19:11f for Michal.
  65. I Kings 1:39-40. "The people" are also described as placing later kings on the throne of Judah: Azariah, II Kings 14:21; and Josiah, II Kings 21:24.
  66. I Kings 11:1-3, 5:6, 10:14-26, 5:27-28, 9:21-22.
  67. I Kings 11:4-8.
  68. I Kings 12:11.
  69. Isaiah 7:14-25; Hosea 12:10; Jeremiah 35:1-19.
  70. II Samuel 12:1f; I Kings 17:1f.
  71. I Samuel 15:26-16:1.
  72. II Kings 9:1-10:29.
  73. Jeremiah 38:2. That such defection was illegal is clear from Jeremiah 37:13.
  74. Daniel 3:16-18.
  75. Daniel 6:7-11.
  76. Esther 3:1-2, 5:9.
  77. Esther 4:1-2.
  78. Esther 4:8.
  79. Esther 4:16, 5:1-2, 8:3-4.
  80. Esther 8:8-9:5.
  81. Compare, for example, the classic rabbinic statement on the subject of disobedience by Maimonides in the twelfth century: "If a heathen orders a Jew to transgress one of the commandments found in the Tora or he will kill him, he should transgress it and not die.... This principle refers to all of the commandments except for idolatry, sexual crimes and crimes of bloodshed. But if he should be ordered to transgress one of these three or be killed, he should die rather than transgress them.... And all this refers to situations in which there is no decree [of the state involved]. But under a decree, when there arises an evil king such as

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Nebuchadnezzar and his like, and decrees against Israel, prohibiting their beliefs or one of the commandments, he should die rather than transgress even one of the lesser commandments....” Moses Maimonides, *Mishneh Tora*, Laws of the Fundamentals of the Tora 5:1-3. A dramatic insight into the deeper meaning of these ideas is offered by the midrashic parable of R. Simlai, which suggests that the ability of the individual Jew to act in spite of worldly law derives from the fact that it was nothing less than *sovereignty* that was granted every individual at Mt. Sinai, where “six hundred thousand ministering angels descended and set two crowns on the head of every individual of Israel, one for ‘we will do’ and one for ‘we will hear’”—the two responses of the Jewish people at Sinai in Exodus 24:7. Shabat 88a.

82. It is essential to take note, however, that the biblical theory of the independence of right from the dictates of the state did not mean that the spheres of moral truth and worldly power were independent from one another. On the contrary, the message of the Bible was that worldly power is ultimately dependent on doing right.

83. Sabine and Thorson, *A History*, p. 141f.

84. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago, 1953), p. 81.

85. See Edward Corwin, “The ‘Higher Law’ Background of American Constitutional Law,” in *Harvard Law Review* 42:2 (1928), p. 386.

86. Plato, *Phaedo*, in Plato, *Five Dialogues* (Indianapolis: Hackett, 1981), pp. 154-155.

87. Plato, *Crito*, in Plato, *Five Dialogues*, p. 53.

88. Much has been made of the fact that during his trial, Socrates tells the jury that if he were offered a deal whereby he would be spared if he gave up philosophy, he would choose to continue philosophizing. *Apology*, in Plato, *Five Dialogues*, p. 34. Yet there is no declaration here that he would violate the law; he is merely rejecting the deal, saying that he would never make such an agreement. Indeed, his emphasis in the *Crito* on the fact that he had signified his acceptance of Athenian law by living all his life in Athens suggests that had there been such an Athenian law during his life, he would have chosen to live in a more hospitable city. One actual example of Socrates’ disobedience to the Athenian state is his refusal to carry out the order of the dictatorship to bring Leon of Salamis to be executed. In this case, Socrates judges the rulers to be in violation of the laws of the city, and actually disobeys. The case is analogous to that of Antigone.

89. “It is not impossible that someone might propose the dissolution of the laws or the regime as something in the common good.... It is evident, then, that some laws must be changed at some times; yet ... this would seem to require much caution. For when the improvement is small, and since it is a bad thing to habituate

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people to the reckless dissolution of laws, it is evident that some errors both of the legislators and of the rulers should be let go; for [the city] will not be benefited as much from changing them as it will be harmed through being habituated to disobey the rulers.... Law has no strength with respect to obedience apart from habit. Hence the easy alteration of existing laws in favor of new and different ones weakens the power of law itself. Further, if they are indeed to be changeable, are all to be, and in every regime? And by anyone, or by whom?" Aristotle, *Politics*, book II, ch. VIII (Chicago: University of Chicago, 1984), pp. 72-73.

90. Aristotle uses Antigone as his sole exemplar for such a tactic. Corwin, "Higher Law," p. 154.

91. Corwin, "Higher Law," pp. 159-160.

92. Quoted in Wolin, *Politics and Vision*, p. 93.

93. Matthew 5:38-41.

94. John 18:36; I Corinthians 7:31; Hebrews 13:14.

95. Romans 13:1-4. See also Ephesians 6:5; Colossians 3:22.

96. I Peter 2:13, 18-23. Also 3:13-14: "Who is going to do you wrong if you are devoted to what is good? And yet if you should suffer for your virtues, you may count yourselves happy."

97. Matthew 22:21. Cf. Matthew 17:24-27.

98. Quoted in Wolin, *Politics and Vision*, p. 113.

99. Quoted in Wolin, *Politics and Vision*, p. 113.

100. Sabine and Thorson, *A History*, p. 187. Yet much as the ideals of the primitive Church seemed to have capitulated before the leering god-emperors of Rome, the Jewish theme of resistance was not far beneath the surface. Almost immediately, the apostles found themselves under orders from the Jewish authorities to desist from their preaching, and this at least was something in which they found themselves unable to acquiesce. Thus the same Peter who wrote with such passion on the subject of submitting to earthly authority was nevertheless moved to declare that the teaching would not cease: "We must obey God rather than men. The God of our fathers raised up Jesus ... [and] we are witnesses...." Acts 5:29-32. The insistence on openly professing Christianity rapidly became the needed loophole through which, as the Church gained in strength and confidence, an increasing range of types of resistance became once again acceptable. Thus Christians were instructed that Peter had not meant that "perverse" directives from those wielding power should actually be *obeyed*, that Jesus had not meant that evil should *never* be resisted. Instead, the established Church reclaimed the authority to order the general abrogation of state laws which were in direct contravention of Christian teachings—calling for what became known as "passive obedience." Under this doctrine

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Christians were to observe and promote Christianity even in the face of state prohibition, fulfilling the exhortation not to resist evil by submitting to whatever punishment the Roman persecutor chose to exact.

101. Ambrose, *Enarrationes in Psalmos* 37, 43. Quoted in S.L. Greenslade, ed., *Early Latin Theology* (Philadelphia: Westminster, 1956), p. 180.

102. Sabine and Thorson, *A History*, p. 183.

103. Ambrose, Letter 51. Quoted in Greenslade, *Early Latin Theology*, pp. 255-256.

104. *The New Encyclopaedia Britannica* (Chicago: Encyclopaedia Britannica, 1993), vol. 11, p. 690.

105. R.W. Carlyle and A.J. Carlyle, *A History of Medieval Political Theory in the West* (Edinburgh: William Blackwood, 1950), vol. 4, pp. 286-289.

106. John of Salisbury, *Policraticus: The Statesman's Book* (New York: Frederick Ungar, 1979), pp. 50-51.

107. Corwin, "Higher Law," p. 165.

108. Aquinas, *De Regimine Principum*, 1:6. Quoted in John Neville Figgis, *The Divine Right of Kings* (New York: Harper & Row, 1965), p. 52. Aquinas did not, however, accept John's view that the illegitimacy of a ruler justified tyrannicide.

109. Of course, it can be reasonably objected that the increasingly aggressive position of the Church with regard to its right to oppose secular government in no way empowered the individual, instead building steadily towards the replacement of the lay king with a pope-emperor whose rule would have been every bit as authoritarian and more. And, indeed, what we know of the sufferance of internal dissent against the medieval popes suggests precisely this. After all, the Jewish prophets never wielded earthly power beyond that which the allegiance of the populace to their words and ideas could command, while the Church was a vast landholder in command of a literal empire of offices and authorities that embraced much of Europe; the Church when it came of age threatened not merely to topple kings but to topple kingship, arrogating the power of empire to itself. Thus the thirteenth and fourteenth centuries found popes such as Innocent III, Innocent IV and Boniface VIII exercising not merely a right to organize resistance to injustice—although this was of course the claim—but the actual annexation of government itself, including the right to establish the fitness of candidates for office, to confirm or deny the validity of elections and treaties between nations, a right to force the arbitration of disputes and discipline heretics, and a right to punish rulers who resisted these projected powers. Sabine and Thorson, *A History*, pp. 271-273. Indeed, Pope John XXII even declared that the authority of the Emperor, being nothing more than a delegation, reverted directly to him in the case of an interregnum. Figgis, *Divine Right of Kings*, p. 52. In short, the ideology of the papacy, once set free from

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the confines of New Testament teaching, tended rapidly towards the establishment of an absolutist church-state—with the Pope replacing the Emperor in absolute rule, to which there could be no legitimate resistance whatsoever. Indeed, such theories of the rights of the papacy, once loosed, continued to haunt Europe for four hundred years. Figgis, *Divine Right of Kings*, pp. 50-51. Yet reasonable as this fear may have been in the fourteenth century, the fact remains that the proclivities of the Church towards a papal imperium were never able to command the loyalty of the peoples of Europe (whose increasingly keen national consciousness stymied such pretensions at every turn), and that this strain of papist thinking proved neither popular nor durable. The real importance in papism lay in the confidence—and even arrogance—with which it posed an independent critique of monarchialism, relying on the Jewish prophets as proof that the sphere of right is to be set over the secular and have the authority even to overthrow it if need be, quoting, for example, Jeremiah 1:10: “I have set you over the nations and over the kingdoms to uproot and tear down, to crush and destroy, to build and to plant.” See Figgis, *Divine Right of Kings*, p. 48. It was the tension which was created by the willingness to behave in the tradition of the prophets that within a short time emboldened both churchmen and laymen to seek theoretical and practical tools to break the jaws of the despotisms that ruled them.

110. Figgis, *Divine Right of Kings*, p. 94.

111. At the outset Protestant reformers seemed to offer scant promise of any disobedience theory whatsoever; as Martin Luther’s primary concern was the inward salvation of the individual, he had no qualms about calling upon German Protestants to side with secular authorities with whom he shared the mutual interest of destroying the influence of Catholicism. Luther’s calls in the 1520s for submission to the state therefore could have been written by Peter or Paul: “It is in no wise proper for anyone who would be a Christian to set himself up against his government, whether it act justly or unjustly. There are no better works than to obey and serve all those who are set over us as superiors. For this reason also disobedience is a greater sin than murder, unchastity, theft and dishonesty, and that these may include.” Sabine and Thorson, *A History*, p. 338. Yet within a handful of decades, as Protestantism gained strength across the continent, the quietistic element in Luther’s thought evaporated—just as the doctrine of submission to the Roman authorities had dissipated with the ascension of the Latin Church after Constantine.

112. Quoted in Sabine and Thorson, *A History*, pp. 358-359.

113. When the Congregationalist movement began among English Puritans, its goal was that every congregation should do without the control of a central ecclesiastical authority, not because every church should be free to set its own doctrine, but because the one true doctrine could be determined well enough without orders from above. In fact, Puritan churches were hardly known for acceptance of



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the freedom of conscience of the individual, being characterized in England, as in Scotland and Geneva, by widespread censorship and espionage to ensure a dedication to the doctrine of the Church. Yet the structural independence of every church worked at cross-purposes with the strict discipline imposed within each congregation, and the movement tended towards increasing congregational independence in doctrinal matters as well.

114. See, for example, Akiva Zakai, *Theocracy in Massachusetts* (Lewiston: Mellen University Press, 1994), pp. 16-24.

115. Thomas Paine, *Common Sense, The Rights of Man, and Other Essential Writings of Thomas Paine* (New York: Meridian, 1969), pp. 29-33.

116. Paine, *Common Sense*, pp. 75, 80.

117. Paine, *Common Sense*, p. xix.

118. Thoreau's innovation is in his advocacy of withholding taxes, a form of disobedience which does *not* involve violation of an unjust law, but rather seeks to bring an end to government policy through nonviolent means. But the common interpretations to the effect that Thoreau's essay was based on a greater theory of nonviolence, or else on a theory of disobedience in cases in which the state is fundamentally just but wrong on a particular issue, are incorrect. Like Paine, Thoreau was advocating revolution, and he was perfectly willing to support violent means as well as nonviolent: "All men recognize the right of revolution; that is, the right to refuse allegiance to, and to resist, the government, when its tyranny or its inefficiency are great or unendurable. But almost all say that such is not the case now. But such was the case, they think, in the Revolution of '75. If one were to tell me that [Britain] was a bad government because it taxed certain foreign commodities brought to its ports, it is most probable that I should not make an ado about it, for I can do without them. All machines have their friction; and possibly this does enough good to counterbalance the evil. At any rate, it is [also] a great evil to make a stir about it. But when the friction comes to have its machine, and oppression and robbery are organized, I say, let us not have such a machine any longer.... If the injustice is part of the necessary friction of government, let it go, let it go: Perchance it will wear smooth.... But if it is of such a nature that it requires you to be an agent of injustice to another, then, I say, break the law. Let your life be a counterfriction to stop the machine.... I do not hesitate to say, that those who call themselves Abolitionists should at once effectually withdraw their support, both in person and property, from the government of Massachusetts, and not wait till they constitute a majority of one, before they suffer the right to prevail through them. I think that it is enough if they have God on their side.... Cast your whole vote, not a strip of paper merely, but your whole influence. A minority is powerless while it conforms to the majority; it is not even a minority then; but it is irresistible when it clogs [the machine] by its whole weight. If the alternative is to keep all just men in prison, or give up war and slavery, the State will not hesitate which to choose...."

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This is, in fact, the definition of a peaceable revolution.... But even suppose blood should flow. Is there not a sort of blood shed when the conscience is wounded? Through this wound a man's real manhood and immortality flow out, and he bleeds to an everlasting death. I see this blood flowing now." Henry David Thoreau, "Civil Disobedience," in Carl Bode, ed., *The Portable Thoreau* (New York: Viking, 1947), pp. 113, 119-123.

119. See Milton Meltzer and Walter Harding, *A Thoreau Profile* (New York: Thomas Crowell, 1962), pp. 252-267.

120. Henry David Thoreau, "The Last Days of John Brown," in Meltzer and Harding, *A Thoreau Profile*, pp. 262-263.

121. Cf. Jeremiah: "So says the Eternal, God of Israel: I made a covenant with your fathers on the day I brought them out of Egypt, the house of slavery, saying: At the end of seven years, every man should set free his brother Jew who has been sold to him.... [Yet] you have not listened to me, to proclaim freedom, every one to his brother and every one to his neighbor. Behold then, I proclaim freedom to you, says the Eternal—to the sword, to pestilence, and to famine." Jeremiah 34:13-17.

122. Thoreau, "Last Days," p. 264.

123. It is instructive to contrast Thoreau's position on resistance to unjust law with that of his fellow abolitionist Abraham Lincoln, whose lot it would be to try to hold together the selfsame state which Thoreau had declared himself prepared to overthrow. Years before assuming the presidency, Lincoln had said, in terms harkening back to the religious imperative of submission to the state: "Let every American, every lover of liberty, every well wisher to his posterity, swear by the blood of the Revolution, never to violate in the least particular, the laws of the country; and never to tolerate their violation in others.... Let it be preached from the pulpit, proclaimed in the legislative halls, and enforced in the courts of justice. And, in short, let it become the *political religion* of the nation.... Although bad laws, if they exist, should be repealed as soon as possible, still while they continue in force, for the sake of example, they should be religiously observed.... There is no grievance that is a fit object of redress by mob law" [emphasis in original]. Van den Haag, "Civil Disobedience," p. 12.

124. Martin Luther King, Jr., *Where Do We Go from Here: Chaos or Community?* (Boston: Beacon, 1968), pp. 169-170.

125. Martin Luther King, Jr., "Letter from Birmingham City Jail," in Hugo Adam Bedau, *Civil Disobedience: Theory and Practice* (Indianapolis: Bobbs-Merrill, 1969), pp. 77-78.

126. King, "Letter," p. 79.