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# Injustice and Restitution

# The Ordinance of Time

Stephen David Ross

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*Things make restitution to one another for their injustice according to the ordinance of time.*

Anaximander

*Justice is Strife.*

Heraclitus

*Which is better, cheap happiness or exalted suffering?*

Dostoevsky

*Someone must have traduced Joseph K.*

Kafka

*The political question is truth itself.*

Foucault

*Why always say of truth that it restitutes?*

Derrida

*In the measure that responsibilities are taken on, they multiply. The debt increases in the measures that it is paid.*

Levinas

*What if the "object" started to speak?*

Irigaray

*What is at stake is not only the hegemony of Western cultures, but also their identities as unified cultures. The West is painfully made to realize the existence of a Third World in the First World, and vice versa. The Master is bound to recognize that His Culture is not as homogeneous, as monolithic as He believed it to be. He discovers, with much reluctance, He is just an other among others.*

Trinh Minhha

## Preface

The twentieth century, riven by wars and the collapse of empires, has brought with its close, throughout the world, extraordinary political events marking the reopening of questions of community and identity once thought to be settled under Western law. The second millennium after the birth of Christ, taken to represent Western enlightenment and progress, has brought with its close, throughout the world, extraordinary political writings marking the reopening of questions of authority and law once thought to be settled under Western reason. At the same time, again worldwide, extraordinary circumstances mark the reopening of fundamental questions of nature and technology. The conditions of a just and effective community remain unknown, profoundly disturbed by hidden enmities. The conditions of a just and effective authority remain unset-tled, profoundly disturbed by forgotten violences. The conditions of a just relation to nature remain fundamentally political, disturbing science's authority. Writings at the close of our epoch gravitate toward questions of justice, community, and authority, moved by memories of suffering and pain, destruction and oppression, animosity and violence, mourning injustices that cannot be remembered. Western and non-Western writers speak of injustices by nationality, gender, sexuality, race, and class, of violence and oppression. Far-reaching questions of authority and justice explore the possibility that Western reason, at the point perhaps of its greatest triumph, represents another violence, another oppression. At stake is a profound reexamination of the idea of the political, of authority and law.

This book takes up these questions of authority, retracing the ideas of reason and law from ancient Greece to the present. The discussion pursues a line of thought begun with Anaximander, who speaks of the ordinance of time as restitution for immemorial injustice, and Heraclitus,

who speaks of justice as strife, through Western literature and philosophy to the present, Western and non-Western. In a voice that repeatedly challenges its own authority, the book explores connections between authority and injustice, rule and law, seeking to understand how ethics and politics can be meaningful where everything in nature is political. The line of thought developed here takes up the possibility that human subjectivity represents repeated subjection to authority, reenacting a timeless and pervasive injustice, throughout nature as well as human experience, providing an understanding of the authority of truth and law as unending restitution for forgotten injustices. Justice, truth, and law circulate as measures of restitution for an injustice older than any measure, an injustice that does not presuppose justice's measure.

The discussion reverses Foucault's understanding that the political question is truth itself, exploring truth's authority as ethical and political. The discussion parallels Trinh Minh-ha's insistence that epistemic authority be delayed to infinity. If political questions repeatedly return us to truth's authority, then both truth and authority demand unending critique, unending deferral, even as we can imagine no way to escape them. Emphasizing twentieth-century continental and pragmatist writings, this book explores alternative voices as challenges to authority, in feminist and multicultural writings, in Greek mythology and African narrative, in Greek drama and twentieth-century literature.

# I

## Injustice's Debt

We 1 struggle to retell Anaximander's tale of an archaic injustice, *adikia*, that inflicts upon us a debt before time; of an archaic injustice whose restitution requires endless time; of a justice, *dike\**, *that circulates as strife, polemos*, within the ordinance of time and law.<sup>2</sup> We begin with questions of law and truth, seeking to touch the limits of their authority. We begin again with questions of justice and the good, seeking to touch their enigmatic limits. We repeatedly contend with our own injustices, the limits of voice and truth.

Do we approach justice's truth? Do we hope to give another measure of justice? Or do we recall an archaic injustice's truth measured by neither law nor reason, especially unmeasured by justice's law? May we imagine that injustice fails to belong to the law that justice always works as Law, an injustice that knows no Law?<sup>3</sup> Here, where injustice honors an age before time, older than memory, before any origin, we think of the circulation of truth and law as the unending forms of restitution that institute Western Law. We think of truth and law as bearing within themselves an injustice before any truth and law that disturbs every measure of justice. We wonder whether the immemoriality of injustice may mark something older than and different from the *logos* and *nomos* of ancient Greece, from Western Reason, something unknown yet present within it. May such an injustice, older and younger than Apollo, than God the Father, emerge from the depths of humanity's inhumanity and reason's madness? May we recall an aboriginal injustice, older and younger than time, unmeasured by law, undiminished by any restitution, unfulfilled by

guilt or vengeance, nevertheless repeating law? Could we find hope in such a memory? Could we find *jouissance*?

These enigmatic questions unfold from our inauguration with Anaximander, but we remember Heidegger's reading of the fragment and his relation to the Greeks, a reading we hope to question as we repeat it. 4 Who, more than Heidegger, asks us to think of injustice's immemoriality? Who, more than Heidegger, repeats truth's injustice? For he diminishes the guilt (*Schuldigkeit*) that belongs to *dike*\* and the immemorial restitution of things for the *adikias*,<sup>5</sup> the "injustice in things," calling it "thoughtless" (*AF*, p. 43). We read his translation of Anaximander translated into English: "along the lines of usage; for they let order and thereby also reck belong to one another (in the surmounting) of disorder" (*AF*, p. 57). Whatever injustice remains in Heidegger disappears in translation, as if we might read Heidegger without knowing of injustice. Heidegger's German reads very differently: "entlang dem Brauch; gehören nämlich lassen sie Fug somit auch Ruch eines dem anderen (im Vorwinden) des Un-Fugs." The force of need and custom in *brauchen*, the justice in *Fug* and juncture in *Fuge*, the wickedness of lacking *Ruch*, the temporality and twisting of *Vorwinden*, the ethical sense of *Unfug's* mischief, all fade silently away, following Heidegger's own retreat from *Schuldigkeit* to *Fug*. We wonder that he can so unjustly allow injustice to pass away within the withdrawal of Being.<sup>6</sup> How can Being withdraw without pain, as if revelation might incur no victims? What, more than injustice, reflects the call of Being, requiring inexhaustible time?

In Lyotard's words:

how could this thought [Heidegger's], a thought so devoted to remembering that a forgetting (of Being) takes place in all thought, in all art, in all "representation" of the world, how could it possibly have ignored the thought of "the jews," which, in a certain sense, thinks, tries to think, nothing but that very fact? How could this thought forget and ignore "the jews" to the point of suppressing and foreclosing to the very end the horrifying (and inane) attempt at exterminating, at making us forget forever what, in Europe, reminds us, ever since the beginning, that "there is" the Forgotten?<sup>7</sup>

What of the silence of the victims, the withdrawal of their suffering? What restitution for their annihilation? Do these questions echo Levinas, or does he open an image of propriety even otherwise than being?

Transcendence is passing over to being's *other*, otherwise than being. Not *to be otherwise*, but *otherwise than being*. 8

In the exposure to wounds and outrages, in the feeling proper to responsibility, the oneself is provoked as irreplaceable, as devoted to the others, without being able to resign, and thus as incarnated in order to offer itself, to suffer and to give. (Levinas, *OB*, p. 105)<sup>9</sup>

What if in the call of Being something echoed that does not belong to Being?

What if in such a call we found ourselves immeasurably indebted, ethically and politically responsible for others? Where in Being can we hear such a call?

What, other than archaic injustice, could mark that responsibility in Being? To what, other than Being, can this injustice belong?

What but archaic injustice can rule against the authority of the proper, against proper authority?

Such questions make us hesitate when Heidegger tells us that the return to Greece bears no particular authority while marking a certain Western destiny (*Geschick*):

In our manner of speaking, "Greek" does not designate a particular people or nation, nor a cultural or anthropological group. What is Greek is the dawn of that destiny in which Being illuminates itself in beings and so propounds a certain essence of man; that essence unfolds historically as something fateful, preserved in Being and dispensed by Being, without ever being separated from Being. (Heidegger, *AF*, p. 25)

We choose not to emphasize Heidegger's relationship to Hitler. We emphasize instead his saying that the German language (even when most contaminated) is closest to the Greek.<sup>10</sup> We note the dawn of the destiny of Being's Western self-illumination in giving up the injustice of its coming into presence: "the presencing of what is present, is already in itself truth, provided we think the essence of truth as the gathering that clears and shelters; . . ." (Heidegger, *AF*, p. 37). Do we hear a truth that clears and shelters but does not subjugate; a truth without suspicion; a truth in the highest; the injustice of the highest? Do we hear in Being's destiny a refusal of injustice's debt?<sup>11</sup> Do we hear a proper destiny?

Heidegger approaches injustice in things, in himself, in Being, when he says,

"Error is the space in which history unfolds." "Without errancy

there would be no connection from destiny to destiny: there would be no history" (AF, p. 26). Here unfolds the withdrawal of Being into errant injustice, unending restitution, the injustice of every historical destiny. Yet he recoils: "How is what lingers awhile in presence unjust? What is unjust about it? Is it not the fight of whatever is present that in each case it lingers awhile, endure, and so fulfill its presencing?" (AF, p. 41). He responds with emancipatory language: "Lingering as persisting, considered with respect to the jointure of the while, is an insurrection on behalf of sheer endurance. Continuance asserts itself in presencing as such, which lets each present being linger awhile in the expanse of unconcealment. In this rebellious whiling whatever lingers awhile insists upon sheer continuance" (AF, p. 43). We understand this insurrection, this rebellion, to belong to the injustice of lingering in any while, however long, however old, of things together, the lingering of injustice, the inescapability of subjugation. We understand this injustice to require compensation. We take justice as the restitution in time for the injustice of whatever lingers, belongs to time, even in the form of destiny. We take injustice's debt to grow with reparation, with responsibility, defeating any destiny, growing older and younger than itself, exceeding itself as justice's injustice.

Heidegger rejects the penalty, thereby the injustice and law, the vigilance, that threatens destiny's justice: "Surely *tisis* can mean penalty, but it must not, because the original and essential significance of the word is not thereby named" (AF, p. 45). He refuses thereby any original and essential significance to the injustice of things and the restitution that they impose. We respond that this injustice, in Anaximander's fragment, may give us a most original and essential truth of things provided that we resist the propriety of the "most" with another vigilance. Or shall we resist even this original and essential nature as injustice's repetition? The errancy that belongs to things against their destiny perhaps another assertion of Western privilege circulates inseparably with their injustice, calling for unending restitution, for insurrection and rebellion in things, neither in us as subjects, nor in Being, nor anywhere in particular. Injustice here precedes and follows the order of time in which truth and justice compose their measure, the injustice into which we find ourselves always already fallen. Injustice grows without measure, older than itself immemorial, younger than itself in deepening restitution, forever mourned.

Does Heidegger repeat a tradition that persists in knowing nothing of its

injustices, nothing of others' suffering, nothing of its own subjections, that knows nothing of these in the name of truth, hopes to pay no penalty for that truth? Does Heidegger repeat that tradition even as our thought of injustice echoes the withdrawal of Being? Do we, do we all,

repeat that movement even as we struggle with its injustices? If we grant metaphysics its self-authorization to subject us to its dominion, do we at the same time retribute its abjection? The idea of truth, justice's truth, in our tradition belongs mimetically to a certain restitution. <sup>12</sup> Can this truth repeat the restitution that belongs to time? If so, does another truth, perhaps a ghostly, abject untruth, circulate together with injustice's truth, uncanny immemorial recollections,<sup>13</sup> to which truth pays relentless restitution? Do we understand the only restitution of which we can speak as a restoration, or can we repay in different currencies, different countries?

If injustice materializes older than time, what unfolds younger than it? In *Parmenides*, Plato presents two relations of age and youth, one where Zeno says, describing his youthful book, "That is where you are mistaken, Socrates; you imagine it was inspired, not by a youthful eagerness for controversy, but by the more dispassionate aims of an older man, . . ." <sup>14</sup> the other in relation to the one in time:

So if the one is, it is in time.

(a) Time, moreover, is advancing. Hence since the one moves forward temporally, it is always becoming older than itself. And we remember that what is becoming older becomes older than something that is becoming younger. So, since the one is becoming older than itself, that self must be becoming younger.

Therefore, in this sense, it is becoming both younger and older than itself.

(*Parmenides*, 152ab)

The one unfolds as both older and younger than itself while philosophy falls into time as young and old. Justice, in time, perseveres as younger and older than itself, along with reason and law. The one, Being, and injustice, remain older than time but still younger than themselves.

This immemoriality of injustice, with desire and truth, encompasses our concern with the injustice of their authority. We call it "charity,"<sup>15</sup> inseparable from a sacrifice that cannot make injustice whole, without scars.<sup>16</sup> The scars emerge older and younger than time, and we spend endless history paying restitution for forgotten subjections, opening new wounds on top of older injuries. How shall we know such wounds, such injuries and injustices? How shall we think of them except as necessary and justifiable sacrifices? How shall we know happiness together with them? If charity knows of injustice, valor knows the immemorial injustice of sacrifice and the archaic abjection of

subjection.

What sacrifice?  
What debt?  
What restitution?  
Can we pay off the debt?  
Do we seek endless retribution?

We begin our work again, challenging the authority of its beginning. We begin a second time with questions of the age of authority, which compose the remainder of our discussions.

1. With what authority do we, do I, begin, do I write, do I claim to speak for and with us or you? What authorizes the we? For that matter, what authorizes this I who begins, who writes as an author, with authority, joining with some others with you who read? Does a beginning posit a community of selfsame others or a selfsame authority authorizing itself to institute a community? Does the authority of a beginning inhere in writing and speaking, in language, or does it belong in some way to me or us as human beings, possibly to nature, wherever we find ourselves, *in media res*? Can we or anything circulate without authority? Can we or anything avoid authority's injustice?

Whitehead does not think so, and calls it "evil": "The nature of evil is that the characters of things are mutually obstructive. Thus the depths of life require a process of selection. . . . Selection is at once the measure of evil, and the process of its evasion." 17 Selection measures evil, which owns no measure in the good. This understanding provides another view of the sins of the world, older than time, whose laws pertain to the world collectively, while evil pertains to the depths of things in relation, together with its evasion, older and younger than itself. Such a view repeats Leibniz's famous remarks about justice's perfections recast in terms of injustice:

it follows from what has been said that the world is most perfect, not only physically, or, if you prefer, metaphysically, because that series of things is produced in which there is actually the most of reality, but also that it is most perfect morally, because real moral perfection is physical perfection for souls themselves.<sup>18</sup>

a better law could not be established than the very law of justice which declares that each one participate in the perfection of the

universe and in a happiness of his own in proportion to his own virtue and to the good will he entertains toward the common good. (Leibniz, "Ultimate Origin of Things," p. 353)

Levinas and Whitehead speak against any such proportion. "What meaning can community take on in difference without reducing difference?" (Levinas, *OB*, p. 154). Neither follows Kant's separation of truth and the good under the rule of the unconditioned. Instead, both take things together to compose an immeasurable ethical relation. How, if fallen together, we and others, commanded to belong together in proximity, heterogeneously, can we avoid responding selectively to our proximities and differences? How, if men and women, adults and children, lions and lambs, wolves and sheep, lie down together, can any refuse the task, the work, of responsibility toward the others, avoid obsession with the others, given by the *polemos* of our heterogeneities? We live in proximity, face to face; we suffer wounding by the others close to us, suffer our own obsessions with them. Fallen into nature, things face, care about, each other, stand in each other's way, take on responsibilities toward and through the others. In the others we find our *jouissance*.

Wounding and obsession nonetheless fail to bring us to subjection, fail to speak with suspicion of abject authority and injustice. Obstruction suggests cooperation, community, as injustice suggests justice's measure. Otherwise, selection marks time's circulation in response to obstruction as justice marks time's movement in response to aboriginal injustice.

The differences of things refuse totality, community, even the understanding of community as difference. As Arendt says:

the reality of the public realm relies on the simultaneous presence of innumerable perspectives and aspects in which the common world presents itself and for which no common measurement or denominator can ever be devised . . . . Being seen and being heard by others derive their significance from the fact that everybody sees and hears from a different position. 19

In the extreme, agreement cancels itself. "The end of the common world has come when it is seen only under one aspect and is permitted to present itself in only one perspective" (Arendt, *The Human Condition*, p. 53). These words mark the insight that community and publicity rest on, presuppose, differences, in perspective, position, being, nature. Yet from what standpoint does this truth of multiplicity in the one derive its authority, the force of its subjections? Does it, unlike the others, set itself



off as true for all, no matter where situated, true without their subjugation and oppression? Or does Arendt's truth of the common world belong within it, unjustly, located somewhere but not everywhere, within or without, exercising a community's authority? Upon what authority does Arendt say "only," and does that authority itself rest within a multiplicity of perspectives? With what authority may we speak of the end of a common world or of modernity, of history or time?

2. Can Arendt's multiplicity within the one avoid the injustices of its heterogeneities, the authority of its commonalities and diversities? Can questions of authority avoid recirculating the injustices of the one, however old or young? We ask whether what appears questionable in law and practice, truth and power, reveals a hidden authority. We ask whether the history of the world itself a one, perhaps an inoperative community may be understood as a struggle over authority, especially truth's authority. Nietzsche calls it the "will to truth," calls authority's struggle the "will to power": a struggle to establish and break authority.

We leave to later, perhaps to others, questions of the authority with which we must struggle against the inescapability of authority.

Instead, we wonder about the measure employed when we speak of questioning authority. This theme of measure belongs to *techne*\* as norm, propriety, but not perhaps as law, neither *nomos* nor *logos*, *loi* nor *droit*, *Recht* nor *Gesetz*. It represents a questionable Western idea, indeed constitutes our most common understanding of questioning toward an end, with a measure, capable of fulfillment. Can we imagine a questioning that circulates without fulfillment, without perfectibility? Can we imagine a questioning without authority? Shall we take it as anarchistic, unjust, to question *techne*'s\* law?

3. We continue to wonder about the oneness of the one that the will to power and truth circulate, the oneness of archaic injustice. "The univocity of being, its singleness of expression, is paradoxically the principal condition which permits difference to escape the domination of identity, which frees it from the law of the Same . . . ."21 We may elsewhere hear the ring of nature's sonance rather than its radiance, sound rather than light (Ross, *RR*), hoping to escape from the authority of philosophy's luminescence.22 Here we address the one, the univocity of being, a being containing all differences within itself so that none may escape, a community of differences. Do we hear this totality as the authority of an absolute mastery that fears it will lose everything? Does