To Call Forth

The following contains an introductory chapter and two excerpted yet still preliminary chapters on address and violence. These chapters are part of a larger project exploring the ways in which we address one another, with an emphasis on the role of law. Address exerts a profound influence on our civil, political and social lives. These simple, often mundane, acts of civility, contempt, deference, insolence and politeness are essential aspects of our social order. Titles and forms of address are common in cultures throughout the world. There is a reason for this. They are elemental features of society. Titles and address coordinate behavior from the ground up, subtly yet forcefully guiding individuals through everyday encounters.

The short excerpts of chapters 7 and 8 (very rough stuff but only about 15 pages total) are the pages on which I am most eager for suggestions and corrections. Please forgive the typos and other errors. A tentative table of contents follows. I very much look forward to your comments.

all best, -Rick

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Address is the kernel of society. People everywhere use words—names, nicknames, titles, styles, curses, terms of endearment or abuse—indicating some aspect or assessment of persons with whom they are interacting. Absent address, society retreats. Our social world as it is would wither without address. Besides sociality, address also constitutes individuality and personality, often giving countenance to persistent anxieties of identity. A measure of dignity, degradation or other sense of self emerges when even the most banal honorific or humilific is offered, or denied. Imprints of address register in our basic biology.\(^1\) Doubtless these broadly felt experiences contribute to the range and salience of address across societies.

Beyond its bearing on “the self” and “the social”, the two great concerns of contemporary life, spoken address brings about something more mundane but no less vital. Address publicly conveys expectations of how an encounter will unfold. As such address allows speaker, addressee and audience to coordinate their beliefs and behaviors based on commonly known announcements. This subtlety is the first law of address. Among the numerous laws relating to titles and address considered throughout this book, this first law has the broadest scope and greatest authority. And yet it escapes almost all scrutiny, overlooked often as mere convention.

Most people are scarcely aware of the degree to which address steers their everyday lives. Address is largely taken for granted, rarely noticed unless spoken inappropriately or in some other unexpected way. Call them “address blunders.” Those unanticipated moments when address fails to achieve its usual and expected effects, ironically, best reveal its functions.
Address blunders by definition occur less often than successes. Still, there is no shortage of failures in the corpus of common experience.

Notable failures are found in the most ordinary circumstances. Take, for instance, an address encounter, described by Alvin Poussaint, which might have been a typical exchange at the time in the American South. Poussaint, however, was a stranger to the South. A black doctor from New York City who had recently moved his practice to Mississippi, Poussaint recalled leaving his office with his secretary one day when a white policeman yelled at him, “Hey, boy! Come here!” Before going further, let’s identify, precisely, the address form used in the utterance. Forms of address are often used to initiate an exchange or to get someone’s attention. In this case, those functions were served by the policeman’s exclamation “Hey,” which proceeded his command “Come here!” What’s left is the address, boy.

Poussaint shot back, “I’m no boy!,” which concluded the address failure. The blunder was complete. A short moment later, however, came the fallout. Apparently caught off guard by Poussaint’s defiant response, the policeman raced at him, “inflamed,” wrote Poussaint, snorting, ‘What d’ja say, boy?’ ... Frightened, I replied, ‘Dr. Poussaint. I’m a physician.’ He angrily chuckled and hissed, ‘What’s your first name, boy?’ When I hesitated he assumed a threatening stance and clenched his fists.

A mundane failure to coordinate expectations based on address had now escalated into a serious and dangerous encounter. Poussaint felt the peril that would accompany any insistence on being addressed by his professional title and last name. As Poussaint withdrew, his “heart palpitat[ing],” he recalled muttering, “in profound humiliation, ‘Alvin.’ ”

Poussaint’s own recollection of the encounter is both poignant and detailed, but there is more still to observe in that moment of address. Considered in its context, which is to say the American South in the 1960s, at the height of the civil rights movement, the address is clearly a response to a real and substantial threat—the threat Poussaint posed to the policeman’s settled conceptions of order. The policeman’s response was disproportionate and still subtle. By repeatedly addressing Poussaint as boy the policeman was not merely situating himself and Poussaint within the existing, though increasingly fragile, racial hierarchy of the American South, he was also invoking a more ancient order, calling on the unquestioned deference slaves owe their masters.

Slaves and servants have throughout history answered to boy. As a generic summons to those who serve, “boy, come here,” is more deeply rooted in servitude than racial subordination. A conflation of race and servitude
especially, but not only, in the Americas has obscured this important fact. Regrettably, this historic conflation still confounds Americans confronted with situations wherein dominance and race intersect. We will see this confusion materialize in events discussed throughout the book. For now, however, the policeman’s solicitation of slave-order by with the utterance boy may be more easily appreciated by looking past America’s exceptionalism.

Addressing Slaves and Servants

Evidence of slave address can be found in some of the earliest written records. Mesopotamian slave contracts from the first millennium BCE used various generic terms to refer to slaves, e.g., “ardu (masc.), amtu (fem.), qallu (masc.), qallatu (fem.), lamutanu etc.” When these contracts made reference to specific individuals, free citizens were “usually identified in the documents both by their father’s name and by a family name,” while slaves were “most often called just by their personal name, followed by ‘slave (woman) of so-and-so’.” Administrative records maintained in temples and archives kept by elite Babylonian families indicate that certain “servile” names predominated among slaves. These materials, however, disclose little about how slaves were addressed conversationally. The challenge here, as Eleanor Dickey observes, is not primarily a “question of the difference between spoken and written language.” It is rather a matter of genre. Contracts and other official documents are seldom conversational. Contracts and official documents are, by design, not meant to reflect a conversational exchange but instead a conclusion that comes at the end of a conversation. One must look to writings in other genres for reflection of ordinary speech.

Searching for colloquial exchange in ancient languages is necessarily a text-based task. But not every textual exchange is revealing on the matter. Some texts hew more closely to common talk than others. Greek tragedy, for instance, with its characteristic elevated speech and uncommon words, is a poor place to find ordinary talk. Comedy, on the other hand, as Dickey observes, tends to speak more plainly. Looking at the more likely sources for common expression, Dickey collected and reviewed nearly twelve thousand address tokens from the prose of more than two dozen authors writing between the fifth century BCE and the second century CE. She observed consistent a pattern of address between and among citizens and slaves: “Free adult males addressed each other by name, whatever their age or rank, but they often addressed slaves (their own or someone else’s) as paɪ ‘boy’ or with other terms which indicated servile status.”

Additional evidence that slaves were addressed as boy can be found in republican Rome. Antiquarians have organized Roman slave-names into
a number of distinct categories. In the oldest categories, “the slave is designated as puer of his master.” Slaves were named in the early republic by appending “boy” to the names of their masters. For example, a slave belonging to Marcus would be called Marcipor, a slave of Lucius called Lucipor and Quintin’s slave Quintipor etc., where the “por element has been explained as puer,” Latin for “boy.”

Turning to early English usage one again finds “boy” more closely associated with slaves and servants than as an address or reference to young males. How and when “boy” entered English usage are far from settled questions. Some etymologists trace it to Old French (for instance, to “baisse, -esse ‘woman-servant’ which has a variant boiasse”), others point to derivations from Low German, Middle Dutch and even baby talk. The absence of consensus over the source of the English “boy” should not belie the broadly accepted view of the term’s first recorded usage. Dobson (1940) observes that boy’s earliest written expression (c. 1260) applied to male servants and others of servile status. Thereafter “boy” was applied to “the lower orders of society,” suggesting “churl” as contrasted with the well-born or nobility. Churl had not yet acquired its current gloss of contempt, but was rather a more neutral description of a social level, unlike boy, which was already then a term of derision.

Not until the fifteenth century did the first instances of “boy” referencing “male child” arise in written English. Before that time, young males were called frumberdling (c. 1000), hind (c. 1297), swain and page (c. 1300) among other addresses. Young males were also addressed as gyrle (or variants gurle, gerle, gorrel, from c. 1300, a reference to a child irrespective of sex), which was subsequently feminized to today’s girl, beginning around the same time that boy attached to young males. Yet even as “boy” acquired its more familiar contemporary meaning, from the 1500s through the 1800s, according to the Oxford English Dictionary, it continued to be “used (chiefly by white people) with reference to non-white slaves and (in English-speaking colonies) to non-white servants, labourers, etc.” It was in this later period, marked by European colonization, when race and slavery fused and boy acquired dark-skin connotations.

European colonists in ‘the new world’ adjusted various practices of slavery to serve their particular environment and aims, but they did not abandon its oldest usages. In some cases, as we shall see, they abdicated prior conventions of address; in other cases they maintained the old familiar forms. Slave address fell into the latter category. Some suggestion of the synonymic character of “boy” and “slave” can be seen in Figure 1, an N-gram depicting the frequency of “boy” and “slave” in a corpus of millions of digitized books from American English publications from 1800 to 2010.
The two terms appear to track each other closely until the early 1860s, after which time “slave” drops precipitously and remains low (with a minor, though revealing, bump in the mid-1960s and 1970s, during the American Civil Right movement), while the frequency of “boy” increases during the American Civil War and remains above the ante-bellum peak for the next century. The figure is perhaps too suggestive, as it no doubt captures broader shifts in register during the period, but it is difficult to entirely discount the image given the long historical link between the terms. Throughout recorded history boy has been the spoken badge of slavery and servitude.

**Boy’s Contemporary Usage**

How does the ageless association of boy with slaves and servants bear on conventional practices in the American South of the 1960s or even today? That is to pose a pointed version of the more general inquiry pursued here: what are the practical consequences of established patterns of address in everyday encounters? The long answer to this question is provided in the chapters ahead. An abbreviated response is found in the shorthand labeled the “first law of address,” that is, in the capacity of address to coordinate expectations, which preserves ancient forms of address while at the same time guiding present-day conduct. Traditional forms and contemporary practices are mutually perpetuated through address.

Game theorist and Nobel laureate Roger Myerson wrote that, “in any cultural tradition that has survived into the modern world we should expect to find generally accepted systems of rights and authority that provide effective focal coordination in most of the important games [of] daily life.”

Equating the demands of daily life with “games” is not an effort to reduce real-world burdens to trivialities. Rather, it is a way of exposing implicit
rules behind daily routines too easily taken for granted. Tacit rules associated with spoken address reflect intergenerational and broadly-shared assumptions of entitlements and authority that determine outcomes across widespread daily interactions. Daily observed outcomes, in turn, support the continuity of these old assumptions. They are mutually constitutive.

Why has the subservient address boy survived into the modern world and what does its utterance accomplish today? A Parisian waiter may today bristle, but would not be shocked at being hailed garçon. No American waiter would countenance being addressed as boy, although some might forgive or unknowingly bow to the French translation. Modern American usage of “boy” is primarily a reference to young males. As a form of address, it sometimes takes an affectionate or play form among intimates or operates as an expression of solidarity. Between non-intimates boy remains derisive. Said to adults or even adolescents, boy signals disrespect. To say it without worry of reprisal is an indication of one’s perceived dominance and another’s subordination. In other contexts, boy may be used to interpret the speaker’s intention with respect to actions taken proximate to the spoken address. A small common word, yet it serves many purposes.

A recent U.S. Supreme Court case, Ash v. Tyson Foods, illustrates these points. Two black men, Anthony Ash and John Hithon, initiated the case, alleging discrimination by their employer, Tyson Foods. Ash and Hithon worked at Tyson’s poultry processing plant in Gadsden, Alabama, where they had been line workers for years killing, plucking, eviscerating and deboning birds among other tedious chores before eventually becoming low-level plant superintendents. When two shift manager positions became available, they applied but were denied based on their race, they argued, after discovering the jobs went to two less experienced white employees from other Tyson plants. Two separate juries accepted their argument and ordered Tyson to pay compensatory and punitive damages. A magistrate judge soon overturned their fleeting victories and the federal court of appeals agreed with the judge, arguing that “as a matter of law” no reasonable jury could have inferred discrimination based on the evidence presented by Ash and Hithon.

Actual juries did, of course, infer discrimination based on the evidence presented, which included inter alia corroborated testimony that the Tyson manager charged with the promotion decision had a habit of addressing Ash and Hithon as boy, such as saying “Boy, you better get going,” to Ash while he was having lunch with his wife in the plant cafeteria, and yelling “Hey, boy,” to Hithon as he was walking out of a conference room. Judges on the appeals court dismissed these comments as merely “conversational” and ruled that “[w]hile the use of ‘boy’ when modified by a racial classification
like ‘black’ or ‘white’ is evidence of discriminatory intent, the use of ‘boy’ alone is not[].”\textsuperscript{23}

In other words, the appellate court concluded, “white boy” or “black boy” can indicate a racially discriminatory disposition, but addressing someone merely as boy could never reasonably convey such an attitude. This argument could not be both sincere and informed. Justices on the U.S. Supreme Court wrote as if it was the latter that was absent. In a 2006 per curiam opinion, i.e., unanimous and anonymous, the Court reversed the appellate court finding, ruling that though boy “will not always be evidence of racial animus, it does not follow that the term, standing alone, is always benign. The speaker’s meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage.”\textsuperscript{24}

Custom and historical usage are indeed important for grasping meaning, but that does not imply one must fully appreciate ancient practices and usages to effectively enlist the imported weight of an address. Tyson’s plant manager needn’t have been fully aware of boy’s historical meaning. He was aware enough of its social meaning, as were Ash and Hithon.\textsuperscript{25} In that context, addressing a man as boy is not an effort to infantalize him, say, to treat him as if he was a child or childlike, but rather to subordinate him, to treat him as if he was a servant or slave rather than as an employee or co-worker. Moreover, in the American South it has long been settled that when a white man addresses a black man as boy, the usual intention and effect is to insult, to humiliate or to ‘put him in his place.’ There is nothing subtle about the comment in moments of conflict backed by a threat of violence or reprisal, such as termination, demotion, failure to promote or issue a pay raise.

These notorious moments of conflict, however, only give a glimpse of the independent power of address. When commands, like “come here” or “get going,” are backed by clear and credible threats it is difficult to appreciate the subtle power of address. Address power gets overshadowed by the power of the threatened sanction to compel behavior. Address then largely appears as humiliation or an honorific, as an expression of superiority or solidarity, all of which are well-studied aspects of how address functions. These functions were displayed in the Ash case, as well as in the encounter described by Poussaint. Recall Poussaint conceding that he was profoundly humiliated by the address encounter. The policeman apparently sought to subordinate Poussaint and superordinate or honor himself through the address. Furthermore, as it was a public encounter, presumably audible to Poussaint’s “Negro secretary” and others, the policeman’s address likely occasioned a moment of solidarity between the doctor and his secretary, intervening in the ordinary hierarchy of their professional status and roles. Additionally, like-minded whites witnessing the policeman’s verbal assault
may have experienced group solidarity and privilege in the moment. His address gave them notice that irrespective of whatever titles blacks bore, they were still to be addressed as *boy* and were entitled to no special deference from whites.

Honor, humility, authority and solidarity—identified within practices of civility, etiquette and politeness—are familiar themes in the study of address. Recognizing these essential themes and practices, this book emphasizes a different function, the coordination function of address. That address coordinates human activity, one might fairly say, is so obvious it hardly needs emphasis, much less a book. Yet it is exactly this obviousness, the ho-hum quality of address, which hides its influence in plain sight and that calls for focused examination. Address coordinates by telling us (and others) who and where we are, how to behave and what to expect from others—the first law of address. These are the *constitutive, regulative* and *correlative* modes of address. Each mode exerts its own form of influence, amplified when combined, as they usually are, sometimes all three manifesting at once.

**Gentle Power, Liberal Obedience**

To appreciate the distinctly constitutive, regulative and correlative modes of address, first consider how address can both express and reproduce ideology. For instance, in addressing Poussaint as *boy*, the policeman did not simply exhibit his personal authority and privilege as a white man in the American South; he was also acting as an agent of the state and as such he was bidding Poussaint to accept his place in the scheme of things, to accept the ideology of his own subordination. Speaking with the voice of the state, the policeman made his overture perfectly clear. After demanding a first name, the only personal address he would grant the doctor, he “bellowed,” recalled Poussaint:

‘Alvin, the next time I call you, you come right away, you hear? You hear?’ I hesitated. ‘You hear me, boy?’ My voice trembling with helplessness, but following my instincts of self-preservation, I murmured, ‘Yes, sir.’ Now fully satisfied that I had acquiesced to my ‘boy status,’ he dismissed me with, ‘Now, boy, go on and get out of here or the next time we’ll take you for a little ride down to the station house!’

A choice was offered. Poussaint could defer or descend into further conflict. He chose deference, addressing the policeman with a gratuitous *sir*. That
was a moment of ideological recognition. Now everyone knew their places and what was expected “the next time.”

It is in these practical rituals of everyday life, argued the French political philosopher Louis Althusser (1970), that ideology transforms “individuals into subjects.” Althusser called transformative process “interpellation” and, as it happens, he illustrated it with an example of a policeman addressing a pedestrian on a crowded street by calling out from behind, “hè, vous, là-bas!” (hey, you, there!). By turning around, claimed Althusser, the addressee gives himself up to the state, as if through “this mere one-hundred-and-eighty-degree physical conversion, he becomes a subject.” Although his account is allegorical, intended to illustrate how individuals become subjects of political ideology, no nuance is required to see how this allegory applies to an encounter where a policeman yells, “Hey, boy! Come here!”, and a proud man acquiesces, “Yes, sir.”

Althusser’s interpellation illustrates a constitutive function of address. When addressed by the state in such manner, subjects are brought into being in a particular way. When the Queen of England says “I dub thee, Sir Elton John,” she creates or constitutes a new subject of the realm with distinct entitlements, obligations and expectations. John, of course, already existed, but in whatever form he was previously received or continuously remained, he became something else, instead or in addition, when the Queen made him a knight. We needn’t determine his exact metaphysical form in order to recognize that there are pragmatic implications that follow from this constitutive address. Because, even more important than creating him as a knight through ancient rules and ritual ceremony, the key constitutive function of address lies in the distinctions it fosters—the “constitutive distinctions,” as Charles Taylor put it.* Still, what practical difference does a constitutive address make—politically, civilly, socially, morally?

Before answering that question, some clarification may be in order. First, state actors (monarchs, police and such) are not the only ones empowered to constitute subjects through address. Commonplace thugs are created as made men through mafia address rituals. Failure to appreciate the effect of this constitutive locution can lead to dire consequences. Second, formal ceremonies are not required. People constitute each other everyday with ordinary polite speech (e.g., “good day, sir”) and impolite utterances (e.g., slurs, curses and hate speech) with consequences potentially no less dire, as discussed in chapters 7, 8 and 9. Third, these everyday addresses

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*“[A]ll the institutions and practices by which we live are constituted by certain distinctions and hence a certain language which is thus essential to them.” Charles Taylor, “Interpretation and the Sciences of Man,” at 25. Addresses are the fundamental terms in that essential language.
inform and are informed by ideology and wider social practices. Calling someone by an offensive name presupposes beliefs and practices that makes offense from the name-calling intelligible: “the vocabulary wouldn’t make sense, couldn’t be applied sensibly, where this range of practices didn’t prevail. And yet this range of practices couldn’t exist without the prevalence of this or some related vocabulary.” Address and the practices it calls forth are mutually constitutive and, moreover, they constitute both subjects and the contexts subjects inhabit.

Apart from its constitutive capacity, address also serves a regulative function. Here address says less about who or ‘where’ you are, than how you ought to behave. Forms of address are not merely instances of civil or polite speech, they are also terms suggesting conduct, like scripts prescribing appropriate behavior. All the etiquette guides ever written contain only a small fraction of the socially sanctioned rules of conduct that are invoked by address. Proper responses to address are learned everywhere and from very early. Infants are instructed to look surprised and then smile at the call of peek-a-boo. Not all the youthful lessons are so sweet, however. Recall the plant manager at Tyson Foods, beckoning Hithon, “Hey, boy,” or commanding Ash in the cafeteria, “Boy, you better get going.” Those old men, speaker and addressees, no doubt learned what conduct was called for by that address when they were young too.

Calling for an action, however, does not assure that it will be forthcoming. Whether anyone complies with the regulative norms triggered by spoken address is another matter. Consider, once more, the encounter in the cafeteria at Tyson Foods. After being publicly addressed as boy, while he and his spouse were having lunch, Ash was left, it seems, speechless. His wife was not. She retorted, “He’s not a boy. He’s a man.” Speaking on his behalf she rejected the script—the call for Ash to properly comport himself by deferring when addressed as boy. Her retort accomplished something else too. By openly confronting the plant manager before the assembled crowd in the cafeteria, she also weakened the power of the address boy to bring about deferential behavior merely by coordinating expectations in the moment and going forward. Her retort affected the correlative function of the address; that simple capacity to align action based on common knowledge of what’s expected is the basis of the correlative modality.

No grand normative structure is required for the correlative mode. Take, for example, a hunter and a second animal predator, each separately in pursuit of the same prey, as they lock eyes and form a common expectation of what the other will do next. The expectation may be based on their relative size or posture, continued eye contact or aversion, bared teeth or something else mutually observable or audible, like the presence of nearby
cubs. At some point one predator may back away—losing the prey but potentially avoiding a fight with the other hunter—or not. While it may be rational for the predators to avoid a fight, whatever the rational outcome is, it isn’t inevitable. The point is simply that the actions of the two pursuers may align based on a shared expectation that is informed by some commonly observed or heard aspect of their encounter. Behavioral conventions observed in nature, e.g., ritualistic animal contests, sex-roles in parental care, seniority and territoriality, have long been seen for their correlative capacity. It is at this very base level where the correlative mode operates, which is why it is so ubiquitous and largely taken for granted.

Almost anything can be enlisted to correlate strategies by facilitating a shared expectation of what will follow. Which prompts the question, ‘how are these correlation devices determined?’ In animal encounters nature tends to select, assisted by evolutionary pressures, the traits and features around which action is correlated. In most human encounters, reason replaces natural selection. It must, since the time-scale required for natural evolutionary processes is too great to account for the novelty of shared beliefs based on traits and features of social encounters. Culture, assisted by a somewhat analogous cultural evolutionary processes, is the principal contributor to social expectations based on commonly observable cues. For address encounters, in particular, it almost goes without saying, that the central source for expectations of how individuals will behave come from the constitutive and regulative modes of address. The correlative modality is primed when these other modes are activated. Loosely speaking, one could say that the correlative mode of address is contained in (or, slightly more accurately, informed by) the constitutive and regulative modes, further contributing to the former’s hidden quality.

Still, it is possible to isolate the correlative mode of address from the other two. An address is sometimes infelicitous, failing to constitute a subject as anticipated or calling for behavior or for a disposition that is inappropriate. Nonetheless, the mere mention of an inapt title, name or pronoun can be enough to correlate expectations and coordinate subsequent actions. Mistakes and slips of the tongue provide good examples. When a patient calls a doctor nurse or classroom visitor calls a student professor, beliefs about how the patient or visitor will act toward the doctor or student, and vice versa, become common knowledge among speaker, addressee and audience. At this point the doctor or student may correct the speaker, but sometimes there won’t be time for that or she simply may not want to bother it. Misspoken speakers who are or become aware of their own mistaken addresses may also find it convenient to avoid self-correction. Notwithstanding the mistake the parties may still coordinate their actions based on the commonly known (yet inaccurate) belief. Alternatively, they
may fail to coordinate in a manner suggested by the inapt address, potentially producing conflict, however small, which might appear inexplicable to an unaware speaker and in consequence may lead to greater conflict. Bearing in mind the likelihood of conflict, even if scarcely conscious of the calculation, addressees often choose to ‘go along to get along,’ complying with the call of an infelicitous address.

Such is the manifest power of address. Address constitutes practices that support political ideologies, cultural conventions and other social structures, even when those ideologies, conventions and structures are not embraced by the participants—potentially none of them. Given the exigencies of everyday life, the beliefs and expectations associated with various forms of address can bring about and maintain the very patterns of behavior called for, simply by giving voice to them through address. It has the power to call forth what it names. Importantly, this extraordinary power of address works even absent the force of the state or the force of habit. Address power operates largely unimpeded for another reason. Its authority is not beyond question, but rather fails to reach the point of questioning. Address exerts multiple influences over society, but this most subtle influence is dominant.

In addition to its contributions to self and social understanding, address exhibits a nearly imperceptible, almost natural, equilibrium force in social encounters. Address bears its own authority. And, for precisely this reason, ancient usages persist in the modern world, often unquestioned. “We are but too apt to consider things in the state in which we find them,” as Edmund Burke cautioned, “without sufficiently adverting to the causes by which they have been produced, and possibly may be upheld.” Continuity of address forms follows not merely from commitment to tradition or unexamined conservatism, but from the subtle capacity of conventional address to coordinate expectations and direct conduct across time and contexts. Making “power gentle and obedience liberal,” to recall Burke, address forms often eclipse the “conquering empire of light and reason.”

Continuity and Change of Address

Aristocratic address, glamorous and wicked curses along with other archaic oral-encounter rituals remain part of everyday practice. These rituals, moreover, nudge contemporary thought and behavior in exactly the same way they swayed ancestral imaginations and deportment. How is this possible? There are no slaves currently in the American South, no nobility in North America, no witches staked in Salem for uttering curses. No one alive has ever heard a Theban slave addressed as boy. Yet when said in appropriate contexts the address reaches back with wind-swift speed, summoning
our oldest intuitions of servitude and slavery. By what mechanism do such
utterances recall ancient and ostensibly abandoned practices? The simple
answer is that the usages have never left us, even though some of the asso-
ciated practices have been formally renounced.

Address forms associated with slaves, nobility, witches and other an-
cient ideal types continue to influence contemporary conduct. In some cases
these forms have receded to smaller spheres of influence. The old usage of
boy apparently still thrives in the chicken plants of Alabama and other back-
waters. Along with other ancient addresses it has survived in the modern
era. Dukes, marchioness, earls, baronesses and viscounts—including later
administrative derivatives of viscount, i.e., bailiff and provost—are still ad-
dressed as such in proper courts and circles. In these contexts the address
functions much as it always has. Moreover, if left unchecked, these timeworn
forms would threaten to spread beyond their limited circles and take root
in other domains.

Address power exists in a steady state of potential expansion. Within
the audible sphere of address there is an “intrinsic tendency to expand, an
endogenous imperialism constantly pushing to spread its surface and in-
crease in extent, depth, and subtlety.” This endogenous imperialism was
well known to imperialists of the past. Recognizing the power of address,
officials and insurgents have long sought to harness or subvert that power
for their own purposes. Much of their efforts are recorded in laws, codes
and other written records, which are the primary sources for the arguments
in this book. These sources reveal an additional important fact about titles
and address conventions. As much as they aide and are aided by equilib-
rrium forces, the continuity of these conventions is hardly a forgone conclu-
sion. Not all conventional titles and addresses successfully resist change.
Conscious and concerted effort may shift prior meanings and functions. To-
ward that end, perhaps no better example may be found than the American
disavowal of titles of nobility.

Formalized at the founding of the United States, the repudiation of
noble titles and addresses had long been observed in everyday colonial con-
duct. To be sure, English subjects in colonial America were well aware of the
“ancient opinions and rules” that “harmonized the different shades of life
under the monarchy.” Yet, “habituated as they were to monarchical hierar-
chy and desirous of stability and continuity, most were” as Gordon Wood
wrote, “not disposed to perceive, much less to understand, the structural
shifts taking place in their society.” English subjects in the colonies lived
among a relatively level and itinerant population, loosely and increasingly
disconnected from an already weak local aristocracy (except perhaps in Vir-
ginia and few isolated pockets in other colonies). For them the etiquette
and customs of aristocratic order had little bearing in their day to day lives. Common people more and more looked past, not to, colonial aristocrats, who lacked the influence and resources of their counterparts in England. “There were no dukes, no marquesses, no court, and nothing like the fabulous wealth of the English nobility.”

Noble status mattered little, not only on the frontier as Arthur Schlesinger stressed, but even in colonial centers of commerce. Social and economic order eventually detached completely from the old aristocracy. Political independence soon followed.

In the wake of the American Revolution no one knew and many feared, with good reasons, that this republican independence would not last. It was entirely reasonable to suppose that when the swirling social and economic forces settled down, the old regime or perhaps a new bloodline aristocracy would establish itself. It was easy to imagine that elites and common citizens alike would seek order in familiar forms of political power and obedience. Anticipating reversion, the national founders tugged at the roots of royal and aristocratic order. They seized on the titles and addresses that supported the old monarchical order.

Justifying the clauses in Article 1, section 10, of the proposed federal constitution (called the “soul of the Constitution” to the people of New York, James Madison observed that “[b]ills of attainder, ex-post-facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact,” and went on to write a long paragraph defending “this constitutional bulwark in favor of personal security and private rights.” He concluded with “[t]he prohibition with respect to titles of nobility,” stating simply that it “needs no comment.” Alexander Hamilton also found obvious the need for this prohibition. “Nothing need be said to illustrate the importance of the prohibition of titles of nobility,” he wrote. Notwithstanding his own sympathy for hereditary titles, or perhaps because of it, Hamilton argued a that constitutional prohibition “may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.” In both federal and state Constitutions, as well as in common practice, Americans ratified their rejection of noble titles and addresses along with the political order those forms sponsored.

Americans, of course, were not alone in turning their backs on hereditary titles. In France, around the same time, titles of nobility were also abolished. “Is it, then, any wonder that titles should fall in France?” asked Thomas Paine, the most vocal critic of aristocratic titles in both the American and French revolutions. Paine had directly observed and appreciated the awesome power that aristocratic titles held over the masses. Yet, although he understood the awe, his appreciation of the subtler effects of these titles was
belied when he asked, “Is it not a greater wonder that they should be kept up anywhere?”

No. Once established and ingrained in common practice the tendency of titles is to perpetuate themselves. At that point, the greater wonder is their demise, not their upkeep.

Aristocratic titles and address had for centuries structured social exchange across Europe. While it is easy to see why revolutionaries would want to abandon forms that support traditional patterns, the difficulty lies in adjusting social expectations of ordinary people in their everyday interactions. “It is common opinion only that makes them anything or nothing,” wrote Paine, prescient about so much in the midst of two revolutions.† Yet he seemed insensitive to the difference in common opinions about these forms in America and in France. Less than two decades after the French Revolution, Napolean Bonaparte reinstituted titles of nobility. Styles derived from these titles are now embraced by the masses in France, where every man is addressed “my lord” (monsieur) and every woman “my lady” (madame). Lords and ladies have never fared well in America. Rejected in common society and in many elite circles, these forms struggled and ultimately failed to find footing in the United States. It was not for lack of trying. Conscious and active efforts were required to keep them at bay, as described in chapter 4, on the occasions they threatened to expand their authority on American soil.

Organization of the Book

[The book proceeds in three parts. The remainder of this part, Organizing Structures, completes the building blocks and expands on the theoretical approaches used throughout the book. Chapter 2 focuses on the basics of address theory and elaborates on the framework of the analysis. Chapter 3 turns more explicitly to game theory, emphasizing the role of address in facilitating and constraining violence. The second part of the book, State and Society, delves into the role of ‘polite’ address in structuring everyday political, civil and social exchanges. These themes are explored in three chapters, based on the tripartite distinction drawn from American constitutionalism: political address (chapter 4), civil address (chapter 5) and social address (chapter 6). The third part of the book, Sacred and Profane Address, moves beyond ‘polite’ address—turning to cursing (chapter 7), swearing (chapter 8), hate speech (chapter 9)—and questions law’s capacity to regulate these forms of address. A brief Coda closes the book.]

†Consider Micheal Thompson’s related insight: “It evidently does not exist except through people’s acting and being disposed to act in accordance with it.” Micheal Thompson, 2008, Life and Action: Elementary Structures of Life and Political Thought Harvard Univ. Press, at 160.
7. cursing

No mob has ever lynched or stoned someone to death in silence. Words are always spoken aloud before and during the assault, in stark contrast to the conspiratorial silence after. Mob violence is a public performance, and words are essential features of this terrible ritual. It often commences with small talk, malicious and self-serving talk. Before any rousing public speeches, mobs are frequently setoff by gossips. Their notorious rumormongering initiates the violent conspiracy and secures assurances that others will stand aside while the more motivated take action.* Talk intensifies with every step. Whispering and equivocation hardens into determined shouts. To sustain themselves against the gravity of the contemplated violence, words are screeched out as if to chase away lingering doubts and reassure each other. These violent conspirators, however, do not speak only among themselves. Their ritual appears to require addressing the victim as well. Why do hostile crowds curse the targets of their violent intent, seemingly, as a precursor to the assault?

Single attackers also curse before striking—cursing is common in both solitary and group attacks—but killing in the company of others reveals something distinct about cursing. As a preliminary matter it is important to observe the difference between swearing and cursing. As John Ruskin put it, “the first is invoking the witness of a Spirit to an assertion you wish to make; the second is invoking the assistance of a Spirit, in a mischief you

*Before mobs riot, it has been noted, they often mill about for some time, swirling and talking among themselves as they move toward realizing their latent violence. The term ‘milling’, Roger Brown wrote, “was originally applied to the slow, circular, aimless movement of cattle.” A similar physical process appears among lynch mobs, Brown observed, and “[i]n the milling process rumors are likely to be transmitted which help to establish and communicate [the structure of the interaction]” that makes lynching possible. Roger Brown, Social Psychology, Free Press (1965) at 756.
wish to inflict."† When attackers swear to god, to spirits or on the souls of loved ones, the ostensible object is almost always a natural person, about whom they feel some immediate inability (some lack of power, authority or commitment) to harm. Swearing attends to this inability. With gods, spirits and souls called as witnesses to threats of violence, the speaker’s resolve to act, the next time, is rendered more credible. How so? By stipulating contingencies publicly, enlisting forces beyond themselves, speakers render future violence less discretionary. A power to act in the future is created by raising the costs of inaction, in the next instance. Swearing in this sense is temporally detached from violence. By the time an attack is imminent, the act of swearing is long passed.

Cursing is temporally more closely connected to physical violence. Curses are immediate precursors to violence. Hurling curses in this context should be understood “not in the superficial sense of throwing dirty words,” as Jack Katz observed, “but in the more profound ancient sense of casting a spell or invoking magical forces to effect degrading transformations[].”43 None of this requires actual magical or supranatural forces. Degrading transformations are not literal physical transformation of cursed objects. Even in the ancient world, attackers were thought to lack the power to actually transform physical objects through words. Any change in a target’s appearance would have been attributed to madness or else some kind of “glamour”—a theory of transformation refined at the height of the witch craze, when courts prosecuted women, mostly, based on charges like using words to transform men to beasts. The intelligibility of transformative curses had to be grounded in both law and theology, since witch prosecutions involved legal and religious subject matters. As incredulous jurists and theologians denied such claims as nonsense and blasphemy, inquisitors endeavored ever harder to establish within Christian theology the existence of witches and their power to work evil through words.44

Conceding that “only God can effect” or bring about “formal and actual transmutation,”45 inquisitors observed “that the words of the Canon cannot exclude” the witch’s “glamour, by which things seem to be transmuted into other likenesses.”46 Glamour is mere a trick, a use of words to trigger a recollection of images and impress them “on the imaginative faculty.”47 Formal and actual transformations did, of course, occur at the time. Inquisitors themselves had transformed their targets into a figure that the community, and the law, could recognize as a witch. Calling someone a ‘witch’ was itself a transformative curse and the first step in a “process of social consensus” that required (and often generated) “enough community

†Benediction, by John Ruskin, in The Genius of John Ruskin: Selections from his Writings, Edited by John D. Rosenberg, Univ. of Virginia Press (1998) at 388. [Note and discuss: Montagu’s conflation of the two and his focus on deflexive curses.]
support to warrant a bill of indictment,” ending in a killing when judges affirmed the charge.\textsuperscript{48} Here “the judges’ words” served as “virtual triggers for action.”\textsuperscript{49}

Two distinct motivations for action can be brought about through cursing. First, cursing may cause a seeming change in the target’s appearance or, more likely, bring about a change in attitude toward the target that commits the attacker to a certain course of conduct. This is the function of cursing that Jack Katz suggests in his discussion of killers engaged in what they see as “righteous slaughters.” They transform their victims “into an ontologically lower status,” wrote Katz, by drawing “on the communal language [of cursing] and its primordial sensibility about the relationship between the sacred and the profane.”\textsuperscript{50} Call this the glamorous function of cursing. When others are present or required for violent attacks, curses serve a second function. Cursing offers assurance to attackers. An audience, by its mere presence, tends to inhibit an attacker’s violence,\textsuperscript{51} at least until the audience grants its permission or reveals its indifference. Cursing provides a focal reference for predicting the behaviors of audience and attacker.\textsuperscript{52} Call this the assurance function of cursing.

Whatever social conditions that long ago gave rise to the practice of cursing before killing, its current prevalence suggests a continuing rationale.\textsuperscript{53} Curses perhaps evolved for the purpose of causing glamorous or degrading transformations, but that’s not all they currently do. Cursing, as well as swearing, may also serve emotive ends\textsuperscript{54} (though one can quibble about whether that’s actually cursing at all),\textsuperscript{55} in addition to other functions.\textsuperscript{56} These isolated functions of cursing may, moreover, interact. For example, the greater the extent to which a curse (through glamour) commits the speaker to a course of conduct in a known and conventional manner, the more likely it may serve as a means for coordinating expectations (through assurance) in interactions with multiple equilibria. It is this last function of cursing, i.e., for coordination, that I wish to explore in the remainder of the chapter. Ritual cursing provides shared criteria for groups of people to select and coordinate strategies.

**Group Violence through Curses**

Apparently senseless mob violence demands explanation. One rational account of group violence against an overwhelmed individual involves a kind of contagion (as suggested by Mark Granovetter and others). Picture a crowd of people gathered in a village square as some third party, the potential target of violence, walks or is escorted through the crowd. Within the crowd lurks thug, looking for a fight, ready to injure someone, perhaps anyone, as
the target walks nearby. Suppose, additionally, that there is a second person
in the crowd, slightly less thuggish than the first, who would join a violent
attack on anyone if given a reason, practically any reason, but would never
initiate an assault himself. Add a third person, who would join two or more
attackers but not one or less, and a fourth who would join three or more but
no less than that and so on. Now, as the target walks by the thug, should
he suddenly yell “whore” or “nigger” and throw a rock in the face of the
target that would prompt the second person to follow, which would prompt
the third and so on until the whole crowd is drawn into a violent cascade. 57

The chain-link logic proceeds so effortlessly, mindlessly, once it gets
going. Yet with this rapid escalation it is easy to overlook what was required
to get it started. What gave the thug confidence to throw the first rock,
not knowing how others would react? Sociopathic indifference, impassioned
indignation or thrill-seeking may lead the thug to disregard or discount the
crowd, but short of such explanations the thug would seem to be consciously
taking on some risk in openly assaulting the target. Moreover, even if the
thug was sufficiently emboldened, where did the second attacker find his
confidence? How, if at all, did he acquire assurance that his actions would
be tolerated and not punished? At some point, when a large enough number
of people are participating in violence the risk of sanction to a new entrant
(the marginal offender) is fairly low given the scale of engagement, but
when only one person is attacking (possibly an irrationally violent attacker,
at that) the risk to the second attacker is nontrivial. How do attackers
overcome their initial restrain and the implicit risks involved in public acts
of violence against seemingly defenseless third parties?

Although the contagion framework described above is essentially dy-
namic, involving sequential decisions made by a number of actors over time,
any point of the interaction can be looked at as moment where the par-
ties may act simultaneously. The simultaneous interaction is depicted in
the stage game (below), played between two potential attackers, i and j,
each deciding whether to attack a third party or be a bystander to a poten-
tial attack (i’s strategies are depicted in the rows and j’s are in the columns).

\[
\begin{array}{c|cc}
  & \text{attack} & \text{bystand} \\
  \hline
  \text{attack} & x, x & y, 0 \\
  \text{bystand} & 0, y & 0, 0 \\
\end{array}
\]
When either $i$ or $j$ attacks, the attacker receives a payoff of $x$ if the other party also attacks and $y$ otherwise. Each receives a normalized payoff of zero when he bystands. In each cell $i$’s payoff is followed by $j$’s. Assume $x > y > 0$, which generates an assurance game, where $i$ and $j$ prefer to attack if, and only if, the other attacks. There are two pure strategy equilibria in this game, one where both parties attack and another where they both abscond. But which one will they choose? Choosing to attack is a risky strategy. The attacker gets something positive ($x > 0$) if joined by the other and something negative ($y < 0$) if acting alone. Yet if assured the other will attack, then attacking is prefer by both to bystanding. Where will they find assurance?

They can find it through curses. Cursing someone in public doesn’t just tell the audience something about the target, the curse also reveals something about the speaker. In cursing the speaker may make an offering to the audience, i.e., he offers his reputation as a hostage, which assures the audience that the speaker is committed to a certain course. Cursing address the problem of strategic uncertainty, i.e., doubt about what strategies, attack or bystander, other parties will pursue. In addition to strategic uncertainty, public cursing also respond to “payoff uncertainty,” by e.g., informing others of whether one’s payoff from attack ($x$) or bystander ($y$) is positive or negative. Additionally, cursing may also affect one’s own pay-off or the payoffs of others, e.g., increasing the value of $x$, for instance, by lowering the cost of attack through dehumanizing the victim (glamour) or “psyching up” the curser or potential attackers.

[The remainder of this section expands on discussion of strategic and payoff uncertainty. Thereafter the discussion turns an analysis of genocidal group violence with a focus on Darfur based on an analysis of survey data collected by the U.S. State Department. A brief description of these data and the analysis is included in an appendix following the endnotes. I would, however, now like to turn your attention to the next topic (of swearing), as I am most eager to get your comments and feedback on this preliminary work. I will be happy to discuss and take questions on the current chapter, including the appendix, at the workshop. Thank you. -RB]
8. swearing

Swearing is so common in everyday speech it hardly registers as such, unless perhaps when expressed in the most scared or profane terms. Sacred oaths and profanities, however, are merely high and low forms, extreme intonations, of a more mundane practice of self-commitment. It is no coincidence that sacred oaths and profanities are both referred to as 'swearing'; their shared origin is well-known. Less appreciated are the myriad other words and ways of speech that reflect this aspect of swearing. Swearing is circumstantial speech that raises the consequence of assertions and actions contrary to the content circumscribed. Whatever content placed in the “hollowed-out form” (that we call swearing) is consecrated by speakers' willingness to increase the stakes, to put themselves and their interests at stake for their words. Everything else is cheap talk. Saying one set of words in ordinary chatter is rarely more costly than saying any other set, and almost all talk is in this sense negligible and inconsiderable. It is not the costs of talking, but its consequences—ethical, moral and social—that distinguishes normal discourse from babble. And in normal discourse words commonly become consequential through swearing.

Ritualized swearing tends to conceal the commonplace of the practice. All the trappings of ceremonial swearing are designed to distract from its unexceptional formula at base. Consider, for instance, the first presidential inauguration of Barak Obama. On Tuesday January 20th, 2009, at about five minutes after noon, he placed his left hand on a Bible held by his wife, Michelle Obama, and then raised his right hand as the Chief Justice of the U.S. Supreme Court, John Roberts, initiated the investiture by asking, “Are you prepared to take the oath, Senator?” None of this—his placing one hand on the Bible, raising the other and taking an oath—is required by the U.S. Constitution. No gods need be called to witness. It is enough to simply affirm, if not in so many words, a commitment to faithfully serve the Office and defend the Constitution.* Allowing the president-elect to affirm rather

*Article II, Section 1 of the U.S. Constitution, in relevant part, states, “Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—
than take an oath, as Franklin Pierce did, was largely seen as a concession to Quakers, who took swearing to be too sacrosanct for such secular rituals (although Herbert Hoover and Richard Nixon, both Quakers, swore anyway). That the framers of the U.S. Constitution recognized the substitutability of an “Oath” and an “Affirmation” demonstrates the common thread running through these forms: both involve swearing, properly understood, giving speakers a means and power to commit by calling on others to hold them accountable for who they claim to be and for what they say they will do. To affirm, assert or simply speak credibly demands a constituent element of swearing.

Swearing may be the most conventional form of speech, both in the sense of being common in addition to being artificial, i.e., neither natural nor supranatural. Much of the religious and spiritual hallmarks connected to sacred swearing is largely supplemental to the commitment created by the mundane speech act. Which is not to deny the independent force of those hallmarks. They kindle arousal by associating the speaker with the dead, divine and the mystical, at times in a manner that may overawe speakers themselves, both devout and non-believing, in addition to their audience. It is perhaps for this reason that religious gestures and ritualistic flourishes have always accompanied the constitutional incantation (thirty-five words) required to create an American president. George Washington is said to have kissed the Bible following his oath. Richard Milhaus Nixon swore on two Bibles, which was still not enough. In swearing not only on Bibles, but also going beyond the constitutional text by concluding with “So help me God,” American presidents in their first official utterance make explicit appeal to God to judge and hold them accountable for whom they claim to be (e.g., “I, Richard Milhaus Nixon”) and what they intend (“do solemnly swear that I will faithfully execute the Office of President ...”). As the constitutional text reveals, however, God is a supplemental witness and authority, supporting the power of others to hold presidents to account for their words.

Spiritual invocations are commonly incorporated in induction and succession ceremonies. Take another example: the investiture ceremony of Munzenze Kavuka, as recalled by the anthropologist Zoe Strother. On Saturday December 19, 1987, about half past nine in the morning, Kavuka had already begun his ascension as Chief Kombo-Kiboto in Eastern Pendeland in the Democratic Republic of the Congo. A large crowd had gathered to watch the ceremony. Kavuka first offered an oral history of his people, naming “their female genetrix” then tracing “the route of migration from their point of origin in Angola to the present.” Spirits of Pende dead were called to

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"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."
witness and judge his account. One task remained for Kavuka to complete.

He stands, axe-at-the-ready, as two young men stretch out a blind-folded ram at his feet. The large crowd jostles nervously and strains to see what will happen. The suspense builds as he begins to dance, flourishing the blade, stutter-stepping over the ram, and back again. As he steps over it for the third time, he brings down the iron blade and beheads the ram with one blow.

As Strother observes, “the difficult task of successfully beheading a ram in one blow” was, ultimately, “a test of the truth of his declarations. Is he who he says he is?” Had he failed, however, for whatever reason, to strike a single clean blow (say, because the ram shifted unexpectedly) in the moments that followed he would be judged by those gathered in the crowd. They may tell themselves that spirits caused the ram to stir because Kavuka did not tell the truth, or if they believed he told the truth they may reach a different judgment (e.g., it was because one of the young men holding down the ram lost his grip). Some may say that he is unfit to lead them. Others in the crowd may see things differently. The point is this: in telling his account to the gathered audience, Kavuka is judged first and foremost by those persons who witnessed, read or were told about the ceremony. When all is said and done, it is living persons, not the dead, who will judge and hold him to account for his words. People are the avenging force behind swearing.

Swearing, Profanity & Obscenity

Swearing an oath, according to the Oxford English Dictionary, is “a solemn appeal to a deity, or to some revered person or thing, to witness one’s determination to speak the truth, to keep a promise, etc.” A profanity may then be rightly understood, wrote John Spurr, as an oath “sworn in inappropriate circumstances, to support a lie or a frivolous statement.” Profanities are oaths inappropriately taken before an avenging power. To reveal this power, consider the following two alleged presidential profanities. First, when in a Whitehouse meeting, Donald Trump was said to have used language characterizing Haiti and nations on the African continent as “shithole countries.” Most observers would immediately recognize his comments as profanities. More obscure, perhaps, was the profanity some saw committed by Trump’s predecessor, Barak Obama, who took the oath of office without establishing who he claimed to be. Trump’s profanity was an inappropriate and frivolous statement. Obama’s profanity was, according to birthers, in support of lie.
“Birthers” is the name given to those who disputed Obama’s citizenship and consequent eligibility to hold the Office of President. Though often depicted as a fringe element in American politics, contemporaneous polls suggested that about a quarter of the country’s adult population questioned whether Obama was a natural-born citizen of the United States.63

For some birthers, among other observers, a critical moment transpired in Obama’s first inauguration. During the swearing-in ceremony, he and Justice Roberts failed to correctly recite the text calling on the president-elect to state, “I will faithfully execute the Office of President of the United States.” Roberts prompted Obama to say—and after a moment’s hesitation Obama repeated—the clause with the word “faithfully” at the end rather than near the start of the clause (i.e., “I will execute the Office of President of the United States faithfully.”). A minor deviation, to be sure, but given the prior doubts and swirling conspiracy theories, it was enough for the White House, acting “out of an abundance of caution,” to administer the oath a second time, the next day before a smaller audience.64

Doubts about the legitimacy of his investiture remained, however, because Obama’s supposed profanity did not result from a transposed word (“faithfully”), just as Trump’s reported profanity did not turn on the particular usage “shithole.” Words alone cannot constitute profanity. To constitute profanity words must be sworn, not merely recited.

Several points of clarification may be usefully observed here. First, as traditionally understood, words may be sworn sacredly, blasphemously, profanely and secularly. Taking a sacred oath is solemn and reverential swearing made under the gaze of some religious or spiritual authority; blasphemy is irreverent swearing contemptuous of such authority; profanity, while ostensibly displaying proper regard for an authority, nevertheless misuses, misfires or otherwise maligns the authority by swearing inappropriately; secular swearing is solemn speech taken under some secular authority, rite or office. As with sacred swearing, secular swearing may also be applied irreverently (blasphemous) or inappropriately (profanity). In this sense, secular and sacred swearing may be seen as baselines that have long co-existed in legal and religious practice. Canon law in the medieval period, for example, drew a distinction “between uramentum — a legal oath[,] the breach of which was a venial sin — and sacramentum, a more solemn oath the violation of which was perjury and a mortal sin.”65 Church leaders recognized and endorsed the separate importance of secular swearing. Without it, exhorted the Dean and eventual Archbishop of Canterbury, John Tillotson, in a 1681 sermon, “Government would many times be very insecure.”

Second, swearing and swearwords should be distinguished from obscenity, which includes but is not limited to vulgar and indecent language.
Obscenity is notoriously difficult to define, as U. S. Supreme Court Justice Potter Stewart famously conceded in saying “I know it when I see it.” He might have added “and when I hear it,” but that addition would not have clarified what constitutes vulgar and indecent usage, although it does reveal an important relationship between obscenity and one’s personal sensibilities. Obscenity offends an individual’s sense of propriety, whereas swearing, when inappropriate (blasphemy and profanity) is an offense against some recognized authority or power, whether named or not. It has never been necessary to name or explicitly call on an authority or power to swear, solemnly or otherwise. Theologians have always regarded “God, damn it” and “Damn it” as equivalents, as well as “God damn you!” and “Damn you!”

Third, all words are susceptible to swearing and may therefore become profanity. Among Jamaicans, for instance, saying “blouse and skirts” in certain contexts is a vulgar expression worthy of reproach. Ashely Montagu, who has written thoughtfully about swearing, might have dispensed with the qualifier when he wrote “practically all words may serve the swearer as makeweights.” Every word is subject to conscription by committed swearers. Yet, what are commonly called swearwords may be better characterized as obscenities or vulgarities, which may themselves of course also be sworn. But not always. Language that is obscene and vulgar according to one’s own sensibilities, may to others qualify as little more than cheap talk and meaningless banter: words spoken with little or no commitment behind them. Swearing requires commitment.

Fourth, commitment and convention (i.e., accepted social practice) are paramount to swearing. Tillotson wrote that all swears are assertory or promissory oaths: “An assertory oath is when a man affirms or denies upon oath a matter of fact, past, or present. promissory oath is a promise confirmed by an oath, which always respects something that is future.” It is obvious that promises entail commitment, that is after all the essence of a promise. Less apparent, but no less true, is that assertions also entail commitments. An assertion, when successful, accomplishes two things, as Robert Brandom insightfully observed. First, it “licenses others to re-assert the original claim (and to assert its immediate consequences).” Asserting

†Moreover, obscenity to some is often inoffensive and unobscene to others in some communities and contexts. There are no universal tabu terms, although some patterns have been observed. Words related to the body and certain bodily functions, for instance, are often set aside. As an obscenity, “blouse and skirts” likely originated as a reference to a woman’s menstrual cycle (it is now more a general term of mild outrage, like ‘what the hell’) but is still sometimes used with the more explicit “bloodclaat” (or “blood-cloth”).

‡Tillotson further distinguished that when a promissory oath is “made directly and immediately to God, then it is call’d a Vow; if to men, an Oath.”
that Obama is not a natural born American gives license to others to restate the claim and to observe the immediate consequence that ‘he is not fit to lead us.’ It was a false claim, to be sure, but truth is not what gives license to re-assert and draw inferential consequences from prior assertions. But it had to start somewhere, somehow. By what power or authority did someone “become entitled to the original licensing assertion?”

With this question, Brandom introduces the second element of a successful assertion: commitment. “In asserting a sentence, one not only licenses further assertions on the part of others, but commits oneself to justifying the original claim.” Critically, what counts as a valid justification for an assertion is determined not by objective fact or even genuine belief of the speaker, but rather by whatever social practice the community accepts as valid. When Kavuka was called to justify the assertions he made during his investiture ceremony as Chief Kombo-Kiboto of Eastern Pendeland, the ‘validity’ of his claims was for some observers borne out by beheading a ram in one fell swoop. When birthers and, in particular, Donald Trump assert Obama’s foreignness, notwithstanding official proof of his domestic birth, their authority to maintain the birther assertion was entirely “constituted by public social practice.” In other words, “a justification is whatever the community treats as one—whatever its members will let assertors get away with.”

Placing a hand on a Bible and swearing an oath to God may in some communities and for some persons contribute weight to their assertions, just as beheading a ram with one blow could in another context. Swearing itself, however, does not find its justification in God or Truth or in accuracy (of an ax blow or of words). It is justified by commitment to one’s words and accepted social practice of the relevant community. The community of committed birthers rejected Obama’s fitness to lead as president not because of a misspoken oath at his inaugural, which was in any event corrected the next day, but rather because his word and his oath were not enough for them, nor was his conventional birth certificate. Trump continued to assert challenges to Obama’s domestic birth years after Hawaii issued a special long-form birth certificate. Trump’s asserted challenges remained effective because of his extraordinary and seemingly perverse commitment to them. He hardly wavered, even when confronted with apparently irrefutable contrary evidence. Trump swore on the lie (a profanity) maintaining a commitment to his words, and was judged not on objective fact or even what he may have personally believed, but rather on what members of the relevant community would let him get away with.”

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Trump only conceded Obama’s citizenship only when it would cost him his credibility when reaching out to a wider audience for the general election. He has since backed away.
Cheap Talk & Commitment

Recall the basic structure of the assurance game as described in the previous chapter. Two (or more) players may choose a given action, which they believe would leave them both better off than any other action combination, but only if each could be assured the other would take the same action. Jean Jacques Rousseau offered the classic example of this dilemma in his *Discourse on Inequality*, wherein he briefly described hunters who must cooperate in order to capture a stag (a large deer) with each aware that the other may abandon their joint enterprise at any moment to pursue smaller game (a hare or rabbit) by himself and for himself. Sharing the stag would provide each hunter with more meat than a small rabbit, but a bigger payoff for each doesn’t assure their cooperation. For that they need commitment and the question here is whether words can provide it.

A stylized version of Rousseau’s stag hunt is depicted in the matrix below. When both hunters choose stag, each expects a payoff of 2; when either one or both hunters choose hare a payoff of 1 is expected for individuals engaged in hare-hunting and 0 for any hunter abandoned to pursue stag alone.

\[
\begin{array}{c|cc}
& \text{stag} & \text{hare} \\
\hline
\text{stag} & 2 & 1 \\
\text{hare} & 0 & 1 \\
\end{array}
\]

When hunting in the woods nothing is guaranteed and so the payoffs in the matrix reflect what the hunters expect to get “on average” and they recognize and accept this inherent risk of the chase. There is second risk to observe too, this one residing less in the hazards of the wild than in the nature of the hunters. When hunting stag together what assurance does any one of them have that each will “remain faithful to his post”? None! Rousseau was unequivocal on this point: “if a hare happened to come within the reach of any one of them, it is not to be doubted that he pursued it without scruple, and, having seized his prey, cared very little, if by so doing he caused his companions to miss theirs.” Contemporary analyses referencing

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from that concession.
Rousseau’s stag hunt game often embrace this ‘strictly individually rational’ reasoning. Lost in these analyses, regrettably, is that Rousseau’s own point of reference was not to a strictly rational individual, but rather to what he labeled ‘savage man,’—“man in a state of nature, wandering up and down the forests, without industry, without speech, and without home[.]” Savage man could appreciate “the few cases, in which mutual interest might justify him in relying upon the assistance of his fellows;” but these men envisioned by Rousseau were not social, much less political or ethical, actors in any meaningful sense of those words.

Rousseau’s savage man is perhaps most removed from his modern counterpart in his absence of speech and limited use of ‘language’ when interacting with others. “It is easy to understand that such intercourse would not require a language much more refined than that of rooks of monkeys, who associate together for much the same purpose. Inarticulate cries, plenty of gestures and some imitative sounds,” wrote Rousseau, “must have been for a long time the universal language[.]” These imagined beings had not yet learned any distinctively human language—a language that, to be shown, has its essence and origin in swearing. Before developing this latter claim, however, it may be useful to first consider language among another class of fictitious beings: the strictly rational actors assumed in much contemporary microeconomic analyses. If Rousseau’s savage man had not yet acquired ordinary language then, beyond its signaling value, the strictly rational actor simply finds language meaningless.

Nothing about economics requires this particular treatment of language and some early scholarship in the field pointed to interesting alternative approaches. A turning point occurred, however, in the second half of the twentieth century with the self-recognized subfield of “the economics of information” and, in particular, an effort to conceive of language lacking not only passion but also ethics, morality and direct utility. Stripped of rhetoric and other irrational influences, speech becomes mere signals. Swearing ceases except as a shibboleth identifying the irrational since sensible actors ‘know’ the only credible speech are words consistent with self-interest. It was hardly inevitable that the economics of information would come to such a stark conclusion.

When Kenneth Arrow wrote about the notion of “moral hazard” he was well aware of its moral and ethical connotations. Arrow took the term from nineteenth and twentieth-century insurers, for whom it captured two distinct meanings, as Tom Baker has thoughtfully observed. First was the problem of identifying “bad character” among those applying insurance. Second was the problem of “temptation” created by the insurance itself. Insurers ‘would refuse to insure ‘moral hazards’—that is, people with bad
characters. And they would structure the insurance contract so that it did not create a ‘moral hazard’—that is, [so as to not] tempt good people to do wrong.” 75 After economists appropriated the usage, Baker wrote, they “dispensed with the insurers’ notion of ‘character’ and changed the theologically loaded ‘temptation’ into an insurance ‘incentive’.” 76 In fact, both the idea of bad character (or more generally, bad characteristics) and that of succumbing to immediate self-gratification or temptation remain key concerns in economics.

Bad character in economics is today studied under the heading of adverse selection or “hidden information” while structural temptation falls under moral hazard or “hidden action.” Adverse selection concerns assertions of past or present fact, where the asserted type, quality or character of some one or thing is in question (“is he who he says he is?”). Moral hazard concerns future actions, where promises and other expressed or implied intentions are odds with self-interested actions that someone can get away with taking (“will he remain faithful to his post?”). It is no coincidence that economists should come to focus on the very same two concerns that theologians and politicians have over many centuries addressed through assertory and promissory oaths and swearing. When words are disconnected from the things and actions that the words purport to describe, there is not only a basic economic problem, but a more profound societal crisis. Absent credible words society can scarcely advance beyond Rousseau’s savages.

Arrow appreciated this predicament and he argued for ethical, moral and political solutions. Ostensibly, he was making the case for government provision of health care services when he first wrote about moral hazard, but as conceded, Arrow “had clearly broader implications in mind.” Moral hazard (or hidden action) illustrates the limits of economic incentives to efficiently organize a society, to say nothing of its ethics, morality and politics. 77 Concern for economic efficiency alone calls for ethical, moral and political responses. Hence Arrow’s insistence on the term “moral hazard,” which has become largely an empty slogan among economists. Today most would agree with an early critic of Arrow, who wrote the problem that moral hazard represents requires no ethical or moral consideration, but is subject simply to “orthodox economic tools,” because acting on self-interest “is a result not of moral perfidy, but of rational economic behavior.” 78 Moral perfidy and rational economic behavior are, however, not mutually exclusive categories, as Arrow pointedly replied, “No doubt Judas Iscariot turned a tidy profit from one of his transactions, but the usual judgment of his behavior is not necessarily wrong.” 79 It is important, however, to look beyond the usual moral judgment of Judas in order to see the economic critique calling for ethical, moral and political responses.
Moral hazard leads to excessive grabbing (reaching for rabbits among other self-serving individually rational behavior) and therefore requires restraint. These restraints must be political, moral or ethical, such as “the professional ethics of physicians” or broader conventional ethics whereby individuals “behave in accordance with some commonly accepted norms.” These norms, “whether internalized as moral principles or externally imposed, are to some extent essential for efficiency,” because the lesson of moral hazard is that “complete reliance on economic incentives does not lead to an optimal allocation of resources in general.”

It is a “characteristic a successful economic system” that sufficiently robust “relations of trust and confidence” are maintained, Arrow rightly concluded, so that individuals “will not cheat even though it may be ‘rational economic behavior’ to do so.” Swearing or something very much like it had to arise, even before law and religion are enlisted, for an economic system to get beyond basic barter.

Recall Rousseau’s savage hunters in the forest. Their world would be transformed if talk could support (equilibrium) outcomes where hunters or other parties cooperated. Common experience and experimental evidence supports the obvious conclusion that even costless talk matters to us. But not so for strictly rational actors. “In any game, however ‘obvious’ it may be that cheap talk will convey information, game theorists traditionally argue that it need not.”

Rationality and conventional criteria for determining equilibrium outcomes always allow these actors to completely disregard all cheap talk. For instance, one hunter may, for whatever reason, ignore any utterance made by the second hunter; if so then the second hunter “might as well babble,” which would of course rationalize the first hunter’s decision to ignore the second’s speech. No doubt the example seems a bit too clever but, as Joseph Farrell and Matthew Rabin observe, “[t]he point is quite general: it is always consistent with rationality to treat cheap talk as meaningless. ... If we didn’t know better, we might think that this was the most reasonable outcome. But we do know better.” There is no problem with the economic logic; it is entirely sound. “The problem is,” as Farrell wrote, “that we have no link between words and actions.” Swearing secures that link.
Notes


3Friederike Braun, Terms of Address: Problems of Patterns and Usage in Various Languages and Cultures (Berlin: Mouton de Gruyter, 1988), 7.


5Id., 22.

6“Certain types of name were restricted to slaves and seem not to have been borne by free persons living in Babylon.” Id., 22. See also, Rivkah Harris, ‘Notes on the Slave Names of Old Babylonian Sippar,” Journal of Cuneiform Studies 29, no. 1 (Jan. 1977): 46-51.


8Depositions, trial transcripts and other legal records of conversational exchanges are, of course, obvious exceptions.

9Aristotle acknowledged as much, in Poetics, by challenging critics who “ridiculed the tragedians for using phrases which no one would employ in ordinary speech” without appreciating that “[i]t is precisely because such phrases are not part of the current idiom that they give distinction to” tragic style. Dickey, “Forms of Address,” 259. See also, Aristotle, Poetics (Part XXII), Translation by S.H. Butcher. “Aristotle says that the goal of tragic language is a dignity and elevation gained by the use of rare and unfamiliar words; that is, by the avoidance of pure conversational language (Poetics 1458a).” [Dickey, get pincte]


11“Dr. Lambertz mentions in this work (page 6) that Roman slave-names fall into three classes: (1) the oldest ones, in which the slave is designated as puer of his master.” F. F. Bruce, “Latin Participles as Slave-Names,” Glotta, 25. Bd., 1./2. H. (1936), pp. 42-50, at 43. Cf. Linda C. Reilly, “The Naming of Slaves in Greece,” The Ancient World, 1, no. 3 (1978):111-113, at 112-113 (contesting the claim that slave names, at least in ancient Greece, represented any distinct category). There is a consensus that names of slave and free citizens in the ancient world overlapped significantly; any debate is merely about the degree of overlap.

12Clive Cheesman, “Names in —Por and Slave Naming in Republican Rome,” Classical Quarterly 59, no. 2 (2009): 511-531, at 511. See also Stefan Brink, who writes “Roman slaves originally had no name of their own. They took their master’s praenomen (the first the usual three names) in the genitive with the suffix por (or puer), e.g., Marcipor, Publipor, Quintipor.” X goes on to note that Or[t]he suffix OpuerO was later replaced by Oservus,O than a slaveO’s name could be Aphrodisius Ploti Gai servus,” Stefan Brink,
“Names and Naming,” in The Historical Encyclopedia of World Slavery, ed. Junius P. Rodriguez (1997), 455. As Cheesman notes, the —por element results from puer by “undergoing syncope and passing from an—o—to a consonantal stem in the third declension.” Id.


14 Dobson, “The Etymology and Meaning of boy.”

15 Males transitioning between boyhood and manhood were referred to as young man (c. 1122) and lad (c. 1500), along with the less common stripling (c. 1398), springal(d) (c. 1450), gorrel (c. 1530) and hobbledehoy (c. 1540), OED, Online.

16 Ibid.

17 [Note: Arab slavery in sub-Saharan Africa was distinct from the race-slavery fusion in America.]


19 In the United States slaves were certainly addressed as boy, a term that seems to have taken on greater salience in the years following the civil war. When slave lost much of its content and utility following the American Civil War and the Thirteenth Amendment to the U.S. Constitution, there was an synonym, boy, politically and otherwise more correct, that could still be applied in its place.


21 Even contemporary usage of endearment (“he’s my boy” largely equivalent to “my man,” just as “my nigger” among black Americans; “good ole boy” among Southern whites.: cite Urban dictionary.) At(t)boy; male affectionate usage Anatoly Liberman p. 209.


24 126 S.Ct. 1195 (2006). It would be another five years, in 2011, before the United States Court of Appeals for the Eleventh Circuit, on its fifth review of the case, would allowed the jury verdict for compensation (no punitive damages) of Hithon to stand. The appeals court dismissed Ash’s claim.

25 That meaning was common knowledge throughout the South long before Martin Luther King Jr., in his Letter from a Birmingham Jail, famously described the pervasive practice of blacks being addressed as boy “(however old you are).” Gunnar Myrdal (1944) observed the same twenty years earlier, in An American Dilemma, as had others before him.

26 [ref. Judith Butler, Yale French Studies]


30 Edmund Burke, Reflections on the Revolution in France, 1790, at 133.


33 Michel Foucault, The Birth of Biopolitics, Picador, New York, 2004, p.187. Foucault made these comments, skeptically, about a description of the state’s tendency to expand. Yet there is little reason to doubt the inherent expansive force of title and address.

34 It was no coincidence that these “old manners and opinions” were associated with political order. “These public affections, combined with manners,” observed Edmund Burke, operate “always as aids to law.” He argued that “[t]here ought to be a system of manners in every nation, which a well-formed mind would be disposed to relish. To make us love our country, our country ought to be lovely.”


38 reference.

39 Publius, [James Madison] The Federalist Papers, No. 44 (Restrictions on the Authority of the Several States, From the New York Packet, Friday, January 25, 1788. )

40 [Discuss Hamilton and the Society of the Cincinnati; Work through timing with The Federalist Papers : No. 84.]


44 Speaking directly of the skeptics, for example, a leading witch hunter of the time admonished jurists that “the text teaches the judge to notice and not be amazed, as vulgar and unearned judges generally are, at the fact the sorceresses for the most part carry out
their acts of sorcery and forms of harm to creatures by means of threatening words and not silently.” See The Nuremberg Handbook, written for the city council of Nuremberg in 1491 by H. Kramer.

45 It was blasphemy to claim that witches had such power, much less prosecute them for it. Even the most committed witch hunters acknowledged this much: “Whoever believes that any creature can be made, or changed for the better or worse, or be transformed into any other shape or likeness except by the Creator Himself Who made all, is without doubt an infidel.” Heinrich Kramer & James Sprenger, The Malleus Maleficarum, Part II, Qn. 1, Ch. 8 (Of the Manner whereby they Change Men into the Shapes of Beasts), at 122. The Church provided expressed support for the authors of The Malleus Maleficarum through the infamous Papal Bull of Innocent VIII, which extended legitimacy to the text as it was included in the publication.

46 Id., at 123 (emphasis added).

47 The Malleus Maleficarum, the widely read authority on witch prosecutions from Byzantium to Salem, invoked Saint Augustine’s recollection of Circe, the sorceress who “changed the companions of Ulysses into beasts” but clarified that “it was only an appearance, or deception of the eyes; for the animal shapes were drawn out of the repository or memory of images...” id.

48 The transformation took place in two simultaneous ways; first, through physical signs, such as behavior, gestures, and (in particular) the Witch’s Mark. Second, certain demographic and personality traits were associated with witchcraft. This type of evidence referred to the “moral character of the suspect”, where the witness “indicated that the suspect belonged to a moral category of persons who were likely to be witches.” Richard Weisman, Witchcraft, Magic, and Religion in 17th-Century Massachusetts, 92 (1984).

49 Robert Cover, Violence and the Word, 95 Yale L. J. 1601, 1613 (1986). The link between a judge’s interpretive decision—which concludes with labeling someone a felon, a molester, a witch and so forth—and the coordinated violence that follows from the judge’s utterance is a mark of extraordinary legal achievement. Id., at 1624.

50 Jack Katz, Seductions of Crime, Free Press (1988), at 361-70. “Cursing sets up the violence to be a sacrifice to honor the attacker as a priest representing the collective moral being.” Id. See also, John Hagan and Wenona Rymond-Richmond, Darfur and the Crime of Genocide, Cambridge Univ. Press (2009), at 162-169.

51 To be sure, that is not always the case. A blinding rage may obscure others from the consciousness of the attacker or he may simply attack, aware of, but undeterred by the judgments and likely reactions of others.

52 In the group context the influence of the words must extend beyond the speaker so that the victim’s doppelganger semblance is not disconfirmed in the attacker. Beyond threatening to interrupt the self-directed glamour, the others present may also, of course, if they recognize the target’s true form, interfere with the violence the curse commits the speaker to pursue. Cursing the victim provides cues that helps the audience get pass any reluctance to see and participate in violence. As Cover observes, “in almost all people social cues may overcome or suppress the revulsion to violence under certain circumstances.” Violence and the Word, 95 Yale L. J. 1601, 1613 (1986).


54 “We may evince emotion in or by issuing an utterance as when we swear[.] We might
say that we use swearing for relieving our feelings.” J. L. Austin, How To Do Things With Words, at 105 (1962).

55 Ruskin distinguishes dirty words from swearing and cursing. “When ill-educated and ill-tempered people clamorously confuse the two invocations, they are not, in reality, either cursing or swearing; but merely vomiting empty words indecently.” The Genius of John Ruskin: Selections from his Writings, Rosenberg, ed., at 388.

56 Beyond the basic locution, illocution and perlocution triad, Austin sketched out five other performative categories of speech acts: verdictives (giving verdicts, assessing, evaluating, estimating, ranking &c.), exercitives (giving orders, appointing, degrading, naming, proclaiming &c.), commissives (making commitments, promising, vowing, pledging, swearing &c.), behabitives (expressing an attitude to someone’s behavior, approving, blaming, congratulating, cursing &c.) and em expositives (expounding of views, citing, insisting, recapitulating, urging &c.). While Austin placed swearing under commissives and cursing under behabitives, it is clear that cursing can involve an assessing character (verdictives) and swearing can entail exercitives and expositives. The point is not to knit-pick Austin’s categories, which he himself understood as loose, but rather to emphasize the numerous functions of cursing and swearing.


58 There is a third less probable equilibrium as well. Letting \( p \) be the probability that \( j \) selects “attack” and \( q \) be the probability that \( i \) selects “attack”, a mixed strategy equilibrium occurs at \( p = y/x - y \) and \( q = y/x - y \). Although this simultaneous move (one-shot) assurance game differs significantly from the sequential threshold account of group violence, dynamic elements can be introduced into the assurance games by allowing the players simultaneously move repeatedly. Sequential equilibria similar to those identified in the one-shot game can be found. The intuition behind the repeated game and its equilibria are the same as the one-shot game.


60 [Washington was hardly the first oath-taker to kiss the bible upon swearing, a practice which goes far back in Christianity, but he did bring it to the U.S. Presidency, establishing ... the convention. See John Spurr, 2001 “A Profane History of Early Modern Oaths,” Transactions of the Royal Historical Society, vol. 11: 37-63, at 45.]

61 Zoe S. Strother, “From the Performative Utterance to Performative Object: Pende Theories of Speech, Blood Sacrifice, and Power Objects,” RES: Anthropology and Aesthetics, No. 37 (Spring, 2000), pp. 49-71, at 47 “The chief-elect must speak before he is invested so that the dead may judge whether or not he is a fit candidate. In the Pende language, “he was invested” (wasambile) cannot be divorced from its literal meaning, “he beheaded [the ram] by sword’s blade,” and its symbolic import, “on that day he told the truth about who we are and whence we came.” at 49.


63 Among Republicans the figure remained that high even after state officials released his long-form birth certificate. [Get and Review specific Harris and Gallop polls prompts!] “Wingnuts' and President Obama”, Harris Polls, March 24, 2010; Travis,
In a statement afterwards, Craig [Greg Craig, the White House counsel] said he believed that the oath had been effectively administered on Tuesday. ‘But the oath appears in the constitution itself. And out of an abundance of caution, because there was one word out of sequence, chief justice Roberts administered the oath a second time,’ he said.” Jeff Zeleny, “I Really Do Swear, Faithfully: Obama and Roberts Try Again,” NYT, January 21, 2009.


Jacobellis v. Ohio, 378 U.S. 184, at 197 (Stewart, J., concurring). More could and perhaps should be said here about obscene language, but it would take us too far from the focus of this chapter on swearing. One may consult a number of excellent sources of insight on this topic: See Montagu at 102 and other cites!

See Montagu at 100 (emphasis added).


As president, Obama had to make an extraordinary request to the state of Hawaii for it to issue him a special long form certificate, which the state had ceased doing for many years prior [get exact date]. He was forced to, (for which Trump credits himself) because of prolonged and substantial doubts about his birth in some quarters (about a quarter of his countrymen) well into his presidency.

Rousseau’s entire discussion of the stag hunt is contained in the following paragraph:

In this manner, men may have insensibly acquired some gross ideas of mutual undertakings, and of the advantages of fulfilling them: that is, just so far as their present and apparent interest was concerned: for they were perfect strangers to foresight, and were so far from troubling themselves about the distant future, that they hardly thought of the morrow. If a deer was to be taken, every one saw that, in order to succeed, he must abide faithfully by his post: but if a hare happened to come within the reach of any one of them, it is not to be doubted that he pursued it without scruple, and, having seized his prey, cared very little, if by so doing he caused his companions to miss theirs.

Cite G.D.H. Cole (1913 translation) Discourse on Inequality (emphasis added to stress the conditional (risk-based) nature that defection from cooperation would occur.)

Frank Knight (1921) was an early promoter of moral hazard in economic thought, but it was Kenneth Arrow (1963) who clarified its ethical and moral meaning in the context


77 “Because of the moral hazard, complete reliance on economic incentives does not lead to an optimal allocation of resources in general.”

78 [535.Pauly] [the quote: “orthodox economic tools” at 531] “Arrow appears to consider moral hazard as an imperfection, a defect in physician control, rather than as a simple response to price reduction.” [535, fn 3 Pauly] Like Arrow “[i]nsurance writers have tended very strongly to look upon this phenomenon ... as a moral or ethical problem, using emotive words ... and providing value-tinged definitions as ... ‘moral hazard is every deviation from correct human behavior...’.” [Pauly, 535] “It will also be shown that the problem of ‘moral hazard’ in insurance has, in fact, little to do with morality, but can be analyzed with orthodox economic tools.” [Pauly, 531]

79 Arrow Reply at 538.

80 Arrow Reply, 538 (emphasis added).

81 [358, Arrow reply]


Appendix: Group Violence in Darfur

When the International Criminal Court (ICC) issued an arrest warrant for Sudan’s President Omar Al-Bashir on charges of rape, war crimes, crimes against humanity and genocide, the biggest legal hurdle was articulating the theory that would connect high-level officials, like Bashir, to remote and dispersed criminal activity like those carried out in Darfur. Violence on the scale that occurred in Darfur required massive coordination both among and between top leaders and low-level perpetrators. While traditional legal theories of organized criminal activity tend to focus on elements of control, where superiors issue direct orders and subordinates comply with these orders, history tells us that perpetrators can cooperate in carrying out violent acts without commands and strict enforcement.

Attackers with shared objectives have incentive to cooperative with each other even in the absence of orders and threats of sanctions. Mere communication—not even rising to the level of agreement or command—can coordinate criminal companions in horizontal relationships, and enlist indirect participation and sanctioning among remote actors in through various networks. In its investigation of whether genocide occurred in Sudan, The United Nations Commission of Inquiry observed certain “irrefutable facts regarding the situation in Darfur.” These facts entail widespread and systematic attacks on civilians committed by the Government of Sudan and the Janjaweed militia, including killings, torture, “disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur.”

At the ground level, there is evidence suggesting coordination through racialized curses between the Sudanese government military forces and Arab Janjaweed militias. To see how this might have occurred, imagine an encounter of two armed men, strangers before that moment (one a soldier in the army of the Government of Sudan, the other a Janjaweed militiaman), each towering, weapons ready, before an unarmed third party as they contemplate awful acts of coordinated violence—assault, abduction, mutilation, murder. Yet the unarmed target of their contemplated violence, is not the only one with cause for concern about personal safety. The would-be attackers are also in the company of unfamiliar, armed and violent men; each is a direct and visible threat to the other. The threatening uncertainty is greater still because the prospective victim is observationally indistinct from individuals in nearby the Arab villages that are to be protected. (As the Commission of Inquiry concluded that victims of violence in Darfur were not observationally distinct from their attackers.) Each attacker therefore has good reason to wonder whether the other will support or counter him in
attacking the third-party. The risk is real. Game theorists describe encounters of this nature as assurance games; each gunman may prefer to attack, but only if assured that the other would attack as well.

Assurances most often come through prior communication. But as in the case of the soldier and the Janjaweed militiaman described above, there is often no opportunity to communicate beforehand. They might, of course, rely on communication in the moment to signal a shared willingness to attack; e.g., a whistle, a nod, eye-contact, or screaming “attack” before actually attacking. All of these cues could be effective and, no doubt, occur in everyday practice. Yet in the Sudanese conflict, racial epithets seemed to serve the assurance function uniquely well.

By speaking these curses the perpetrators construct a racial context that is otherwise unobservable, or nonexistent (Hagan Rymond-Richmond 2009). Moreover, they dehumanize and demonize the third party (justifying the on-coming attack, Katz 1988), and they provide instant assurance to each other when exchanging epithets toward the victim. In this sense, racial epithets may have played a key role in the mass coordinated atrocities in Darfur. The data, as we shall see, provide some support for this suggestion.

Atrocities Documentation Survey (ADS)

In June 2004, a U.S. official notified the Sudanese government that it was observing and recording attacks on villages in Darfur using satellite and aerial imagery. Typically, the attacks started early in the day with aerial bombardment of villages. After the bombings, Sudanese government forces often accompanied by horse-riding Janjaweed militia would raid the villages—killing, shooting, raping and assaulting men, women and children, as well as burning, looting and destroying property. Villagers who were able to escape these attacks ended up in neighboring Chad, for the most part, along with millions of other displaced Darfuris. Although satellite and aerial images provided evidence of the attacks, the government of Sudan continued to deny their occurrence. Therefore, during the following July and August, the U.S. State Department, at the direction of Secretary of State Colin Powell, fielded the Atrocities Documentation Survey (ADS). The ADS was a survey of 1,136 refugees who witnessed and experienced attacks in Darfur, but were then living in Chad.

An eight-page summary of the ADS survey, which included a table of descriptive statistics and maps, formed the background for Secretary of State Powell’s testimony on September 9, 2004 to the U.S. Senate Foreign Relations Committee stating that genocide was occurring in Darfur (U.S.
This summary report, however, was only the first step. Follow-up research on the ADS survey has significantly helped to document and analyze violence in Darfur. The ADS data uniquely and extensively documented victimization during the attacks on black African settlements in Darfur. There is only one other systematic quantitative study of pre-camp violence in Darfur (Deportere et al. 2004), and none that includes sexual violence.

### The ADS Sample and Interviews

In the ADS survey, interviewers asked refugees, since the beginning of the conflict approximately 18 months earlier: (1) when, how, and why they had left Darfur; and (2) if, when, how, and by whom they, their family, or their fellow villagers were harmed. The survey mixed the closed-ended format of health and crime victimization surveys with the semi-structured format of legal witness statements. In addition, using the State Department’s geospatial technology, cartographers, translators, and interviewers’ notations, researchers were able to locate 90 percent of the settlements from which the refugees fled. In total, 932 of the 1,136 refugees were identified as coming from 22 settlements. Additionally, the ADS data were cross-checked and supplemented by rereading and recoding the extensive narratives recorded in the interviews.

The ADS refugee sample provides a descriptive picture of the results of attacks on farms and villages in Darfur. About 40 percent of the ADS respondents are male and they are on average 37 years old. Female refugees probably outnumber males in Darfur because males are more likely to be killed while females are more likely to be raped and survive. Four tribes are largely represented in the sample: just over half of the Africans in the sample are self-identified as Zaghawa, approximately a quarter Masaleit, and about five percent each are Fur and Jebal. The largest concentrations of the Zaghawa fled from North Darfur, while most of the Masaleit and Fur fled from West Darfur, with the Jebal previously concentrated in one town, Seleya, in West Darfur. The identification of the groups is important in establishing the protected status of the victims of the atrocities.

There were two significant waves of attacks in Darfur, and these predictably corresponded with the peak periods of ethnic cleansing involving violent and health related death and displacement. About a quarter of the sample fled during the first three months of the first wave attacks, about half fled during the four months of the second wave of attacks, with the remaining quarter fled during the other thirteen months. The second wave of attacks was obviously the most costly in terms of the physical destruction of
the group conditions of social life for Africans in Darfur. It was during the second wave of attacks, in December 2003, that Sudanese President Omar Al-Bashir vowed to “annihilate Darfur rebels.” The death toll in Darfur during this wave—an eighteen-month period—is estimated at between two hundred and four hundred thousand persons.93

Each ADS narrative was read and coded to designate the attacking group as Janjaweed, Sudanese, or combined Sudanese and Janjaweed forces. Sudanese government forces and Janjaweed militia were distinguished by their clothing and equipment. About two thirds of the attacks were joint Sudanese and Janjaweed operations; nearly a fifth of the attacks involved Sudanese forces acting alone (usually in bombing attacks); and about one tenth involved the Janjaweed alone. The remaining ten percent of cases are uncategorized. The ADS interviews are highly detailed in recording the shouting of racial epithets. The narrative accounts of the attacks were examined on a case-by-case basis and reveal a significant number of heard racial cursing during attacks. The content of the epithets were recorded in detail, using the exactly wording of the epithets.94 Refugees often reported hearing the incoming forces shouting racial slurs, such as “this is the last day for blacks”, “[w]e will destroy the black skinned people”, “kill all the slaves”, “kill all the blacks” and so on.

Data

The data contain a block of twenty repetitions of a set of variables pertaining to reported events, followed later in the data with an additional block of five repetitions of the variables. The variables in the blocks are date, event (the type of event), perp (the perpetrator of the event), loc (location of event, with 400 some distinct locations), villid (village identifier for the event, which has only 22 different values), vicno (number of victims) and a comment field, often with significant additional details. Table 3 provides the distribution of event types and frequency and Table 2 shows distribution of perpetrators for individual events. In what appears to be a joint attack (attack is defined as all events for a respondent for one date), the perpetrator may be Janjaweed (J), Sudanese government soldiers (GoS) or Janjaweed & GoS (JS) for any event.

Results

In order to isolate the fraction of events that are epithets, we first dropped aerial bombing, and all displacement events, including death from displacement, as they are precursors or consequences of the attack, not part of it. Next, we restricted the dataset to just those events with a Janjaweed (J),
Table 1: Distribution of Attacker Types

<table>
<thead>
<tr>
<th>Perpetrators</th>
<th>Freq.</th>
<th>Percent</th>
<th>Cum.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janjaweed</td>
<td>1,740</td>
<td>14.54</td>
<td>14.54</td>
</tr>
<tr>
<td>Arab villagers</td>
<td>4</td>
<td>0.03</td>
<td>14.57</td>
</tr>
<tr>
<td>GoS soldiers</td>
<td>2,077</td>
<td>17.35</td>
<td>31.93</td>
</tr>
<tr>
<td>GoS police</td>
<td>6</td>
<td>0.05</td>
<td>31.98</td>
</tr>
<tr>
<td>Other</td>
<td>431</td>
<td>3.60</td>
<td>35.58</td>
</tr>
<tr>
<td>Janjaweed &amp; GoS</td>
<td>6,115</td>
<td>51.09</td>
<td>86.67</td>
</tr>
<tr>
<td>Air strike</td>
<td>1,504</td>
<td>12.57</td>
<td>99.24</td>
</tr>
<tr>
<td>Missing Data</td>
<td>91</td>
<td>0.76</td>
<td>100.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>11,968</td>
<td>100.00</td>
<td></td>
</tr>
</tbody>
</table>

government soldiers (GoS) or Janjaweed and government solders (JS) perpetrator. The figure below, which depicts coefficients and standard errors from the regression (Model 1) in Table 3, illustrates the basic finding. During violent events there appears to be a strong relationship between cursing and the perpetrators’ identities. When respondents observed the presence of Janjaweed and government soldiers during an event, the respondent was significantly more likely to report hearing racial epithets (again, and importantly, as a fraction of all events reported by the respondent).
Table 2: Description and Count Selected Events in Reported in Survey

<table>
<thead>
<tr>
<th>A Sample of Events Described &amp; Recorded</th>
<th>Frequency Reported</th>
</tr>
</thead>
<tbody>
<tr>
<td>looting, theft of livestock, food stores &amp;c.</td>
<td>1,974</td>
</tr>
<tr>
<td>killings</td>
<td>1,881</td>
</tr>
<tr>
<td>shooting</td>
<td>696</td>
</tr>
<tr>
<td>abduction</td>
<td>431</td>
</tr>
<tr>
<td>beating (reported of self or others) and knifings</td>
<td>423</td>
</tr>
<tr>
<td>death from disease, starvation, dehydration &amp;c.</td>
<td>415</td>
</tr>
<tr>
<td>racial epithets</td>
<td>378</td>
</tr>
<tr>
<td>rape (reported of self or others)</td>
<td>328</td>
</tr>
<tr>
<td>targeting of children, elderly, women &amp; men</td>
<td>314</td>
</tr>
<tr>
<td>whipping and branding</td>
<td>77</td>
</tr>
<tr>
<td>various other events, specified in comments section</td>
<td>60</td>
</tr>
<tr>
<td>sexual violence (non-rape), humiliation &amp; threats</td>
<td>50</td>
</tr>
<tr>
<td>poisoning of wells</td>
<td>42</td>
</tr>
<tr>
<td>immolation (setting fire to people)</td>
<td>41</td>
</tr>
<tr>
<td>amputation</td>
<td>29</td>
</tr>
<tr>
<td>disembowelment of pregnant woman</td>
<td>8</td>
</tr>
</tbody>
</table>

Table 3: Regressions on Joint Attacks

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Shootings</th>
<th>Rapes</th>
<th>Killings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home Village</td>
<td>-0.046*</td>
<td>-0.010</td>
<td>-0.046*</td>
</tr>
<tr>
<td>Proximate Arab Village</td>
<td>0.002</td>
<td>-0.001</td>
<td>0.026</td>
</tr>
<tr>
<td>Cursing</td>
<td>-0.010</td>
<td>-0.003</td>
<td>0.031***</td>
</tr>
<tr>
<td>Killings</td>
<td>-0.013</td>
<td>-0.003</td>
<td>—</td>
</tr>
<tr>
<td>Rapes</td>
<td>0.001</td>
<td>—</td>
<td>0.012</td>
</tr>
<tr>
<td>Shootings</td>
<td>—</td>
<td>-0.011</td>
<td>0.015</td>
</tr>
</tbody>
</table>

N | 4,650    | 4,436   | 5,393

*aSignificance at 0.10, 0.05 and 0.01 denoted by *, ** and *** respectively. Standard errors, clustered at village identification, are reported in parentheses.