

R. Brooks, January 31, 2018.

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## **To Call Forth**

### *Creating & Maintaining Constitutive Distinctions through Spoken Address*

The following contains an introductory chapter and several 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 16 pages total) are the pages on which I am most eager for suggestions and corrections. I have included chapter 3 (out of order) for those seeking a little more background on the general methodological approach and assumptions. For everyone else, this chapter may be skipped without great loss. 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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# 1. first law of address

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup> 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’.”<sup>5</sup> Administrative records maintained in temples and archives kept by elite Babylonian families indicate that certain “servile” names predominated among slaves.<sup>6</sup> 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.”<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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 *paî* ‘boy’ or with other terms which indicated servile status.”<sup>10</sup>

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.”<sup>11</sup> 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.”<sup>12</sup>

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 “ba-iasse, -esse ‘woman-servant’ which has a variant boiasse”), others point to derivations from Low German, Middle Dutch and even baby talk.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.”<sup>16</sup> It was in this later period, marked by European colonization, when race and slavery fused and *boy* acquired dark-skin connotations.<sup>17</sup>

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.<sup>18</sup>



Figure 1: “boy” “slave” Google Ngram, American English, 1800-2010

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 antebellum peak for the next century.<sup>19</sup> 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.”<sup>20</sup> 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.<sup>21</sup> 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*,<sup>22</sup> 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[.]”<sup>23</sup>

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 speakers meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage.”<sup>24</sup>

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.<sup>25</sup> In that context, addressing a man as *boy* is not an effort to infantilize 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, “hé, 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,<sup>26</sup> 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.”<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.”<sup>30</sup> 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.”<sup>31</sup>

## 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 associated practices have been formally renounced.

Address forms associated with slaves, nobility, witches and other ancient 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 backwaters. 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 addressed as such in proper courts and circles.<sup>32</sup> 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 increase in extent, depth, and subtlety.”<sup>33</sup> 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 equilibrium forces, the continuity of these conventions is hardly a forgone conclusion. Not all conventional titles and addresses successfully resist change. Conscious and concerted effort may shift prior meanings and functions. Toward 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 conduct. 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.<sup>34</sup> Yet, “habituated as they were to monarchical hierarchy 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.”<sup>35</sup> 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 Virginia 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.”<sup>36</sup> Noble status mattered little, not only on the frontier as Arthur Schlesinger stressed, but even in colonial centers of commerce.<sup>37</sup> 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 economics 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. [describe the anti-aristocracy sentiment] They seized on the titles and addresses that supported the old monarchial order.

Justifying the clauses in Article 1, section 10, of the proposed federal constitution (called the “soul of the Constitution”<sup>†</sup>) 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.”<sup>38</sup> 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,<sup>39</sup> 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.”<sup>40</sup> 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 heredity 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

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<sup>†</sup>reference.

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?”<sup>41</sup> 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.<sup>‡</sup> 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, Napoleon Bonaparte reinstated 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.]

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<sup>‡</sup>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 set off by gossips. Their notorious rumormongering initiates the conspiracy to kill and secures some assurance that others will stand aside while the more committed and motivated fit the noose or escort a neighbor, daughter, or other to the killing place.\* Talk intensifies with every step. Whispering and equivocation hardens into determined shouts. To sustain itself against the gravity of the contemplated violence, words are screeched out as if to chase away lingering doubts in any members of the mob. In the clamor the mob searches itself, looking for a focus, a rallying cry. When a manta is found it moves through the mobs like contagion. Simple chants (e.g., “stone that whore”; “lock her up”) operate like some hypnotic vocalization. But these violent conspirators do not speak only among themselves. Their ritual appears to require addressing the victim as well, if not principally. 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

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\*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. The observed association between gossip and the willingness of persons to commit acts of violence, or to stand by while others do, goes back much further. See e.g., Leviticus 19:16.

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 wish to inflict.”<sup>†</sup> 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.<sup>42</sup> 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. Cursing occurs in the same moment, and is a part, of an physical attack. Curses are immediate precursors to violence. To appreciate this point, it is important to see these are curses “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[.]”<sup>43</sup> 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—calling into question the horrors of witch trials and the Church’s complicity in the practice—inquisitors endeavored ever harder to establish within Christian theology the existence of witches and their power to work evil through words.<sup>44</sup>

Conceding that “only God can effect,” what the Canon calls “formal and actual transmutation,”<sup>45</sup> inquisitors observed “that the words of the Canon cannot exclude” the witch’s “glamour, by which things *seem* to be transmuted into other likenesses.”<sup>46</sup> Glamour is mere a trick, a use of words to trigger a recollection of images and impress them “on the imaginative

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<sup>†</sup> *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.**]

faculty.”<sup>47</sup> Formal and actual transformations did, of course, occur at the time. Inquisitors themselves had transformed their targets into a figure that the community, and law, could recognize as a witch. Calling someone a ‘witch’ was itself a curse and the first step in a “process of social consensus” that required (and often generated) “enough community support to warrant a bill of indictment,” ending in a killing when judges affirmed the charge.<sup>48</sup> Curses coordinated violence against a member of the community; when the target was someone whom others might hesitate to harm or see harm done to, curses gave assurance to attackers. Law sometimes intervened between the curse and the wickedness it called forth, and at other times law perfected the evil when “the judges’ words” became “virtual triggers for action.”<sup>49</sup>

Curses serves two separate functions. 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 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.”<sup>50</sup> 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,<sup>51</sup> 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.<sup>52</sup> Call this the assurance function of cursing.

Whatever social conditions long ago gave rise to the practice of cursing before killing, its current prevalence suggests a continuing rationale.<sup>53</sup> 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,<sup>54</sup> (though one can quibble about whether that’s actually cursing at all),<sup>55</sup> in addition to other functions.<sup>56</sup> The separate functions of cursing may, moreover, interact. For example, the greater the extent to which a curse (*qua* swear) 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 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 draft. Ritual cursing provides shared criteria for groups of people to select and coordinate strategies. This idea is sketched out in the next section and then applied to the recent conflict in Darfur.

## Coordinating Group Violence

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 the bloody fields of Darfur. Violence on the scale carried out in Darfur required massive coordination both among and between top leaders and low-level perpetrators.<sup>57</sup> 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,<sup>58</sup> theory tells us that perpetrators can cooperate in carrying out violent acts without commands and strict enforcement.

Attackers with shared objectives have incentive to cooperate 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.<sup>59</sup> 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.”<sup>60</sup>

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 and violent men; each is a direct and visible threat to the other. The threatening uncertainty is greater still because the potential 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.<sup>61</sup>) 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.

## A Simple Model of Group Violence through Curses

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 sadistic orgy.<sup>62</sup>

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 restraint and the implicit risks involved in public acts of violence against seemingly defenseless third parties?

Although the contagion framework described above is essentially dynamic, involving sequential decisions made by a number of actors over time, any point of the interaction can be looked at as moment where the parties 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 potential

attack ( $i$ 's strategies are depicted in the rows and  $j$ 's are in the columns).

		$j$	
		attack	bystand
$i$	attack	$x, x$	$-y, 0$
	bystand	$0, -y$	$0, 0$

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.<sup>63</sup> 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 preferred by both to absconding. 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 addresses 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 responds 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 payoff 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. [expand discussion of strategic and payoff uncertainty; reference Dharmapala & McAdams (2005) and Rajiv Sethi.<sup>64</sup>]

Most often assurances 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.

## Empirical Analysis

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. Department of State 2004).<sup>65</sup> 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.<sup>66</sup>

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.<sup>67</sup> 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.

Table 1: Distribution of Attacker Types

Perpetrators	Freq.	Percent	Cum.
Janjaweed	1,740	14.54	14.54
Arab villagers	4	0.03	14.57
GoS soldiers	2,077	17.35	31.93
GoS police	6	0.05	31.98
Other	431	3.60	35.58
Janjaweed & GoS	6,115	51.09	86.67
Air strike	1,504	12.57	99.24
Missing Data	91	0.76	100.00
Total	11,968	100.00	

Table 2: Description and Count Selected Events in Reported in Survey

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

## 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), government soldiers (GoS) or Janjaweed and government soldiers (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).

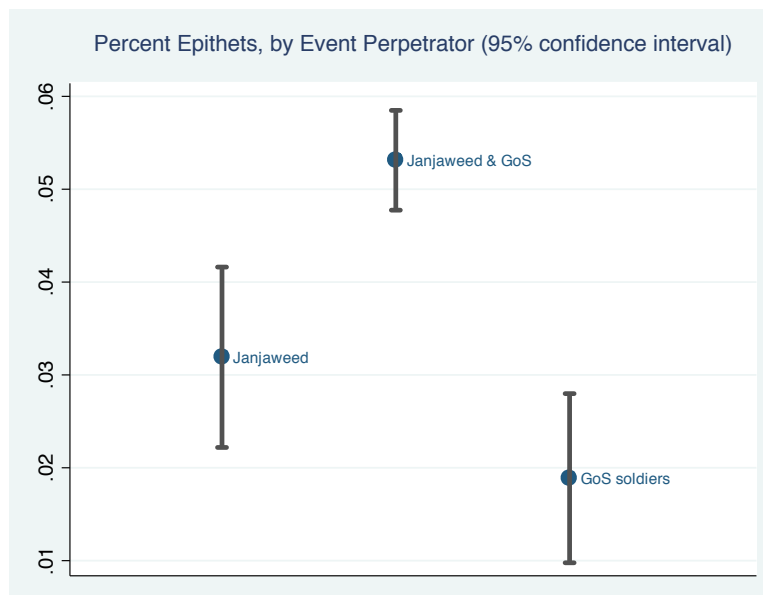


Table 3: Regressions on Joint Attacks

Independent Variable <sup>a</sup>	Shootings	Rapes	Killings
Location			
Home Village	-0.046*	-0.010	-0.046*
Proximate Arab Village	0.002	-0.001	0.026
<b>Cursing</b>	<b>-0.010</b>	<b>-.0.003</b>	<b>0.031***</b>
Killings	-0.013	-0.003	—
Rapes	0.001	—	0.012
Shootings	—	-0.011	0.015
N	4,650	4,436	5,393

<sup>a</sup>Significance at 0.10, 0.05 and 0.01 denoted by \*, \*\* and \*\*\*, respectively. Standard errors, clustered at village identification, are reported in parentheses.

## 8. swearing

Sunlight slipped through wispy white clouds while strong gusts of wind made an already freezing day almost unbearable for exposed skin. Bright cold weather, however, would not discourage the record crowd gathered for the first presidential inauguration of Barak Obama. It was Tuesday, January 20th, 2009, about five minutes after noon when he placed his left hand on the 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 his investiture by asking, “Are you prepared to take the oath, Senator?” None of this—placing one hand on the Bible, raising the other and taking an oath—is required by the U.S. Constitution. A simple affirmation to faithfully execute the Office and preserve, protect and defend the Constitution would have sufficed.\* By convention, however, the required words (only thirty-five) have from the start been tied to ritualistic gestures and flourishes. George Washington is said to have kiss the Bible following his oath.<sup>68</sup> Richard Milhaus Nixon swore on two Bibles, which was still not enough. Yet by swearing on Bibles and often going beyond the constitutional text, concluding with “So help me God,” American presidents in their first official utterance make explicit appeal to spirits, to judge and hold them accountable for whom they claim to be, e.g., “I, Richard Milhaus Nixon,” and what they vow to perform—“do solemnly swear that I will ...”

Spiritual invocations are common to induction and succession ceremonies. Consider the American anthropologist Zoe Strother’s (2000) de-

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\*Article 2, 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:— 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” (emphasis added). Allowing the president-elect to avoid oath-taking—as Franklin Pierce did, while Herbert Hoover and Richard Nixon, Quakers, did not— was largely a concession to Quakers, who took swearing to be too sacred an act for the secular ritual. Still, the allowance reveals a common element and purpose between swearing and affirming, as well as asserting and declaring. All of these speech acts, issued in public, bring forth forms of assurance and commitment by calling on others to hold the speaker accountable for what was said.

scription of the investiture ceremony of Munzenze Kavuka as Chief Kombo-Kiboto in Eastern Pendeland in the Democratic Republic of the Congo. As Strother recounts the day, it was Saturday, December 19, 1987, about half past nine in the morning. A large crowd had gathered to watch the ceremony, for which Kavuka poised and ready.

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.

Before undertaking this fateful act, Kavuka had to offer an oral “history of the clan, which names their female genetrix and traces the route of migration from their point of origin in Angola to the present.” Spirits of Pende dead were called to witness and judge his account, necessarily preceding “the difficult task of successfully beheading a ram in one blow [which, ultimately, was] a test of the truth of his declarations. Is he who he says he is?”<sup>69</sup>

### Is he who he says he is?

Casual swearing, colloquially *profanity*, sounds entirely unlike sacred ceremonial swearing to modern ears. Foremost, for the modern listener, is the absence of any reference to God in much contemporary profanity. In fact, however, it has never been necessary to mention the name of God in order to swear. Theologians and other scholars have long treated “God, damn it” and “Damn it” as equivalents, and surely see little light between “God damn you!” and “Damn you!” Recall also that the U.S. Constitution requires no mention of any god to execute the ‘swearing in’ ceremony of the President. Swearing and profanity are of one and the same mode and it is important to appreciate their inextricable association. If we take earnest and solemn swearing, like those felicitously conducted at investiture ceremonies, to be sacred oaths, then profanity may be properly understood, observed John Spurr, as an oath “sworn in inappropriate circumstances, to support a lie or a frivolous statement.”<sup>70</sup> Hence, when the President of the United States swears inappropriately, whether to support a lie or frivolous statement, he commits a profanity.

Compare the following two events. First, when in a Whitehouse meeting, President Donald Trump used vulgar language characterizing Haiti and nations on the African continent as “shithole countries.” Most observers

would immediately recognize his statement as a profanity. Less obvious was the alleged profanity committed by his 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 was a profanity in support of lie, at least according to so-called "birthers"—a loose (some, to put it uncharitably, loose to the point of being unhinged) collection of Obama political opponents and dissenters seized by the grip of various conspiracy theories about his citizenship and consequent ineligibility to hold the Office of President. Birthers were often depicted as a fringe element in American politics, but contemporaneous polls suggested that about a quarter of the population's adults questioned whether Obama was a natural-born citizen of the United States.<sup>71</sup> Not only during his presidency but also before he took office, a considerable segment of the American population questioned whether he was who he claimed to be.

Among doubters a critical moment transpired when, during Obama's first swearing in ceremony, he and Justice Roberts failed to correctly recite the clause in the Constitution requiring the president-elect to say that he 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 of the clause instead of the beginning, that is to say, "I will execute the Office of President of the United States *faithfully*." A minor deviation, to be sure, but given the prior doubts and conspiracy theories, it was enough for the White House, acting "out of an abundance of caution," to administer the oath a second time, correctly the next day.<sup>72</sup> Doubts about the legitimacy of his investiture remained, however, because Obama's supposed profanity did not result from the transposed word "faithfully." Nor did Trump's reported profanity turn on the particular usage "shithole." No words are, in and of themselves, profanities. A profanity is a speech act realized through any number of words used in relevant contexts.

To appreciate the elements of profanity in Trump's and Obama's acts of swearing, several pertinent distinctions may be usefully observed. First, swearing and swearwords must 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 by figuratively throwing his hands up and 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 relation between obscenity and personal sensibilities.<sup>73</sup> Obscenity offends an individual's sense of propriety, whereas swearing, when inappropriate, is first and foremost an offense to a recognized authority.

Second, swearwords are spoken sacredly, blasphemously, profanely or secularly. *Sacred swearing* is solemn and reverential speech made under the gaze of some religious or spiritual authority; *blasphemy* is speech explicitly contemplating contempt or irreverence for such authority; *profanity*, while ostensibly displaying recognition and regard, yet still misuses, misfires or otherwise maligns the recognized authority; *secular swearing*, which for present purposes is importantly distinct, is solemn speech taken under secular authority, rite or office. Although swearing is rooted in religious doctrine, secular swearing is a long accepted practice. “Medieval canon law distinguished 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 moral sin.”<sup>74</sup> In early modern English courtrooms, nobles often “asserted (not always successfully) their right to give evidence” on their honor instead of under a sacred oath.<sup>75</sup> From the middle ages to the present, secular swears have been a base for everyday behavior. Without them, exhorted Dean and eventual Archbishop of Canterbury, John Tillotson, in a 1681 sermon, “Government would many times be very insecure[; for they support] the faithful discharge of Offices of great trust, in which the welfare of the Publick is nearly concerned.”

Third, swearwords take limitless form. They may arise from any recognized words or expressions in a community. Among Jamaicans, for instance, the utterance “blouse and skirts” in certain contexts is a vulgar swear 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.”<sup>76</sup> Every word is subject to conscription by determined swearers. And any word, once drawn into their common currency, may with time be released from foul usage. Although the equilibrium force of everyday address, as described in earlier chapters, would tend to work against that prospect. Change is possible, but rare here. Delay for creative word choice seldom serves the swearer’s exigent needs. Garden-variety swearers are “content to draw upon the large reserve of words that have performed time-honored service as swearwords,” as Montagu observed, which across societies appear to be drawn largely from the same well that includes the names supernatural beings, both good and evil, ancestors, sacred places and tabu terms related to the body.<sup>77</sup> Recall the Jamaican swear, “blouse and skirts”— originally a reference to a woman’s menstrual cycle (now more a general term of mild outrage, like ‘what the hell’) but is still sometimes used with the more explicit, “blood-cloth,” or “bloodclaat” in the spoken vernacular.

Fourth, and paramount, is that to swear, in any form, is to commit oneself. Tillotson preached that one may swear under two distinct types of oaths, *assertory* and *promissory*. “An *assertory* oath is when a man affirms

or denies upon oath a matter of fact, past, or present [while a] *promissory* oath is a promise confirmed by an oath, which always respects something that is future.”<sup>†</sup> 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. Some elaboration about assertions may clarify this subtle yet important observation.

An assertion, when successful, accomplishes two things. First, it “licenses others to re-assert the original claim (and to assert its immediate consequences).”<sup>78</sup> Asserting 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 false, of course, 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?”<sup>79</sup> With this question, as Robert Brandom posed it, we may better appreciate the second, but in fact primary, accomplishment 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.”<sup>80</sup> 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 borne out by beheading a ram in one fell swoop. When birthers and, in particular, citizen Trump assert Obama’s foreignness, notwithstanding official proof of his domestic birth, their authority to maintain the birther assertion in the face of contrary formal evidence 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.”<sup>81</sup>

Placing a hand on a Bible and swearing an oath to God (like beheading a ram with one blow in another context) is a constitutive public performance often sufficient to justify one’s assertion. Obama failed to justify his assertion of fitness to lead not because of a misspoken oath at his inaugural, which was in any event corrected the next day, but rather because *his* oath-taking was not enough for many Americans, nor was his conventional birth certificate, or even the long-form birth certificate, for which he made a spe-

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<sup>†</sup>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*.” John Tillotson, *The lawfulness, and obligation of oaths a sermon preach’d at the assises held at Kingston upon Thames*, July 21, 1681, Sermon 12, at p. [pincite]



cial request for its issuance from the state of Hawaii after prolonged and substantial doubts about his birth in some quarters (about a quarter of his countrymen) well into his presidency. Trump continued to assert challenges to Obamas domestic birth years after Hawaii issued the special long-form certificate. Trump's asserted challenges remained effective because of his extraordinary commitment to them and because, you will recall, his justification to maintain those assertions were never grounded in objective fact or even what Trump personally believed, but rather what members of the relevant community would let him get away with.

## **Cheaptalk and Commitment**

[To be completed]

### 3. addressing violence

Every encounter, no matter how brief or banal, may escalate into violence. Wherever and whenever people come together there is always a threat of assault, wrote Erving Goffman, “each person becomes a potential victim or aggressor in the potential occurrence of violent interpersonal actions, such as physical or sexual assault, blocking of the way, and so forth.”<sup>82</sup> Beyond their capacity to issue or be subject to physical harm, parties to an encounter are also “in a position to accost or to be accosted by others for the purpose of initiating a state of talk—... they can command and plead with each other, insult or compliment each other, inform and misinform each other.”<sup>83</sup> So much can go wrong, terribly wrong, in any encounter. Managing the latent violence of mundane encounters is the most basic achievement of civil society. How is this feat accomplished? Thomas Hobbes famously argued that pre-political societies escape their unmanaged violent “state of nature” by subjecting themselves to the greater violence of the Leviathan, the State. Yet even before the State, families, clans, tribes and other informal groupings relied on norms— rules of social engagement, including forms of address and other speech conventions like modulating tone and volume of voices—to defuse the dangers inherent in their routine encounters. They had to!

State and society is simply unimaginable without first solving “the problem of maintaining orderly activity internal to the encounter.”<sup>84</sup> Maintaining orderly activity, however, should not be confused with avoiding dominance and subordination within encounters. Dominance is entirely consistent with avoiding direct conflict and violence so long as others present at the situation appreciate their subordinate roles. Situational subordination,

moreover, is often the best response when facing a dominant counterparty or someone who expects to be treated as such, whether or not deference is otherwise merited. Civil address, through which parties learn or affirm their roles and the expectations of others, is arguably the primary means of bypassing unwanted and unintended conflict and violence. There is a further subtlety to see in encounters of civil address. While careless or impolite address (e.g., slights, insults, curses) are often precursors to violence and are themselves instances of conflict, considered and polite address can facilitate even greater harm. Civil address is used not only to avoid violence, but also to achieve it, and in an orderly and most effective manner. Hence, even the Hobbesian State relies on these ancient forms to refine and perfect its own violence.

## Controlled Violence

Consider the exchange below, from the courtroom of Judge Elie L. Holton, where an attorney, M.C. Pritchard, questioned George Street in a manner the opposing counsel, Millard Farmer, found objectionable.<sup>85</sup> “Q.”, indicates a question from Pritchard to Street.

**Q.** When did this take place, *George*?

**Mr. Farmer:** *Your Honor*, may I object to I don’t mean to harass Mr. Pritchard too awful much, but we will refer to our client George Street by his first name, because that’s an affectionate way that we feel about him. And, we’ve known him a period of time. But, we would insist that when he is referred to by the prosecutors that he be referred to as Mr. . . .

**Mr. Pritchard:** In other words, . . .

**The Court:** I will not direct you to do that.

**Q.** Do you have any objection to me calling you *George*?

**Mr. Farmer:** Yes, *sir*, *Your Honor*, I object to . . .

**The Court:** Objection overruled. You may ask the question.

**Mr. Farmer:** *Your Honor*, ...

**The Court:** The objection is overruled. The objection is noted in the record.

**Q.** *George*, when did Mr. Strickland . . .

**Mr. Farmer:** *Your Honor*, I object again to him calling my client *George*. ... He is not his friend. He is trying to have him electrocuted.

“Not even the facade of civility,” wrote Robert Cover, “can obscure the violence of a death sentence.”<sup>86</sup> Farmer would not allow Pritchard’s colloquial address to conceal the violence he sought to levy on Street, himself a convicted murderer. Both men, Pritchard and Street, had a personal awareness of what it took to kill someone and were willing to use instrumentalities available to them for that purpose. Their distinct means and approaches, however, well-illustrate the difference between senseless and thoughtful orderly violence.

Context provides the fundamental distinction between the means and approaches of Street and Pritchard.<sup>87</sup> Whereas Street acted within a social context seeking to inhibit killings, Pritchard occupied a role within an institutional setting designed to overcome this inhibition. Individuals opposed to capital punishment, for instance, are prohibited from sitting as jurors in the non-sentencing (“the guilt”) phase of capital trials, rendering so-called ‘death-qualified’ juries, which exhibit strong biases toward conviction and execution.<sup>88</sup> Death qualification is an obvious mechanism for limiting conflict among jurors and other courtroom participants, which further facilitates the institutional administration of violence. Forms of address may be a less obvious but no less important mechanism that serves the same purpose. Some background on the case may clarify the point.

In the courtroom exchange above, reproduced in a 1981 Federal Court of Appeals case, Street was being questioned by Pritchard in the second sentencing phase following his conviction for a murder, which occurred on October 14, 1974. That morning Street’s common-law wife, Ruby Taylor, was raced to the local emergency room. She was pregnant and had gone into labor. They lacked health insurance. Hospital staff told Street that his wife would not be transferred from the emergency room into the hospital without adequate assurance of payment for her expenses. He then left the hospital, hailed a taxi, and directed the driver to several homes, where he sought to borrow money, without success, from various friends and family members. At the last stop, which turned out to be a deserted home, Street and the cabbie, M. B. “Red” Herrin, argued over the mounting taxi fare.

At the deserted home the police later found a trail of blood running from the front yard through the abandoned house into the backyard and over to an old well. Bloodstains curled around the well’s curved wall and disappeared into the water. Reaching over the well wall, the police chief used a pike pole to assess the bottom, but the water was too deep. Then, secured by a rope, the chief himself was lowered into the dark water, where he continued to stir the pike pole until he hooked something. A right shoe first surfaced, still laced to the foot of a man floating upside down in the well. It was Herrin. His bloated body stretched at the seams of more than a dozen

knife cuts. An autopsy identified 14 recent stabs and slashes to his torso and body. The coroner reported “[t]he cause of death was multiple deep knife wounds and drowning, the latter possibly being the terminal event.” It is difficult to imagine a more horrible death—bleeding, drowning, completely submerged upside-down in a dark narrow wellshaft.

Street killed Herrin, in self-defense, he claimed. Words of address were no doubt exchanged between them. Their address in all likelihood escalated, rather than eased, the conflict between them, which was messy, bloody, passionate and senseless.<sup>89</sup> Killing a man over a \$38 cab fare could hardly be the product of a sensible or rational plan. Later chapters will discuss how address contributes to this kind of ‘senseless’ ‘irrational’ violence. For now the focus is how address controls anticipated planful violence, which exists in its most refined form when the State kills Citizens.\* Itself unable to take life, the State must enlist numerous individuals, in various roles, to do its killing. Nor do judges themselves ever kill defendants, or executioners themselves. To execute a convicted defendant, within the U.S. constitutional order, requires a vast “system of roles,” as Robert Cover has observed, wherein “the social cooperation of many others, who in their roles as lawyers, police, jailers, wardens, and magistrates perform the deeds which judicial words authorize.”<sup>90</sup> Oddly enough, the system of roles seems to enlist even the obliging participation of the defendant, whose “world is threatened. But he sits, usually quietly, as if engaged in a civil discourse.”<sup>91</sup> All these actors know and keep their roles in no small part with the aide of forms of address.

Address contributes greatly to the maintenance of violence in our legal order. It recalls and reinforces the hierarchy of authority required to execute commands, which ordinary individuals (lawyers, jurors and members of the courtroom audience among others) might otherwise eschew.<sup>92</sup> To illustrate, let’s return to the case at hand. At his initial trial, Street’s self-defense claim was rejected by jurors. They convicted him of murder

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\*As Robert Cover noted, this “well-coordinated form of violence is an achievement. The careful social understandings designed to accomplish the violence that is capital punishment, or to refrain from that act, are not fortuitous or casual products of circumstance.” Our expectation of “near perfect coordination” is so great, that its failure disturbs even otherwise indifferent observers. For many, the recent embarrassment of American capital punishment system was not that innocent persons are sometimes executed; Type I errors are predictable outcomes even in highly rational, fair and efficient criminal justice systems. Rather it was the messy and amateurish manner in which state killings were carried out when it became difficult to acquire drugs for their lethal injections. All pretense of rational sanitized execution was lost on April 29th 2014, when the state of Oklahoma executed Clayton Lockett with a mixture of drugs put together by non-medical professionals that left Lockett thrashing and screaming for three quarters of an hour. “‘This shit is fucking with my head,’ he said, head bucking, before he finally died.” S.M., “Death-penalty drugs: Dangerous cocktails,” *The Economist*, April 29th 2015. See also, Jeffrey E. Stern, “The Cruel and Unusual Execution of Clayton Lockett,” *The Atlantic*, June 2015.

and sentenced him to death. The United States Supreme Court vacated the death sentence, on technical grounds, remanding the case for rehearing on the sentencing aspect. It was at this rehearing where Pritchard kept calling Street by his first name, leading Farmer to scathingly remind those present that Pritchard is not Street's friend but is rather "trying to have him electrocuted." As Judge Holton responded to the objection, the exchange continued in revealing form.

**The Court:** Objection overruled.

**Q.** *George*, when did . . .

**Mr. Farmer:** *Your Honor*, I object to him referring to our client . . .

**Mr. Pritchard:** . . .

**Mr. Farmer:** . . . by any name . . .

**The Court:** Don't get up . . .

**Mr. Farmer:** . . . at all.

**The Court:** Have a seat. *Mr. Sheriff?*

**Sheriff:** Yes, *sir*.

**The Court:** Sit this gentleman down by the name of Mr. Farmer. Don't make that objection again. I will let you have it as a continuing objection throughout the trial.

**Mr. Farmer:** May we be heard?

**The Court:** No, *sir*.

**Mr. Farmer:** May we put up evidence?

**The Court:** No, *sir*.

**Mr. Farmer:** *Your Honor*, may we argue this motion?

**The Court:** No, *sir*. It's already been argued all the Court is going to hear it.

**Mr. Farmer:** *Your Honor*, may I . . .

**The Court:** No, *sir*.

**Mr. Farmer:** May I have time to prepare a motion?

**The Court:** No, *sir*.

**Mr. Farmer:** *Your Honor*, may I prepare a motion?

**The Court:** No, *sir*.

**Mr. Farmer:** May I make an offer of proof?

**The Court:** No, *sir*.

**Mr. Farmer:** May I confer with my client?

**The Court:** Not at this point, no *sir*.

**Mr. Farmer:** May I advise . . .

**The Court:** Your client is on the stand just like . . .

**Mr. Farmer:** . . . my client regarding his rights?

**The Court:** . . . Don't interrupt the Court. Your client is on the stand. You put him on the stand just like any other witness. He will be treated just like any other witness.

**Mr. Farmer:** *Your Honor*, I . . .

**The Court:** No better or no worse.

**Mr. Farmer:** I didn't put him on the stand to have him discriminated against.

As the tension between them escalates, note the heightened civility (which is not to say politeness) in Holton's expressions, addressing Farmer as *sir* repeatedly and referring to him as a *gentleman* and as *Mr. Farmer*, even as he orders the sheriff (calling him *Mr. Sheriff*) to restrain Farmer. Likewise Farmer maintains an appropriate deference, even a distant formality with the repeated use of "we" near the start (i.e., may *we* be heard? may *we* put up evidence? may *we* argue this motion?), which he switches to "I" as their exchange becomes more heated and personal. Still, while being confrontational, both men maintain civil forms. Their exchange might have continued along this line but for what came next:

**The Court:** Overruled. Now, don't make that objection again. You have a continuing objection. I mean about the calling him by the name of George.

**Mr. Farmer:** *Your Honor*, do you object to me calling you Elie?

A line was now crossed. Farmer begins with *Your Honor* but ends with a reference to the judge's first name, Elie. It was an obvious challenge. Holton responds not by saying how dare you ask *me* that question, but by directing Farmer's comment to the institution. In his response, Holton shifts Farmer's address away from himself, as an individual or even as a judge, toward *the Court*, the law, and in doing so enlisted another set of coercive mechanisms.

**The Court:** *Mr. Farmer*, do not ask the Court any such question as that. That is a direct confront of the Court of its authority. If you do that again I will consider it as a contempt of this Court.

**Mr. Farmer:** What, *Your Honor*, may I ask *the Court*. I want to inquire . . .

**The Court:** *Mr. Farmer*, this Court finds your continual interruption of the Court, your refusal to allow us to continue with examination of this witness to be in contempt of the Court. This Court so finds you in contempt of Court. It is the judgment of the Court that you are in contempt of Court. It's the judgment of the Court that you be sentenced to the common jail of this county for a period of 24 hours. *Mr. Sheriff?*

Eight days later Farmer received a second contempt judgement after accusing Holton of participating in and covering up efforts to discriminate against his client:

**The Court:** All right, *Mr. Farmer*, the statement that the Court wants to cover it up is a direct contempt of this Court, knowingly made by you. I have repeatedly warned you about this. Again you have sought to make that statement. The Court finds you in contempt of Court, *sir*, again. The Court sentences you to 3 days in the county jail, ser . . .

**Mr. Farmer:** *Your Honor*, may I be . . .

**The Court:** . . . service to begin at the termination of this case. That's all.

**Mr. Farmer:** *Your Honor*, may I be heard on this?

**The Court:** No, *sir*.

**Mr. Farmer:** *Your Honor*, may I have counsel to represent me and present evidence on this issue?

**The Court:** No, *sir*.

**Mr. Farmer:** *Your Honor*, may I for the purpose of here forward understand what can be my role in representing Mr. Street as far as bringing out the reason that I feel that he is being denied a fair trial. I don't understand, *Your Honor?*

**The Court:** You'll have to exercise your discretion and your knowledge as an attorney.

**Mr. Farmer:** *Your Honor*, . . .



**The Court:** That’s all.

**Mr. Farmer:** *Your Honor*, may I . . .

**The Court:** No, *sir*, we’re through with that discussion. All right, call the next juror, *Mr. Clerk*.

The exchange between Farmer and Holton is a striking example *regulative mode* of address on display. We see forms of courtroom address used to maintain orderly activity in a context of extraordinary brutality and violence committed by subjects of the law and by legal officials. Address here invokes “scripts,” telling participants in the courtroom encounter (i.e., judge, defense attorney, prosecutor, defendant, witness, bailiff, sheriff, clerk, jurors, aggrieved family members, reporters and other audience) how to behave. Scripts, however, are not sufficient to assure compliance, as the exchange above illustrates. There are a number of reasons for this insufficiency. First, scripts are always incomplete, providing no explicit direction for any number of contingencies that parties may face. Second, scripts are often ambiguous or vague, leaving parties unsure about what is required of them even when there is some nominal direction. Third, parties sometimes contest or reject an unambiguous applicable script. Farmer belonged to this category.

In other courthouse encounters around the same time Farmer had been “rushed by a fist-waving prosecutor, punched by a deputy, banned from a Florida courtroom” and publicly reviled by jurists throughout Georgia. A staunch opponent of the death-penalty, Farmer specifically rejected the scripts associated with the administration of capital punishment, which he viewed as racially biased. In one case he had half of a dozen trial judges removed by asking them, under oath, if they would approve of their daughters marrying black men.<sup>†</sup> In Street’s case, both in and out of court, he called the prosecutor, Pritchard, and the judge, Holton, racists. Pritchard had no patience for Farmer’s approach and accusations, which he saw simply as an effort to “intimidate the court.” Pritchard refused to address Street as *Mr.*, he later told reporters, “because I wouldn’t call any man *mister*, black or white, if I knew he was a mad-dog killer.” Holton, whose home

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<sup>†</sup>As reported in a local newspaper account, he had “six trial judges removed . . . after putting some of them under oath and asking if they would approve of their daughters marrying a black or if they would object to sharing a hotel room with one.” The same article observed “In his most publicized case, Farmer represented five blacks accused in 1977 of killing a white man during a robbery in Dawson, Ga. The defendants were acquitted after Farmer warned the jury at one point that the rural Terrell County town was ‘on trial for racism’.” “Newman attorney Millard Farmer: Death-penalty opponent handles cases by challenging the legal system” Georgia newspaper article [get exact cite]. [Note the absence of “man” and “men” following the adjective “black”, but not “white”, in this local newspaper account.]

was picketed while Farmer sat in jail for contempt, took a more forgiving view, observing that Farmer was “a darned good attorney, but sometimes he wants to run the whole show.” And that, for Holton, was what was at stake in the encounter.

Who is to be dominant and who subordinate? In the end, Holton asserted his dominance through the threat of violence, deploying the *in terrorem* and peremptory power of contempt (which is explored in more detail in Chapter 5), but that was only after their exchange of addresses failed to coordinate the various parties engaged in the witness examination. This is important: even while rejecting the script, Farmer still sought to avoid conflict (and jail) through the *correlative mode* of address. Indeed, it was a heat-of-the-moment reference to Holton’s first name, not an address blunder, that resulted in the courtroom coordination failure. Had Farmer not slipped, if it was a slip, a continuing exchange of civil addresses between Farmer and Holton might have lead any one of them to eventually back down. Pritchard might have called Street “*Mr.*,” just to get on with the examination; Holton might have ordered Pritchard to address Street as *Mr.*, which is now required by law; or Farmer might have desisted, if he felt persistence was doing his client more harm than good.<sup>‡</sup> To clarify the dynamics and distinctions of these modes of address in managing conflict, the next section introduces the stylized depiction of conflict know as the hawk-dove interaction or game.

## Hawks and Doves

The hawk-dove game is a general representation of situations where individuals (or players) choose from two actions—one more aggressive (*hawk*) and one less aggressive (*dove*). Real world examples are easy to find. Imagine two drivers approaching an intersection where one or both might acquiesce to the other or accelerate through; or take two parties (spouses or business agents) negotiating from positions of conciliation or conflict; or a couple of steadfast pedestrians about to walk directly into each other on a sidewalk unless one steps aside; or a judge and a lawyer at odds about the treatment of a witness on the stand. A two-person version of this game is shown below in the matrix below, where each cell (labeled i, ii, iii or iv) depicts the outcome from combinations of the players’s various actions.<sup>§</sup> When both

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<sup>‡</sup>It is worth noting, around the time, that “only two juries in the 200 or so capital cases in which [Farmer had] participated have returned a death verdict.”

<sup>§</sup>Player 1’s actions are depicted along the rows, while player 2’s actions are shown on the columns. Player 1’s outcome is shown in the lower left corner of each cell, while player 2’s in the upper right corner.

are aggressive (*hawk, hawk*), cell (i), the *worse* possible outcome results for each player. When one party is aggressive and the other is not, cells (ii) or (iii), the one who plays *hawk* gets the *best* possible outcome, while the less aggressive party gets a *good* outcome, but would have had a *better* outcome had the other party also chose *dove*. This is the basic structure of the hawk-dove game, which is easy to describe but can be tricky to solve.

		Player II	
		hawk	dove
Player I	hawk	worse worse (i)	good best (ii)
	dove	best good (iii)	better better (iv)

To more easily see the solution, or equilibria, of this game, the terms describing the outcomes in each cell have been replaced by numbers, that fully preserve the basic structure, in the matrix below.<sup>¶</sup> Thus, the payoff to each player when both are aggressive (*hawk, hawk*) is -2, which is the “worse” outcome for the players. When they are both less aggressive (*dove, dove*) each gets a payoff of 1—a fine outcome, indeed “better” than being a *dove* to a *hawk* and getting 0, but not the “best” outcome a player can achieve when the other player plays *dove*. That is, when Player I plays *dove* (the bottom row of payoffs apply) Player II gets a higher payoff (i.e., 2) from playing *hawk* instead of *dove*. And, should Player II in fact choose to play *hawk*, Player I can do no better than to play *dove* (securing a payoff of 0 rather than -2 by playing *hawk* too). Player I choosing *dove* and Player II choosing *hawk* is a Nash Equilibrium: neither player has incentive to change strategy given the other player’s strategy. By symmetry, Player I choosing *hawk* and Player II choosing *dove* is also Nash Equilibrium.<sup>93</sup> From a shared welfare perspective, it doesn’t matter who plays *hawk* and who plays *dove* so long as both don’t play *hawk*. But from an individual player’s perspective this is the key question. Who shall play *hawk* and who *dove*? Nothing in the

<sup>¶</sup>The figure with numbers below retains the nonnumerical description for the row player (in parentheses) to facilitate translation as the outcomes are characterized in terms of payoffs.

game provides any clue to this question and failure to resolve it may lead to the mutually undesired outcome where both play *hawk*.

		Player II	
		hawk	dove
Player I	hawk	<div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">-2</span> <span>-2</span> </div> <div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">(worse)</span> <span>2</span> </div> <div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">(best)</span> <span>0</span> </div>	<div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">2</span> <span>0</span> </div> <div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">(worse)</span> <span>2</span> </div> <div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">(best)</span> <span>0</span> </div>
	dove	<div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">0</span> <span>2</span> </div> <div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">(good)</span> <span>1</span> </div> <div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">(better)</span> <span>1</span> </div>	<div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">1</span> <span>1</span> </div> <div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">(better)</span> <span>1</span> </div> <div style="display: flex; justify-content: space-between; align-items: center;"> <span style="margin-right: 20px;">(better)</span> <span>1</span> </div>

Yet perhaps it is not so dire. People don't usually commit themselves unbendingly to an initial decision that turns out to be bad for everyone. Rarely do two approaching pedestrians purposefully walk into each other on sidewalks. Though they sometimes do when both refuse to reconsider their course of action. More often after observing that the other player has also chosen to play hawk, each player decides whether to stay with the initial decision or change to dove. Their interaction is dynamic and each moment that the players simultaneously determine their actions can be thought of as a distinct game where every instance of hawk-hawk conflict imposes some inconvenience or costs on the players. We have all witnessed someone, perhaps even ourselves, walk in the on-coming path of another person and stop just before colliding, and then attempt another route (or not) just to have another near collision because the other person also adjusted (or not), until one or the other (and sometimes very occasionally both) stood still, encouraging or challenging the other person to go around. This dynamic interaction has an equilibrium, similar to that of the one-shot game, where it is expected that Player I will choose dove and Player II will choose hawk following any number of previous hawk-hawk near misses. There is also an equivalent equilibrium where in the next moment Player I is expected to choose hawk and Player II to choose dove irrespective of their prior interactions. As with the one-shot game, an expectation that either player will play hawk supports an equilibrium where the other plays dove, just as an expectation that one will play dove supports an equilibrium where the other plays hawk. The dynamic game is a little more complicated and perhaps a lot more realistic, but there is still nothing in the game that resolves the

indeterminacy of who is going to play hawk and who should play dove for their part of the equilibrium.

## Correlating Behaviors on Social Distinctions

One way to resolve the indeterminacy of the games equilibria is to take cues from outside of the game. External cues can assign the role of hawk to one player and dove to the other.<sup>||</sup> For example, players might correlate their behaviors based on some observed event, like rainfall, such that when it is raining Player I plays hawk, while Player II takes that role when it is not raining. Road rules can operate along these lines, encouraging one driver to be more or less aggressive with respect to another following some mutually observed weather or road condition. More generally, game theorists have developed randomized correlated strategies (using a coin flip, for instance, to assign hawk to Player I and dove to Player II if “heads” and the reverse if “tails”) to resolve indeterminacy in coordination games like Hawk-Dove.

There is, however, no reason for the assignments to be strictly random, even if they are arbitrary. The key feature is that the players have shared expectations about who will do what in the interaction between them. An infinite number of things can bring about these expectations. For example, when two players face off, the bigger one or the surlier one may be expected to play hawk. Sex differences might also determine assignment, where tradition may establish an expectation that males play hawk in coed encounters. Any physical difference, including skin color, may be enlisted to correlate behavior toward certain equilibrium outcomes. A common history between the players might, for instance, predispose lighter skin persons to play the dominant hawk when facing someone darker, or vice versa.<sup>94</sup>

Social distinctions, even more than physical ones, play an essential part in resolving hawk-dove interactions in society. Social distinctions, of course, are often associated with physical differences. Appearance, demeanor, dress, audible speech and accent, apparent age and so on, all contribute to social status. Still, it is possible to isolate purely physical differences, like sex and skin color, from socially determined differences, like gender and race. These strictly social differences, which include titles, honorifics and other forms of address, coordinate much of everyday behavior by providing effective focal bases for organizing activity.\*\* When two individuals agree on their relative social status or rank, for example, that shared

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<sup>||</sup>[Perhaps, elaborate on the distinction between “actions” versus “strategies” here.]

\*\*Titles and address, in particular, can also be used to counter coordination on unwarranted criteria (like, in most cases, skin color, sex, race and gender). [Discuss Delta Airlines and black women doctors].

belief will often determine which one of the two is “entitled” to the *hawk* role and who must be satisfied with *dove*.

Persons assigned to play *dove* based on their status may not like it and might even resist it, but they can do no better in the immediate instance than to follow their assignment. Importantly, it is not fear of sanction or retribution that leads the player assigned *dove* to comply. Compliance follows from the reasonable expectation that the other player will play *hawk*, and given that belief there is nothing to be gained from deviation. It is in this way that fulfilling the roles assigned by one’s social categories facilitates coordination and avoids conflict. However, merely because it is useful, in some sense, to conform to the expectations of one’s social role, does not mean that those expectations will be or should be followed.

## Roles, Scripts and Strategies

When and whether to follow the dictates of one’s role are deeply normative questions, whereas the Hawk-Dove game offers only a descriptive account. It is simply a heuristic for considering a stylized form of coordination. Several points are worth noting about the game as thus far described. First, the outcome of the dove-dove strategy combination may be socially preferred to the hawk-dove ones. The summed payoffs are the same for all these outcomes (i.e., 2), but they are shared equally when both players choose dove and perfectly unequally when one chooses hawk and the other dove. Even if there was some way to costlessly tax and redistribute the gains of the one playing hawk so that both players end up with an equal post-tax payoff, or some manner of alternating play so that the payoffs are equal on average, there may still be societal value in having both players choose the same strategy, the less aggressive one, or in denying to any player the more aggressive strategy.

In addition to serving some larger societal purpose, discouraging aggressive play may also be jointly better for the two players. Imagine, for example, that the payoffs for the dove-dove strategy combination were changed from 1 to 1.5, while keeping everything else the same. There would be no change in the pure strategy equilibria of the game, where one player chooses *hawk* and the other *dove*. But now that *dove-dove* strategy combination creates a summed payoff of 3, which is greater than what is produced by any other strategy combination. In this case, society may have a strong incentive to discourage playing *hawk* with legal or social sanctions.

On the other hand, the payoff for each player when both play *dove* could also be changed from 1 to 0, without affecting the pure strategy equi-

libria. Now the *hawk-dove* outcome leads to the greatest joint payoff. A society, in this case, may wish to encourage hierarchy; or perhaps not. Broader societal norms of egalitarian engagement may trump efficiency gains from certain *hawk-dove* exchanges. One can say that such considerations are strictly outside of the game and ought to be discarded, as they have nothing to do with what is optimally determined within the game. But, of course, looking outside of the simple game structure is precisely what must be done to assign actions to players in games with the multiple equilibria. It seems somewhat artificial to say that parties look beyond the game in forming expectations about who will play *hawk* and who will play *dove*, but take no other cues from society.

At the same time, social expectations do not dictate individual behavior. Prescribed norms of behavior are necessarily incomplete.<sup>95</sup> Typically, they only suggest behaviors that should be, or are generally, taken in certain contexts. There remains unspecified contingency in all social interactions, which make the relationship between role and behavior indeterministic. Social roles, moreover, in many contexts offer no unique prescription because individuals occupy multiple roles. *Mother, citizen, lawyer, spouse, employer, daughter, activist, teacher* are social roles that a single person may simultaneously occupy. Situational indeterminism cannot be resolved by prescribed conduct when multiple roles offer differing and conflicting prescriptions.

Additionally, it may be unclear what conduct is called for with any given role or status. Dominant individuals sometimes choose *dove* despite their higher status. This observation raises a fundamental question. What does it mean to play *dove*? Any particular hawk-dove exchange must be considered in light of broader structured interactions that define the individuals' social context. At any moment, choosing the less aggressive strategy can be an indication of a player's dominance—a dominance so evident the player can afford to be generous. Playing *dove* may also create status for a player, in the way that ritual offerings function in traditional gift economies. These rituals are observed in market economies too, of course. Thorstein Veblen described them in the behavior of the gentlemen who enlisted both friends and competitors to demonstrate pecuniary prowess by offering “valuable presents and expensive feasts and entertainments.”<sup>96</sup> Whether gift rituals like potlatch and expensive feast originated in religious or redistributive aims (such as, allowing a subordinate to acquire the better outcome in some particular instance), there is little doubt that these practices endow the giver with honor and status.

Furthermore, an individual's behavior is also importantly determined his or her personality. Some people are simply hawkish and their behaviors are determined as much by individual temperament as they are by social

role. Others have a preference for dove-like conduct, conciliation and sharing being prized by them more so than personal accumulation of material gains. Furthermore, being familiarized, socialized or habitualized with or within certain roles or statuses, “with their characteristic value-orientations, may so affect the formation of personality as to make it sometimes more, sometimes less, difficult to act out the requirements of other statuses.”<sup>97</sup> These are all important caveats, and must be kept in mind in evaluating the predictive and descriptive value of the rational-strategic structure of the interaction. All of the above notwithstanding, there are still useful lessons to be taken from the simple Hawk-Dove game.

The potential for conflict in certain encounters are often addressed by observable social distinctions. Social distinctions create shared expectations of appropriate behavior, which parties may use to coordinate their actions. When they act in accordance with shared prior expectations, individuals tend to avoid conflict and they preserve the status quo. Titles and social roles serve this function exceptionally well, although they are not the only means of establishing social distinction in encounters. Dress, demeanor and even consumption, in everyday and ceremonial forms, all indicate social distinctions that can be enlisted to correlate strategies, as well as spatial distance and gestures, like handshakes, nods and winks. Yet among all these conventions, titles and address represent a particularly universal and effective means of relating people and coordinating expectations. More fluid than dress, more flexible than demeanor, titles and address are pervasive and effective coordination devices for controlling violence in Hawk-Dove situations and other conflictual interactions.

A final lesson to be drawn from the discussion of roles in Hawk-Dove encounters concerns the distinction between “scripts” and “correlated strategies.” Scripts provide independent self-focused instructions for action. Correlated strategies are dependent and outward looking. Parties look to the actual existing context, not to the one presupposed by the script. An analogy may clarify. “All the world’s a stage,” wrote Shakespeare, “And all the men and women merely players.”<sup>98</sup> Players in a Shakespearian play may proceed adequately by following the script—their lines and stage directions. Scripts in the real world, however, as mentioned previously, tend to be ambiguous, vague and incomplete, forcing players on the world’s stage to improvise based cues not in the script.

To be sure, not all scripts in the social world are so indefinite. Some social roles come with highly articulated scripts (i.e., strictly prescribed conduct) especially when partnered with particular counterpart roles, like *parent* interactionally partnered *child*. When paired in such interactions role-occupants tend to follow well-known scripts. These role-pair scripts



tell individuals what to do—how to behave—in their interactions with each other. If everyone follows her script and if the scripts are “written” to avoid conflict, then coordination is assured, even absent any regard for the expectation of others. The clearer the script the better. “It is relatively easy to decide who is dominant,” observed sociologist Roger Gould, in context where “the people in them occupy roles for with there is an explicit terminology. Children and parents, workers and employers, slaves and masters typically have a vocabulary for the way they relate to each other.”<sup>99</sup>

The more explicit the terminology and the distinctions of rank, the less likely violence and conflict will result, continued Gould, as “only one person can plausibly lay claim to preeminent status, at least if the rules are followed.”<sup>100</sup> Yet it is often not sufficient, or necessary, to rely on a belief that the rules will be followed. When, in particular, the terminology of role is unclear or the distinctions of rank are ambiguous, it would be silly to leave one’s face buried in the pages of a script. Parties, instead, look to counterparties and contexts for cues of how they expect to be treated and received in their interaction. Titles and address provide essential clues. Titles, in the broad sense of encompassing social labels, relate members of society to each other—doctor to patient, citizen to police officer, customer to clerk and so on. Beyond these dyads, parties are often subsumed within role-sets that further situate and regulate their behavior, as described below.<sup>101</sup>

## Regulating Role-Sets

A role-set should not be confused with the “multiple roles” that a single person might occupy at any time, such as *mother*, *lawyer*, *niece*, *employee*, *veteran*, *daughter*, *citizen* and on. These roles (or “statuses,” “social positions,” or “social statuses”) come with norms that prescribe various, and often conflicting, demands on an individual occupying them. A young *associate* at a law firm, who is a *parent* to a young child, will often face great difficulty balancing competing social expectations of those two roles alone, particularly but not only when the *parent* is a *mother*. Adding more roles only makes the balancing more challenging, but it is important to see this challenge, ultimately, as a personal one. It is a question of how an individual chooses allocates her time, attention and recourses across the multiple roles she occupies. Role-sets face a different problem, one that is interpersonal rather than personal, because role-sets characterize associated roles, simultaneously occupied by different persons. Each role or social status has complementary roles or statuses.

For example, *mother* is associated with *son* and *daughter* as well as with *father*, while *lawyer* is generally in interactional role-relationships with

*client, partner, secretary, clerk, judge, opposing counsel, bailiff*, and so on. Someone who is a *lawyer* will, of course, interact with people in other roles too, such as a *babysitter, parent, neighbor, doorman* and *surgeon*, but typically, hopefully, not in her role or status as *lawyer*. In her role or status as *lawyer*, the essential interpersonal problem is, as Merton put it, “identifying the social mechanisms which serve to articulate the expectations of those in the role-set so that the occupant of a status is confronted with less conflict than would obtain if these mechanisms were not at work.”<sup>102</sup> In organizational settings, address is often the central mechanism that articulates expectations in order to mitigate conflict.

Conflict within role-sets is inevitable. Occupants of connected roles or statuses develop different interests and values, not only due to inherent operational conflict between some roles, such as between prosecutor and defendant, but also, and significantly, as a result of the very processes of social differentiation that lead particular individuals to occupy distinct roles within the set. Moreover, “to the extent that members of the role-set themselves hold substantially differing statuses, they will tend to have differing expectations (moral and actuarial) of the conduct appropriate for the status occupant.”<sup>103</sup> Add to this a greater frequency and intensity of interactions within many role-sets and the likelihood conflict becomes increasingly certain.

Merton proposed a number of mechanisms that work to counteract the structural tendency toward conflict within the role-set. Some mechanisms are based on the relative importance, power and authority of the roles in the set (e.g., a judge’s evident supremacy over the courtroom bailiff reduces potential for conflict not only within the judge-bailiff dyad, but also in the judge-jury and lawyer-bailiff dyads among others). Additional mechanisms contain conflict by limiting the observability or verifiability of dyadic exchanges within the larger role-set. Take, for example, the dispensation afforded a lawyer to speak the judge in chambers away from jurors and other audience, or the rule allowing privileged and confidential information between lawyer and client. More extreme responses might even limit or eliminate interactions within a role-dyad.<sup>104</sup> It is sometimes essential to abridge the role-set, e.g., limiting who may speak to whom (as well as how and when), to maintain a stronger “consensus of role-expectations among those who remain.”<sup>105</sup>

Forms of address serve to articulate and maintain expectations within functional role-sets.<sup>106</sup> Address literally verbalizes expectations across role-relationships.<sup>107</sup> Conflict reduction is especially important in institutions that deploy purposeful, if not “rational,” violence. Separating senseless violence from the purposeful sort is the first task in the efficient organization of

violence. Next is to eliminate or reduce the senseless and to refine purposeful aggression. Address fulfills a key function at this stage. Think about address practices in organizations that typically engage in violence. Military and mafia address may first come to mind. Members of these organizations are trained and habituated to carry out brutal acts, and the way they address each other and their victims undoubtedly facilitates their efficient operation. Yet, the success of address regulating premeditated violence is best evidenced not by professional killers, but by the way address enlists ordinary civilians to participate in extraordinary violence—sometimes lawful (e.g., capital jurors) sometimes not (mobs engaged in lynching and stoning).

### **Framework, Unit of Analysis and Further Caveats**

[The remainder of this final section, to be completed, briefly discusses the unit of analysis; psychologically anonymous agents; partial equilibria and the totality of social encounters; treating “institutions as rules of the game” versus “institutions as equilibria”, single-exit frameworks; critique of situational determinism and determinist ‘linguistik-system’; and adds a few more minor caveats.].

## Notes

<sup>1</sup>Dov Cohen, Richard E. Nisbett, Brian F. Bowdle and Norbert Schwarz, "Insult, Aggression, and the Southern Culture of Honor: An 'Experimental Ethnography'," *Journal of Personality and Social Psychology*, May 1996, vol. 70 (5):945-60 (finding an effect of disparaging address in cortisol levels).

<sup>2</sup>Alvin F. Poussaint, "A Negro Psychiatrist Explains the Negro Psyche," *New York Times*, August 20, 1967. Susan Ervin-Tripp (1972) discussed Poussaint's account in her foundational work on address.

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

<sup>4</sup>H. D. Baker, "Degrees of Freedom: Slavery in Mid-First Millennium BC Babylonia," *World Archaeology* 33, no. 1, *The Archaeology of Slavery* (June 2001): 18-26. At p. 20 (citation, Dandamaev 1984: 81-102, omitted).

<sup>5</sup>*Id.*, 22.

<sup>6</sup>"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.

<sup>7</sup>Eleanor Dickey, "Forms of Address and Conversational Language in Aristophanes and Menander," *Mnemosyne*, Fourth Series 48, no. 3 (1995): 257-271, at 258.

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

<sup>9</sup>Aristotle 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 pincite]

<sup>10</sup>Eleanor Dickey, "The Ancient Greek Address System and Some Proposed Sociolinguistic Universals," *Language in Society* 26 (1997):1-13, at 5.

<sup>11</sup>"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.

<sup>12</sup>Clive 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 [t]he suffix puer was later replaced by servus, thus a slaves 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.*

<sup>13</sup>“Boy is a baby word. All over the world, one finds similar words beginning with b and p and meaning ‘child’; boy is allegedly one of them.” Liberman (2000, 201). See Eric J. Dobson, “The Etymology and Meaning of boy,” *Medium Aevum* 9 (1940): 121-154; Bernhard Diensberg, “The Etymology of Modern English BOY: A New Hypothesis,” *Medium Aevum* 50 (1981): 79-85; Anatoly Liberman, “The Etymology of English boy, beacon, and buoy,” *American Journal of Germanic Linguistics & Literatures* 12, no. 2 (2000): 20134.

<sup>14</sup>Dobson, “The Etymology and Meaning of boy.”

<sup>15</sup>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.

<sup>16</sup>*Ibid.*

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

<sup>18</sup>For a description of data source, see Jean-Baptiste Michel, Yuan Kui Shen, Aviva Presser Aiden, Adrian Veres, Matthew K. Gray, William Brockman, The Google Books Team, Joseph P. Pickett, Dale Hoiberg, Dan Clancy, Peter Norvig, Jon Orwant, Steven Pinker, Martin A. Nowak, and Erez Lieberman Aiden. *Quantitative Analysis of Culture Using Millions of Digitized Books*. Science (Published online ahead of print: 12/16/2010).

<sup>19</sup>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.

<sup>20</sup>Roger B. Myerson, “Justice, Institutions, and Multiple Equilibria,” 5 *Chi. J. Int’l L.* 91, 102-103 (Summer 2004).

<sup>21</sup>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.

<sup>22</sup>546 U.S. 454, 126 S. Ct. 1195 (2006).

<sup>23</sup>Ash II, 129 Fed. App’x 529, vacated, 546 U.S. 454, 126 S. Ct. 1195 (2006), at 533 (citation omitted).

<sup>24</sup>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.

<sup>25</sup>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.

<sup>26</sup>[ref. Judith Butler, *Yale French Studies*]

<sup>27</sup>Charles Taylor, "Interpretation and the Sciences of Man," 3–51, at 24.

<sup>28</sup>J. Maynard Smith and G.R. Price, "The Logic of Animal Conflict," *Nature* 246(2): 15-18 (1973); John Maynard Smith and G.A. Parker, "The Logic of Asymmetric Contests," *Animal Behavior*, 24:159-175 (1976); Avi Shmida and Bezalel Peleg, "Stringent and Symmetric Correlated Equilibria are the Distributions of ESS's of Biological Conflicts with Symmetric Roles," in *Understanding Strategic Interaction: Essays in Honor of Reinhard Selten*, Wulf Albers, Werner Güth, Peter Hammerstein, Benny Moldovanu and Eric van Damme (Eds.), Springer [YEAR?]; Karl Sigmond, "John Maynard Smith and Evolutionary Game Theory," *Theoretical Population Biology* 68: 7-10 (2005).

<sup>29</sup>L.L. Cavalli-Sporza and M.W. Feldman, *Cultural Transmission and Evolution: A Quantitative Approach*, Princeton Univ. Press, Princeton, NJ (1981); R. Boyd and P.I. Richerson, *Culture and the Evolutionary Process*, Univ. of Chicago Press, Chicago, London (1985).

<sup>30</sup>Edmund Burke, *Reflections on the Revolution in France*, 1790, at 133.

<sup>31</sup>Edmund Burke, *Reflections on the French Revolution*, 1790, at 128. "The age of chivalry is gone. That of sophisters, economists, and calculators has succeeded."

<sup>32</sup>Confirm that *bailiffs* and *provosts* derive from viscount; see Petit-Dutaillis, C. (1936). *The Feudal Monarchy in France and England*. Oxford, UK: Routledge. at p. 162. ISBN 9781136203503.

<sup>33</sup>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.

<sup>34</sup>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."

<sup>35</sup>Gordon S. Wood, *The Radicalism of the American Revolution*, 1993, Vintage Press, New York, at 125

<sup>36</sup>Gordon S. Wood, *The Radicalism of the American Revolution*, 1993, Vintage Press, New York, at 112

<sup>37</sup>Arthur Schlesinger, *The Aristocracy in Colonial America*, 74 Proceedings of the Massachusetts Historical Society 3 (1962).

<sup>38</sup>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. )

<sup>39</sup>[Discuss Hamilton and the Society of the Cincinnati; Work through timing with *The Federalist Papers : No. 84.*]

<sup>40</sup>Alexander Hamilton, "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," *The Federalist Papers : No. 84.*

<sup>41</sup>Thomas Paine, *Rights of Men*, Vale: New York, 1848, at 40.

<sup>42</sup>By saying, for instance, "I swear to God, I will kill him, if or when X occurs!" the speaker commits himself to a course of action, although, of course, not irrevocably so. Such statements are nonetheless typically more than "cheap talk" (as defined and discussed *infra*). Moreover, a warning issues when the target hears or learns of the threat, which serves as an expression of power, however limited, and a justification for future harming.

<sup>43</sup>Righteous Slaughter from Jack Katz, *Seductions of Crime* (1998).

<sup>44</sup>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.

<sup>45</sup>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.

<sup>46</sup>*Id.*, at 123 (emphasis added).

<sup>47</sup>*The Malleus Maleficarum*, the widely read authority on witch prosecutions from Byzantium to Salem,<sup>108</sup> Massachusetts, 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.*

<sup>48</sup>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).

<sup>49</sup>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

<sup>50</sup> 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.

<sup>51</sup>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.

<sup>52</sup>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).

<sup>53</sup> “[A]s so often happens, archaic ideas continue to serve [functional], though novel, purposes.” *Kidd v. Thomas A. Edison, Inc*, 239 F. 405 D.C.N.Y. (1917, Judge Learned Hand). See also Mary Douglas, [cite]; Roger B. Myerson, Justice, Institutions, and Mul-

tiple Equilibira, 5 Chi. J. Intl L. 91, 102-103 (Summer 2004).

<sup>54</sup> “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).

<sup>55</sup> 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.

<sup>56</sup> 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.

<sup>57</sup> The ICC Prosecutor has identified three individuals—President Omar Al-Bashir, former Deputy Minister of Interior Ahmad Harun, and the militia leader Ali Kushayb—as joint participants in the mass atrocities in Darfur.

<sup>58</sup> In the past international criminal law has oscillated among several theories of liability—from command responsibility to more recently notions of “joint criminal enterprise,” “co-perpetration” and “participation”—and, still, the law remains unsettled. Pillay (2009:8) noted that participation “refers to any individual who plans, instigates, commits, orders or abets the execution of crimes. It does not require the direct hand or the physical participation of the accused in the perpetration of the criminal act. Rather, it applies when this individual participates in criminal conduct with a plurality of actors.” Pillay emphasized that, “The responsibility lies not just with the military leaders, but with their political masters as well.” In Darfur, Prosecutor Moreno-Ocampo charged that this chain of command ran through Sudan’s President Omar Al-Bashir and his Deputy Minister Ahmed Mohammed Harun. Legal scholars call the latter hierarchical forms of participation “indirect co-perpetration,” “perpetration-by-means,” “perpetration by another person, and control over an organization” (van der Wilt 2009). All may ultimately involve the superior responsibility invoked by Grotius when he wrote centuries ago that, “we must accept the principle that he who knows of a crime, and is able and bound to prevent it but fails to do so, himself commits a crime” (1615[1964]:523).

<sup>59</sup> In the Rwandan conflict, for example, the privately-owned radio station, R.T.L.M., broadcasted anti-Tutsi coordinating propaganda that fueled and facilitated genocide in that country, by *inter alia* calling victims *inyenzi*, the Kinyarwanda word translated as cockroach. [Relate to Kafka].

<sup>60</sup> Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004: (Geneva, 25 January 2005) at 3. “Acting under Chapter VII of the United Nations Charter, on 18 September 2004 the Security Council adopted resolution 1564 requesting, *inter alia*, that the Secretary-General ‘rapidly establish an international commission of inquiry in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of



genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.’”

<sup>61</sup>“The various tribes that have been the objects of attacks and killings (chiefly the Fur, Massaleit and Zaghawa tribes) do not appear to make up ethnic groups distinct from the ethnic group to which persons or militias that attack them belong. They speak the same language (Arabic) and embrace the same religion (Muslim). In addition, also due to the measure of intermarriage, they can hardly be distinguished in their outward physical appearance from the members of tribes that allegedly attacked them.” The U.N. International Commission of Inquiry on Darfur (2005:129)

<sup>62</sup>See Mark Granovetter, Threshold Models of Collective Behavior, 83(6) American Journal of Sociology 1420-1443, esp. 1424.

<sup>63</sup>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.

<sup>64</sup>Dharmika Dharmapala & Richard H. McAdams, 2005. “Words That Kill? An Economic Model of the Influence of Speech on Behavior (with Particular Reference to Hate Speech),” The Journal of Legal Studies, University of Chicago Press, vol. 34(1), pages 93-136.

<sup>65</sup>Whether these attacks amounted to genocide remains a matter of dispute. The U.N. Commission concluded that an element of intent was absent for a finding of government-sponsored genocide. The Genocide Convention of 1948 and the customary international law interpreting it stipulate requisite objective and subjective elements for finding genocide. “The objective element is twofold. The first, relating to the prohibited conduct, is as follows: (i) the offence must take the form of (a) killing, or (b) causing serious bodily or mental harm, or (c) inflicting on a group conditions of life calculated to bring about its physical destruction; or (d) imposing measures intended to prevent birth within the group, or (e) forcibly transferring children of the group to another group. The second objective element relates to the *targeted group*, which must be a ‘national, ethnical, racial or religious group’. [T]he subjective element or *mens rea* is [also] twofold: (a) the criminal intent required for the underlying offence (killing, causing serious bodily or mental harm, etc.) and, (b) ‘the intent to destroy, in whole or in part’ the group as such. This second intent is an aggravated criminal intention or *dolus specialis*: it implies that the perpetrator consciously desired the prohibited acts he committed to result in the destruction, in whole or in part, of the group as such, and knew that his acts would destroy in whole or in part, the group as such.” [124] While concluding the Government itself lacked intent, the Commission left open the possibility of genocidal intent existing in single individuals, including Government officials, for determination by competent courts on a case by case basis. [132]

<sup>66</sup>Hagan and Palloni (2006). The two sources of death counts are the ADS interviews and a separate survey based on news and NGO reports of deaths in attacks on 101 villages (Petersen and Tullin 2005).

<sup>67</sup>Additionally, each individual was assigned a code indicating whether or not they heard racial epithets.

<sup>68</sup>[Washington was hardly the first oathtaker to kiss the bible upon swearing, a practice

which goes far back 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.]

<sup>69</sup>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

<sup>70</sup>John Spurr, A Profane History of Early Modern Oaths, *Transactions of the Royal Historical Society*, Vol. 11 (2001), pp. 37-63, at 38; referencing A.J. Gurevich’s discussion of medieval practice (i.e., “a solemn act of this nature cannot be carried out against the will of God”) at p. 40.

<sup>71</sup>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, Shannon (April 4, 2010). “CNN Poll: Quarter doubt Obama was born in U.S”. politicalticker... CNN. Archived from the original on April 24, 2011. “Obama’s Birth Certificate Convinces Some, but Not All, Skeptics,” Gallup (May 13, 2011).

<sup>72</sup> “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.

<sup>73</sup>*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!

<sup>74</sup>John Spurr, A Profane History of Early Modern Oaths, *Transactions of the Royal Historical Society*, Vol. 11 (2001), pp. 37-63, at 57

<sup>75</sup>John Spurr, A Profane History of Early Modern Oaths, *Transactions of the Royal Historical Society*, Vol. 11 (2001), pp. 37-63, at 51 [*Cf.* for exceptions to this claim: J. Hawarde, *Les Reportes del Cases in Camera Stellata* ed. W.P. BAildon (1894) 275, 426 [Spurr, fn 56] [Find cases!]

<sup>76</sup>See Montagu at 100 (emphasis added).

<sup>77</sup>See Montagu at 100-104.

<sup>78</sup>Robert Brandom, 1983, “Asserting,” *Noûs*, vol. 17(4):637-650, at 642.

<sup>79</sup>Robert Brandom, 1983, “Asserting,” *Noûs*, vol. 17(4):637-650, at 641.

<sup>80</sup>Robert Brandom, 1983, “Asserting,” *Noûs*, vol. 17(4):637-650, at 641.

<sup>81</sup>Robert Brandom, 1983, “Asserting,” *Noûs*, vol. 17(4):637-650, at 644, 648.

<sup>82</sup>Erving Goffman, *Behavior in Public Places*, at 197 (1963).

<sup>83</sup>*Id.*

<sup>84</sup>Erving Goffman, *Behavior in Public Places*, at 153-154 (1963)

<sup>85</sup>*Farmer v. Holton*, 146 Ga.App. 102, 1978 (emphasis is added for non-pronoun addresses)..

<sup>86</sup>Robert Cover, “Violence and the Word,” *Yale Law Journal*, 95:1606-1629 (1985-1986), at 1623.

<sup>87</sup>[I am setting aside any personal dispositions toward violence, about which the record reveals no useful comparative information].

<sup>88</sup>Cite Ellsworth study. Robert Cover helpfully observes that “for most of us, evolutionary, psychological, cultural and moral considerations inhibit the infliction of pain on other people. Of course, these constraints are neither absolute nor universal. [Additionally] in almost all people social cues may overcome or suppress the revulsion to violence under certain circumstances. These limitations do not deny the force of inhibitions against violence. Indeed, both together create the conditions without which law would either be unnecessary or impossible. Were the inhibition against violence perfect, law would be unnecessary; were it not capable of being overcome through social signals, law would not be possible.” Cover, “Violence and the Word, 1613

<sup>89</sup>Two lives lost—one murdered, one executed [confirm date!—over a \$38 cab fare; a cautionary illustration of how disputes over small debts, trivial misunderstandings and perceived slights can spiral quickly out of control. See R. Gould, *Collision of Wills*.

<sup>90</sup>Robert Cover, “Violence and the Word, Yale Law Journal, 95:1606-1629 (1985-1986), at 1620.

<sup>91</sup>*Id.* at 1607. “It is, of course, grotesque to assume that the civil facade is ‘voluntary except in the sense that it represents the defendant’s autonomous recognition of the overwhelming array of violence ranged against him, and of the hopelessness of resistance or outcry. *Id.*”

<sup>92</sup>“It is crucial to note here that if the warden should cease paying relatively automatic heed to the pieces of paper which flow in from the judges according to these arbitrary and sometimes rigid hierarchical rules and principles, the judges would lose their capacity to do violence. They would be left with only the opportunity to persuade the warden and his men to do violence. Conversely, the warden and his men would lose their capacity to shift to the judge primary moral responsibility for the violence which [1626] they themselves carry out.” Cover, 1626-1627

<sup>93</sup>Both players choosing *dove* is not an equilibrium outcome because one can do better by playing *hawk* when the opponent chooses *dove*. Similarly, both players choosing *hawk* is not a stable outcome since neither player would maintain strategy *hawk* if convinced the other player was also choosing that strategy. In equilibrium one player plays *hawk* and the other plays *dove*. There is also a third equilibrium to this game where each player randomizes between *hawk* and *dove* in a manner that makes the other players randomized play a best response.

<sup>94</sup>See Richard H. McAdams, Conformity to Inegalitarian Conventions and Norms: The Contribution of Coordination and Esteem, 88 *The Monist* (2005).

<sup>95</sup>Goffman, Turner (19xx). Scripts are necessarily incomplete because of bounded rationality (Simon 1954) and indescribability of events yet realized (Maskin and Tirole, 1999). Even the most detailed dramatic script leaves gaps. All scripts are merely “sketched out beforehand.” (1989:55). Behind every actor’s social and theatrical performance lies the already established skein of collective representations that compose culture—the universe of basic narratives and codes and the cookbook of rhetorical configurations from which every performance draws. In a theatrical performance, the actor strives to realize ‘individual character,’ as Turner (1982:94) put it, but he or she can do so only by taking ‘partly for granted the culturally defined roles supposedly played by the character: father, businessman, friend, lover, fiancé, trade union leader, farmer, poet’ (Turner, 94)... The ability to understand the most elementary contours of a performance depends on the audience knowing already, without thinking about it, the categories within which actors behave. In a complex social order, this knowledge is always a matter of degree.”

<sup>96</sup>Thorstein Veblen, *The Theory of the Leisure Class*, 1967, at 75.

<sup>97</sup>Merton, *Social Theory and Social Structure*, p.381

<sup>98</sup>William Shakespeare, *As You Like It*, Act 2, Scene 7.

<sup>99</sup>Roger V. Gould, *Collision of Wills* (2003), 44.

<sup>100</sup>Roger V. Gould, *Collision of Wills* (2003), 44.

<sup>101</sup>Robert Merton (1957) introduced the idea of a role-set.

<sup>102</sup> [114]. “[U]nlike the problems centered upon the notion of multiple roles, this one [the role-set] is concerned with social arrangements integrating the expectations of those in the role-set; it is not primarily concerned with the familiar problem of how the occupants of a status [role] manage to cope with the many, and sometimes conflicting, demands made of them.” *Id.* [114]

<sup>103</sup>Merton, 122.

<sup>104</sup>For example, restraining orders; removing a disruptive or explosive role-pair; sequestering witnesses or juror, limiting lines of questions, exercising power of criminal contempt]

<sup>105</sup>Merton, 121. The structural arrangement of tripartite address, where one addresses a second party on behalf of a third, partitions off some role-subsets for a variety of reasons, including limiting conflict. We will return to tripartite address in chapter 7 in the context of swearing.

<sup>106</sup>“Doubtless, these are only some of the mechanisms which serve to articulate the expectations of those in the role-set.” (Merton at 121) Address is a most effective response to “the general problem of identifying the social mechanisms which serve to articulate the expectations of those in the role-set so that the occupant of a status is confronted with less conflict than would obtain if these mechanisms were not at work.” [114]

<sup>107</sup>Its centrality is evident in military contexts. Proper address is the first lesson for cadets at West Point, where initiates, like Klinker, must perfectly dispatch the basic declaration—“Sir, New Cadet Klinker reporting to the Cadet in the Red Sash for the first time as ordered, sir”—before beginning their course of study; common recruits in basic training, as well as their drill sergeants, must also master strict rules of address: drill sergeants are to be addressed as such (not *sir*) and “recruits must be referred to as ‘private,’ ‘soldier,’ or ‘warrior,’ or by last name.” Brian Mockenhaupt, “The Army We Have” *The Atlantic* June 2007. [Get reference for how to address “drill sergeants”] On West Point see David Lipsky, *Absolutely American: Four Years at West Point*. 2003, p. 152. See also George A. Akerlof and Rachel E. Kranton, “Identity and the Economics of Organizations” 19(1):9-32 *Journal of Economic Perspectives* (2005) at 9.