Justice and the Insights of Resistance: The Red Tory Jurisprudence of George Grant

Thomas Schofield
BOOK REVIEW

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I. INTRODUCTION OR THE VERY THOUGHTFUL, UNUSUAL, ANCIENT, RADICAL, CONSERVATIVE, CHRISTIAN, INTELLECTUAL, CANADIAN WORLD OF GEORGE GRANT

If these American hills are not yet ringing with the particular sound of George Grant's philosophic music, the fault lies not in any weakness of Mr. Grant's voice. 1 Grant remains unsung by legal academics outside

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Janet Lindgren, David Fraser and John Henry Schlegel improved my thoughts and manuscript; several of my teachers—especially Mitchell Franklin (Philosophy of Law), Michael S. Cross (Canadian History) and Frank Cunningham (Philosophy)—fostered the underlying education that made this essay possible. AmeriCanadian perspective and any remaining misjudgments are my responsibility.

1. George Grant is perhaps an obscure figure outside of Canada, but he is a Canadian intellectual power and the ultimate Ontario tory. Born in 1918, he attended Upper Canada College, Toronto, Ontario, where his father was headmaster. He graduated from Queens University, Kingston, Ontario with a degree in history; his grandfather was principal at Queens. Grant next worked toward a degree in jurisprudence at Balliol College, Oxford, then served in the Merchant Marine during World War II. After the war, he obtained a doctoral degree in the philosophy of religion from Oxford. Grant served as Professor of Philosophy at Dalhousie University between 1947 and 1960; he was a Professor of Religion at McMaster University between 1961 and 1980. He returned
a select few in his native Canada; it takes the rare warm winds of the chinook to spread his influence. In one sense Grant's absence in the law schools is not unexpected, for he has come to think about justice, and concern for justice occurs principally outside of the milieu of legal training. Most thoughts instead are engendered by philosophers and ordinary, decent citizens.

George Grant's anonymity is deeply entrenched. This is a mass age in which collective recognition is required to sustain presence and impact. Most of Grant's small band of die-hard followers exist within the realm of theology and not within the parameters of jurisprudence. One book of essays devoted to Grant's thought actually begins with the chiding observation that he has "been preoccupied with the relationship between technology and justice." For most of us, to think deeply about justice would constitute an unqualified virtue and there would be no sense that we were somehow distracted from subjects considered more worthy of reflection.

Ultimately, the absence of a legal audience is not of serious moment for Grant. He does not especially care to influence the views of this par-

to Dalhousie University in 1980 to serve as Killam Professor of Political Science, the seat he held until his death on September 27, 1988.

2. Hughes, The Great American Legal Scholarship Bazaar, 33 J. LEGAL EDUC. 424 (1983). The article traces the dominant trends in legal education and describes the place of philosophers in the law schools as follows: "Philosophers are a more exotic species but are generally perceived as being harmless. . . . While they may find philosophers annoyingly cryptic and obscure, law professors recognize that in certain circles that count for something philosophers are thought to give tone to a place, and since they are generally well-mannered and usually conceive their task as being to furnish analytical and ideological support for liberal constitutionalism, they can easily be absorbed." Id. at 430.

3. D. Creighton, Harold Adams Innis, Portrait of a Scholar (1978). Creighton's book contains a pertinent discussion of the obscurity that so often accompanies the works of those with contrary views or ideas. Creighton quotes Harold Adams Innis, a leading Canadian political economist whose proposals for U.S./Canadian economic relations never gained wide acceptance, who observed: "I keep coming back to my own particular interests in what I laughingly call 'research', namely the persistent tendency in the field of knowledge and in the social sciences to build up monopoly or oligopoly situations. The literature builds up around the name of Keynes or Marx or someone else and everything else is dropped. A situation responsible for these tendencies is dangerous and comes a little short of dictatorship." Id. at 403.

4. L. Schmidt, Introduction in George Grant in Process: Essays and Conversations at ix (L. Schmidt ed. 1978) [hereinafter George Grant in Process]. Grant participated in the development of this volume through a series of group interviews presented in the form of conversations, interspersed with essays about Grant's thoughts by other scholars. Most of the papers in the volume were delivered at a conference with Grant in attendance. Subsequent references to this work which do not denote the author of a particular essay are comments by Grant from the conversations.

For a second study of Grant's theology and philosophy, see J. O'Donovan, George Grant and the Twilight of Justice (1984).
ticular segment of the infrastructure of the Establishment. Grant is otherwise engaged in the formidable task of upholding the tradition of classical civilization as articulated in Platonic thinking. He further seeks to unify this ancient Greek tradition with his avowed Christianity. Through Grant, the Christian tradition takes on a peculiar hue and is also in need of preservation. Accordingly, Grant is found most typically leaping to the barricades (or perhaps standing before the altar) engaged in argument over moral issues confronted within his adopted Anglican church. Beyond, or more likely because of this, Grant's thinking speaks deeply to issues of jurisprudence. His insights should be recognized, even if he does not cultivate attention from legally-oriented professionals.

Grant's place is bounded by his "against the tide" vision, reflected both in the nature of his thoughts and in his mode of presentation. Grant's voice is expressed through a small number of essays often developed from spoken lectures. The power of his thinking begins in the care of his approach. His essays appear gradually and are painstakingly reworked for clarity. Key words are defined in cultural and historical context, quite in contrast to the "rush-to-print" mentality characteristic of the academic superstar. In an early collection of essays, Technology and Empire: Perspectives on North America, Grant speaks of liberation through language which takes place by the molding of particular forms. He then adds:

Like food, language not only makes human existence possible, but can also confine it. It is therefore useful to think about those parts of our language which particularly express our civilization, and to judge just how these key words have come to determine our apprehension of what is.

Despite the occasional appearance of daunting terminology—autochthonic, epigone, diremptions and eschatology, among others—Grant's essays are accessible because he is deliberate in his definitions. Unfolding of the language is just one source of his considerable insights.

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5. The publishing history of English-Speaking Justice is illustrative. Grant's comments were originally presented in lectures at Mount Allison University in Sackville, New Brunswick in 1974. The lectures contain seminal criticism of John Rawls' Theory of Justice, J. RAWLS, A THEORY OF JUSTICE (1971), and of the United States Supreme Court decision in Roe v. Wade, 410 U.S. 113 (1973), two reference points of justice in the 1970s. Although English-Speaking Justice was carefully reworked for publication, no edition was generally available until 1985. How many works—in any discipline—retain sufficient vitality to merit their first widespread circulation after a span of eleven years? How many academicians have a sufficient sense of self and cultural context so as to be content with the careful thinking through of ideas as an end in itself largely distinct from circulation?


7. Id. at 63; see also R. WILLIAMS, KEYWORDS (1976).
Nonetheless, there is a valid criticism in the observation of one of his commentators that "the world and he use different dictionaries." This is not simply reflective of Grant's contrary stance and disdain for what passes as modern thought. Grant is always an advocate; he scorns the concept of "value-free." Grant requires concentration because his subjects are difficult, and also because the skew of his perspective must be unearthed by the reader, but his work is worth the effort.

Reading Grant, one gets the sense of a few friends — Sheila Grant, Dennis Lee, the publishers at The House of Anansi — coaxing words from a reluctant, never final Grant. Grant is quite comfortable with thinking in terms of limits, including the silence that is instilled by a sense of limit in the power of his own thought. He is not unwilling to acknowledge intellectual debt or to suggest that he would not have been able to think this or that out for himself: "[n]or would it be within my ability to show its inter-relation . . ."; "[i]t is not my business to write ten or more volumes . . ." This is sometimes a distillation of the political aim, an attempt to enhance the power of his argument; but it is also sometimes a recognition of the tentative hold that any degree of thought has when compared to the complexity of what must be thought about.

Grant's work is ultimately philosophical in a traditional sense, framed in the process of public discourse. As such, it is consciously classical political thought. Grant is rarely self-descriptive, but does refer to himself as a political philosopher. In a time before the hegemony of modern analytic philosophers, a central subject of philosophy was resistance to injustice through thoughtful courage and sometimes common sense. Grant returns to this tradition from a rare vantage point. He simply rejects many of the assumptions of the modern age. He is insightful because he stands outside his culture somewhat in the manner of T.S. Eliot or David Jones.

But Grant is distinct in that he does not stand outside looking wholly backwards. It is Grant who contends "I do not want to say that I simply reject modernity," "[w]ho cannot be grateful for the electric

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10. *For these disclaimers in sequence, see Technology & Justice* 21, 67, 71.
12. *G. Grant, Conversation*, in *George Grant in Process*, supra note 4, at 143.
light . . . ." Technology "was partly undertaken in the name of . . . charity":

no writing about technological progress and the rightness of imposing limits upon it should avoid expressing the fact that the poor, the diseased, the hungry and the tired can hardly be expected to contemplate any such limitation with the equanimity of the philosopher.

In Technology & Justice, Grant is careful to reiterate this defensive acknowledgment:

Modern human beings since their beginnings have been moved by the faith that the mastery of nature would lead to the overcoming of hunger and labour, disease and war on so widespread a scale that at last we could build the world-wide society of free and equal people. One must never think about technological destiny without looking squarely at the justice in those hopes.

(Technology & Justice, p.15).

Elsewhere, Grant gives un-provisional credit to the powerful, undoubtable truth which has emerged from modern insight and technology: "The great theoretical achievements of the modern era have been quantum physics, the biology of evolutionism, and the modern logic." (English-Speaking, p. 86). His stated acceptance of these achievements is in stark contrast to fundamental reaction. But what Grant gives he also takes away through his awareness of the incomplete nature of contemporary understanding: the logic and the science and the balance of modern scholarship do not add up to producing "that thought which is required if justice is to be taken out of the darkness which surrounds it in the technological era." (English-Speaking, p.89). Grant’s long sense of time allows him to refer to the achievement of the past several hundred years by dismissive reference to "the modern experiment," a phrase which suggests that our present sense of knowledge has no lasting power. To discuss failures of modern thought as measured by concepts of justice and as developed in Grant’s texts is to return directly to the political.

To fathom that Grant is essentially and foremost a political writer does not in itself lead to a facile understanding of his work. Grant’s political view is distinctive. He is hostile to the capitalist individualism of the United States, and has attempted mightily to sustain and expand traditions different from the anti-communitarian, uncivilizing imperialism which characterize it at present. The tone of this characterization is the

13. TECHNOLOGY AND EMPIRE, supra note 6, at 103.
14. George Grant, Conversation, in GEORGE GRANT IN PROCESS, supra note 4, at 21.
15. Id. at 18.
customary language of Grant. Yet even as he has rejected the liberal basis of American society and its cultural incursion into Canada, he is not wholly dismissive of barren liberal values.

By Grant’s account, his favorite political statement is Sir Thomas More’s aphorism: “When you can’t make the good happen, prevent the very worst from happening.”¹⁶ From this pragmatic context, Grant recognizes that some positive things remain, particularly certain legal traditions emanating from liberal thought. But Grant is skeptical of the modern and is quick to place the origins of certain common law legal traditions in pre-modern natural law thought. There is no doubt that Grant will, at times, resort to classical liberal legal argument—the language of rights, the inalienable rights of individuals, the undermining concept of justice as privilege—in political recognition that the language of liberalism is the only broadly extant moral language (English-Speaking, p.5).¹⁷ Grant adopts the liberal political language to enable his message to be heard. Ironically, this use is not predicated upon personal belief. Yet Grant is not entirely ironic and is able to conclude that there is much good in the tradition of the English Constitution, even if we believe that commerce is not a more feasible basis for society than is honor.¹⁸ As Grant observed in English-Speaking Justice, “[t]here are worse things than a nation of shopkeepers.” (English-Speaking, p.51).

It is this conservation of tradition that is distinctive in Grant’s political perspective. He believes in the limits of order. The uniqueness of Canada that was worthy of preservation lay in the fact that authority was established before settlement in the West; the United Empire Loyalist was the true Canadian patriot and the citizen model for what Grant holds dear. But Grant is no conservative in any recognizable American sense, for Grant would willingly abandon the language of freedom and embrace socialism to preserve the traditions of a just, ordered society. It is Grant who asks what is socialism “if it is not the use of the government

¹⁶. *Id.* at 19.

¹⁷. This assessment of the place of liberalism is essentially shared by Roberto Unger. R. UNGER, KNOWLEDGE AND POLITICS (1975). Unger’s view can be summarized as follows: Liberalism is a philosophical system. But it is also a type of consciousness that represents and prescribes a kind of social existence. As a philosophy, it belongs primarily to the order of ideas. As a sort of consciousness, it participates in the life of society. Like any view that has shaped a whole era in the history of thought, it overruns the boundaries of the realm of ideas and lays roots in an entire form of culture and social organization.

*Id.* at 118.

¹⁸. G. Grant, *Conversation*, in GEORGE GRANT IN PROCESS, supra note 4, at 19.
to restrain greed in the name of social good?" 19 This is practical socialism, preserving justice and civil social order without class struggle and without a belief in the altruistic perfectability of man.

This is also, undeniably, an unattainable socialism, but it is sweet, pure ideology of sustenance without violence. The voice of Grant's practical, decent socialist politics speaks best if the farther left is unable to significantly confront a liberalism that is perceived to "deliver the goods" in a materialist society in search of pleasure. Grant and the New Left of the 1960s engaged in circumspect mutual admiration. The young of that time believed that Grant's eloquent attacks on American imperialism could be translated into grand, legitimate support for cultural revolution. Grant certainly did not agree, but believed instead that the New Left was reaching for values to transcend the horror of the modern world. 20 In the intervening decades, there is a sense in which each—mentor and radical constituency—has abandoned the other. In a further sense, however, their paths are not wholly dissimilar.

Grant's politics defy definition in the North American political spectrum because he ultimately pays little attention to the minor niche occupied by the recognizable Canadian radical tory tradition. 21 Grant perceives that traditional notions of politics constitute a charade in which we can stake out our turf against the leaders in the original sense of revolution—over and over and over again—without significant impact upon the homogenous administration of the underlying capitalist-entrenched subservient bureaucracy. The machinery of the state operates by its own rules, while traditional politics has been stripped of content, entrusted only with selection of the figureheads. It becomes increasingly difficult to shake the foundations. Change does not occur through seizure of control; rather, we can only tinker with technique (English-Speaking, p.10).

Grant's political insights are directed at the link between the modern development of technology—largely accepted and deemed good within our culture—with the development of empire. Lament For A Nation 22 expresses this relationship in the context of a further engulfing of Canada by a Vietnam-era America. Grant sets the stage for a positive

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22. LAMENT FOR A NATION, supra note 19.
view of nationalism as an oppositional force to the destiny of pervasive American cultural imperialism. He does so in the form of a lament in recognition of the odds of ultimate success. Grant's argument shares a common value with leftist critiques of the prevalent liberal consensus. The theme was expanded by Grant in broader cultural terms in Technology and Empire: Perspectives on North America:

The era of modern thought has been the era of western imperialism. . . .Modern men have been extremely violent in their dealings with other men and with other beings. Liberal doctrine does not prepare us for this violence because of its identification of evolution with movement of the race to higher and higher morality. Such a doctrine could not understand that an expanding technological society is going to be an imperialist society even when it is run by governments who talk and sometimes act the language of welfare both domestically and internationally.  

Grant's political place would be assured, at least in Canadian history, by the influence of these related works. But Grant's focus through the 1970s evolved from his core understanding of the impact of technology upon the political culture to its impact upon concepts of justice. Grant's thoughts shifted from the survival of Canadian society to the nature of technological society. As he has confronted technology, his approach remains unique in defining the relational question as a counterpart between technology and justice. It is in this mode that Grant's thought becomes fundamental to jurisprudence.

Grant simply does not share the view that an advancing technological society is representative of an advancing humanity. This exception puts his perspective at odds with the assumptions found in almost all political camps. Both Marx (who never saw the electric light) and Ronald Reagan (the "Star Wars" President) share a belief in technological progress for the good of all. Even more complex, Grant's opposition to American imperialism is molded by a construct essentially identical in value to his fervent opposition to the "right" to abortion. The state has the duty and must have the power to preserve the well-being of the species. Even though he finds genocide more terrible than individual murder, Grant is more likely to express his opposition to abortion than his opposition to war. The disquieting character of Grant's "working through in opposition" is evident by the unease with which his admirers find themselves unable to embrace the entire package of his resistance.

23. TECHNOLOGY AND EMPIRE, supra note 6, at 72.
24. G. Grant, Conversation, in GEORGE GRANT IN PROCESS, supra note 4, at 13.
25. Id. at 15.
Grant had developed his thought from a universal range of sources and he has in turn had influence upon persons within a broad range of political and social perspectives. It is a tribute to Grant’s unique power that he largely inspires dialogue in lieu of emulation. Just why this is so is most easily revealed by forging ahead into an exploration of Grant’s recent works related to justice.

II. TECHNOLOGY AND JUSTICE

Technology & Justice is, in the first instance, a title which misleads, for Grant is not engaged in a sustained relational discussion of these two elements. The collection of essays is much broader in subject and thus serves as an introduction to the depth and range of Grant’s thought. The central query is directed to modern knowledge: what we know, and the limits of what we know in our technological society. A more appropriate title for the book would be “The Paradigm of Knowledge,” were it not for the danger that such a heading might seem too grand.

Grant’s task begins by defining and unfolding our technological vision. Grant proposes that the modern age is most fundamentally characterized by its relationship with technology, a new word coming from the Greek terminology for making or knowing. This combination constitutes a union that did not exist in the world before the critical methods of modern science (English-Speaking, p.1 n.2; Technology & Justice, p.11 n.1).

But Grant does more than define. In fact, the main thrust of his argument constitutes a radical inversion. Grant ultimately and strikingly believes that, despite technological progress, there is a shrinking of what we know and understand.\(^{26}\) As our society becomes inordinately complex, we are subject to a universalizing and homogenizing vision that is largely self-imposed. The pervasive limits are shallow and there is no content beyond Billboard’s current “top forty” chart. The model of the Enlightenment thinker, with a keen sense of the whole, is unsustainable within these limits (Technology & Justice, p.34).

To think now in terms of the whole requires an understanding of what can be gleaned from many expanded fields of knowledge that are

\(^{26}\) For a feminist analysis of the “shrinking” or lessening of knowledge that flows from a technological mind, see D. Russell, THE RELIGION OF THE MACHINE AGE (1983). Mrs. Russell is in part engaged in battle with the pure intellectualism of her ex-husband Bertrand Russell, but provides a powerful history of the development of western thought. See also L. Mumford, TECHNICS AND CIVILIZATION (1934), and L. Mumford, THE MYTH OF THE MACHINE (1964)(for discussions of the effects of technology on societal thought).
divided by the modern disciplines. For example, biochemistry, a union of two subjects into one essential aspect of the whole, only takes us to a deeper but related level of modern physics. To know much is a formidable task and to know all is impossible. Those who most know recognize that our inquiries are at their infancy. The totality of human understanding is incompetent even as some describe our present achievement as remarkable. What we have lost is the capacity to think with confidence in terms of the whole. We now believe that past enlightenment was no more than quaint illusion. Grant contends that the consequence of this loss is an erosion of our ability to order our affairs with right, reason and justice.

Humans characteristically resent being told that the “old ways” are contrary to reason; such resentment manifests itself in resistance to the new. Grant carries his resistance to modernism to powerful and energetic levels because he believes that we must pay for the erroneous account of knowledge that drives our culture (Technology & Justice, pp.9-10). Grant does not simply resist; rather, he sets out positively to show that the modern technological view is contrary to reason. At a more abstract level, our incompetence, coupled with our unjustified belief in progress, is beyond reason.

The concept of justice is offered as a benchmark from which to measure the broader limits Grant perceives. Modern accounts of justice are, by Grant’s thesis, understood in unity with the findings of modern science: “[t]he coming to be of technology has required changes in what we think is good, what we think good is, how we conceive sanity and madness, justice and injustice, rationality and irrationality, beauty and ugliness” (Technology & Justice, p.32).

Grant essentially advances a three-pronged argument. One prong is found in the account of what technology is and what it has done. Perhaps no thinker has addressed this aspect of the argument better than Grant. The second part reconstructs previous notions of justice. The third element of the argument measures what justice has now come to be.

Grant is at his best in the first confrontation with technology. He is likewise effective in evoking the tradition of historic justice. This makes sense since the tradition evokes a sense of comfort sufficient to lead Grant to advocate its restoration. In a moment, I will approach Grant’s concept of classic justice. But before doing so, I think it would be helpful to subject Grant’s account of the modern view to cross-examination, although this is by no means meant to suggest that a trade tool, occasion-
ally useful in the search for truth, is coordinate in any meaningful sense with the search for justice.

A. Modern Theoretical Justice

Grant's account of modern justice is highly charged and unusual in its orientation. At his most argumentative, Grant simply concludes that modern accounts are wholly barren. "Brilliant scientists have laid before us an account of how things are, and in that account nothing can be said about justice." (Technology & Justice, p.60). In his more purposeful analysis, Grant uses Nietzsche's conception of justice as a power beyond good and evil. This modern account is a social construct, expanding beyond the realm of individuals to a path of advancement for all mankind. Certain individuals may obstruct the path, but they are merely expendable roadblocks. Grant finds the content of this account of justice objectionable even in its most benign manifestations (Technology & Justice, pp.91-94).

Grant argues in extreme terms that modern science has undermined more just and traditional accounts of justice. Grant sees this erosion as emerging from a common scientific view within capitalist, communist, national-socialist or fascist variants of our polity. Grant's contention is that, despite important differences, all of these modern political ideologies share a defective view of justice arising from modernism (Technology & Justice, p.26).

Those who hold a more charitable view of modern justice would quarrel with the broad sweep of Grant's argument. Capitalist justice was founded upon important principles of political equality and freedom which Grant's traditional stance must continue to hold dear. But as Grant contends, the expression of these principles was linked, remarkably, with the founders of modern science. Bacon, Hume, Hobbes, *et al.*, are of historic significance both for the method of their science and for the content of their justice, which developed to guide western society in now gender-neutral accounts of "the rights of man." Only the quaint content of their science has been swept away.27

Arguably, this bourgeois justice may have been arrested in its development. Modern conditions may require an enhancement of Enlightenment political justice with a broader sense of social justice.28 Within this

27. For background and overview, see generally H. Cairns, Legal Philosophy from Plato to Hegel (1949).

view, one of the causes of this stunted development was the change in revolutionary thinking in nineteenth century Europe. This gap in the capitalist account of justice can be repaired in present liberal jurisprudence by further development of thought about justice essentially within this early modern tradition. Both Rawls and Dworkin perceive justice as fairness in part through distribution of the social good.29 This late twentieth century approach assimilates and unifies three elements: nineteenth century Emersonian individualism is layered upon the eighteenth century value structure, and secured by an even more modern obsession with just administration and legal process.

This distributional conception of justice has been viewed as an improvement, but jurisprudence and rights still do not meet the needs of strangers and this must ultimately be a fundamental test by which we measure our justice.30 Dworkin's rights are trump, but national security inveterately trumps trump. We characterize the person as a bearer of rights, but cannot convert this mantle to create a just society. Grant stands apart, urging that a hollowness results from inattention to community.

In contrast to Grant's suggestion that all modern variants are similar in the insufficient content of their justice, Marxism represents a dramatic departure from the capitalist account. Allen Buchanan has effectively argued that Marx and those within the Marxist tradition do not value bourgeois justice under capitalist institutions.31 The Marxist dismissal of concepts of justice is linked to the content of Marx's critique of capitalist society.

Marx substituted theories of alienation and exploitation as non-juridical concepts which explain how social institutions, which we create but cannot control, place profound restrictions upon us. In this Marxist view, preoccupation with justice is conceptually defective both as theory and explanation. The transformation of proletarian revolution would make obsolete the classic modern bourgeois justice of liberty and equality. Bourgeois notions of justice were not only insufficient but were destined to be entirely unnecessary. Whether one finds the Marxist analysis

29. See J. RAWLS, supra note 7; R. DWORIN, LAWS EMPIRE (1986) (development of theory that justice linked to societal welfare). Rawls and thinkers like him must contend with the ingrained conception that it is "the bounden duty of every citizen to better his social status; to ignore those beneath him, and to aim steadily at the top rung of the social ladder." J.S. MIL, MILL ON BENTHAM AND COLERIDGE, WITH AN INTRODUCTION BY F.R. LEAVIS 28 (1978) (quoted from Leavis introduction).
dubious, optimistic or appropriately radical, the critique is fundamentally distinguishable from prior and continuing juridical accounts because of the direction it takes in a humanitarian sense of the perfectability of man.

Radical Marxism forced a reevaluation, but ultimately did not much change the content of bourgeois justice. Liberal opposition to Marx represents more a honing and defense of early modern justice as it emerged in the bourgeois revolutions of the Enlightenment. John Stuart Mill follows Bentham and improves the argument for the dominant calculus while retaining its content. But despite Mill’s efforts, in mid-nineteenth century revolutionary Europe, both the requirements for social change and the content of the radical argument for such change were removed from the language of rights and liberal justice.

Rawls, Dworkin and similar modern liberal theorists expand the liberal definition to include social justice but do not adequately respond to the critiques which question liberal foundations. Rawls’ first principle of justice can be described as Mill’s only principle of justice. What is added by Rawls’ second principle of justice is not incompatible with the completion of Roosevelt’s New Deal. Underlying every liberal definition is inherent contradiction. Grant knows that no liberal theorist can answer the critique expressed by thinkers from Marx to Roberto Unger which lays bare the inconsistency of belief necessary to sustain the liberal point of view.

In twentieth century hindsight, it appears that values of bourgeois

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32. See J.S. MILL, supra note 29 (introduction by F.R. Leavis). Elsewhere, Leavis obstinately offers English studies as a living humanities replacement for the classics and as a defense against a technologically based Benthamite civilization. F. R. LEAVIS, ENGLISH LITERATURE IN OUR TIME & THE UNIVERSITY (1967).

33. See R. UNGER, supra note 17, at 91. Unger argues that:

- a system of laws or rules (legal justice) can neither dispense with a consideration of values in the process of adjudication, nor be made consistent with such a consideration.
- Moreover, judgments about how to further general values in particular situations (substantive justice) can neither do without rules, nor be made compatible with them. This is the antinomy of rules and values.

Id. Unger is a conscious enigma: considered too brilliant to be directly criticized, he is marginalized even within Critical Legal Studies (CLS). Unger’s “super-liberal” account of the CLS enterprise, expresses a point of view and agenda not widely shared by any of the CLS core groups. R. UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT (1986). See Schlegel, Notes Toward an Intimate, Opinionated, and Affectionate History of The Conference on Critical Legal Studies, 36 STAN. L. REV. 391 (1984). Beware that Schlegel was Associate Dean of the University of Buffalo Faculty of Law and Jurisprudence. Buffalo perhaps does not fit the prevailing self-fostered “elite institution” mythology, but was and is a haven of Critical Legal Studies. Unger’s romantic humanity — if not his dense intellectual style — must be absorbed in CLS if the “movement” is to have future impact.
justice have been more enduring than Marx had envisioned. Societies want Marx's social redistribution in harmony with the justice enshrined in bourgeois freedom and fairness. Gorbachev approaches Dworkin while the Reagan-Thatcher right views Dworkin's liberalism as synonymous with the New Left. Neither the Marxist nor the capitalist ideology dominates the political world in the expected manner.

The alternative of national socialism, although now thoroughly discredited, was viewed differently in a previous time. It is closest to the Nietzschean view attacked so ferociously by Grant. Perfectability of man was achievable as a matter of overcoming man's baseness rather than liberating his goodness. Unlike liberal limitations which flow from Locke's view of psychology, this political ideology was not so much based upon the nature of human character as on a political agenda arising from the climate of post-World War I Germany. This version of the political is purely "statist" as opposed to the "communitarian" opposition to unbridled individualism advanced by the Left. Nonetheless, by any measure, justice was not here transformed from a due to individuals to a guidance mechanism of the societal organizational tool. The attempt to excessively elevate the state almost necessarily engenders staggering injustice which corrupts any meaningful content of justice within this ideology. Grant's inherent belief in the state as a guiding control for community is perpetually confronted by this historical limit.

Grant goes further in his critique and rejects the bargains and instrumentality of all modern approaches to justice. Modern justice is flawed in part because it is adjudicative and adversarial. This contrasts with Grant's traditional justice based upon a social structure which creates harmonious, spontaneous order. Non-adversarial justice suggests a resemblance between Marx and Grant, but the similarity is limited and the Marxist does not call upon traditional justice for post-bourgeois society. The reasons will become manifest when we turn to an analysis of the content of the traditional justice.

Grant sees all of the modern accounts as dependent upon the emergence of a modern scientific perspective in which man controls destiny and in which fate no longer rules. In Grant's account, this common out-

34. R. SCRUTON, THINKERS OF THE NEW LEFT (1985). Scruton places Dworkin at the liberal edge of a group of fourteen thinkers including E. P. Thompson, Raymond Williams and Michael Foucault. Scruton approaches his subjects with a blunt hatchet. E.P. Thompson refers to Scruton's excesses: "But I find on scanning the dust-jacket that this Scruton is a philosopher, who need not pay regard to inconvenient things like facts. He is engaged in loftier heuristic exercises." Thompson, LONDON REV. BOOKS, May 7, 1987, at 20.
look is more striking than the obvious differences among political systems. Grant ignores the striking changes in the scientific worldview between Newton and the present relativist paradigm. Likewise, the change in views toward justice in the nineteenth century, as compared to seventeenth and eighteenth century thought, is not developed by Grant. Perhaps Grant would view the differences between Jefferson and Marx as reconcilable, the more humane Marxism of the bourgeois Engels making such an argument possible. However, any such reconciliation would be emasculated as an acceptable account of justice under Grant's scrutiny; he does not attempt to pursue such an argument.

Likewise, Grant does not use Technology & Justice to look at modern theories of utilitarianism or social contract as a supportive foundation for modern justice. The sole reference to the pervasive sway of utilitarianism is a single reference to its "squalid terms." (Technology & Justice, p.67). Grant's impatience with social contract is expressed in a call for justice "beyond bargains." The absence of a sustained account of the modern theoretical constructs in Grant's battle between technology and justice is explicable because such constructs are elegantly developed in the confrontation with liberalism that Grant unfolds in English-Speaking Justice.

The absence within Technology & Justice does make it more difficult to place Grant's argument in context but it is not otherwise destructive. Grant does not expect most readers to accept his rejection of the terms of modern life. Accordingly, he is sketchy in tracing the modern account of justice. His effort instead evokes and develops the traditional account of justice with considerably more force.

Grant's strategy is obvious: he perceives the task of promoting the classical tradition as easier than discrediting the modern account. Repudiation and rejection of the pervasive modern antithesis can only occur within the better classical tradition because all alternatives share a false modern progressivism unmindful of the eternal nature of things. Grant's account of modern justice is evenhanded, even as it contains potent critical insights. We turn to his account of traditional justice to see if the content is fully worthy of Grant's ringing endorsement.

B. The Traditional Account of Justice

Grant is spared his customary task of definition when he addresses the traditional account of justice. In Plato's Republic, justice was defined

as rendering unto anything that which is its due. Political justice was the attempt to render what was due to human beings. The definition is of extraordinary power in its apparent simplicity.

At the outset, Grant heightens his contrast between ancients and moderns by leaving this definition in the place of its origins. Greek influence upon modern law and justice is remote because Greek concepts were not oriented toward rules as a guide to conforming conduct. Grant could, but chooses not to, bring us in touch with the traditional definition by tracing its history from its Greek origins into Roman law.\textsuperscript{6}

The definition of justice as rendering that which is due appears at the outset of the first book of Justinian's \textit{Institutes}.\textsuperscript{37} The Roman law construct added the structure of rules and what was perceived to be rational decision arising from rules. This structure allowed the traditional definition to have an extended run into the modern civil law of many European countries. To trace the history of the traditional definition from its Greek origins tells us much about its sufficiency. Grant does not pursue this test of the validity of precedent when he affirms that the traditional definition is more adequate than the modern.

Grant also does not sufficiently fit the traditional definition of justice into its own context, although he is deeply knowledgeable in the particulars of the relationship. Grant asserts that "what is due" is a measure of limitation, traditionally vertical (\textit{Technology & Justice}, p.58). The task was to show how we come to know what is due to anything. For the ancient Greek philosopher, there was a natural answer in the Aristotelian classification of things and beings according to their purpose. Without a whole cultural classification of what is due, the traditional definition can ring as hollow as a Ronald Reagan speech. Rambo and John Wayne render what is due to others, but by what criteria do we agree or disagree with their acts and methods? We are cut off from the traditional classification and correspondingly have undermined the idea of "the natural law." What we have retained is tradition, which has a power in law and cultural matters that is substantially underestimated by most accounts.\textsuperscript{38}

Grant defines modern technological science by its criticism of the Aristotelian classification of things in terms of their purpose. Modern

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\textsuperscript{36} \textit{See Cairns, supra note 27} (for an outline of the historical development of the concept of justice).
\textsuperscript{37} \textit{Justinian, The Institutes of Justinian}, Book 1 at 3 (J.B. Moyle trans. 5th ed. 1913) ("Justice is the set and constant purpose which gives to every man his due.").
\textsuperscript{38} Two poles for the understanding of tradition are the works of E. P. Thompson and Northrup Frye. Thompson's most explicit work on law and tradition is found in E.P. THOMPSON, \textit{Whigs and Hunters: Origin of the Black Act} (1975); \textit{see also} Abramson, \textit{William Morris and
concepts contribute to an unwillingness in our age to think that we can have knowledge of what is due to each being. But there is more to the problem than a loss of knowledge from which to apply the classical account of justice as the rendering of what is due. The classical account is, if not corrupt, then at least underdeveloped by our standards.

Grant is an advocate and is very circumspect in his use of the classical tradition. He relies upon Plato rather than Aristotle because there is presently something that feels unjust in the Aristotelian defense of slavery. But the point is that the entire classical tradition is steeped in the concept of status as a measure of what is due. The American Constitution has had a celebrated life—in the heart of the empire and elsewhere—as a framing statement for modern guarantees of political justice. But article I, section 2, paragraph 3 of that constitution provided for apportionment of representatives by counting three fifths of an obliquely defined slave population. Slavery was preserved by this and other clauses without actually appearing directly in the Constitution.

Deals regarding slavery were not simply an incident of political compromise but were an example of conflict between the new concept of justice "that all men are created equal" and a traditional account by which status determines the extent of one's due. The compromise could not have been fashioned without the tradition which Grant exalts in the abstract. It would take many more years, bitter civil war, and untold suffering before the status concept would be more fully adjusted. Constitutional amendment only partly and belatedly works corrective justice. The injustice within the tradition of justice leaves need for much more remediation.

Grant's conservative stance does not make him the goat for the issue in this particular example. It is simply that he must dance very deftly amid such hot coals if his account of better traditional justice is to be persuasive. Grant is aware of this conundrum, though he is somewhat silent about it. His personal version of justice draws upon two traditions. Grant would and does say that it was the work of Christianity to add an extension of what was due others (Technology & Justice, p.54). If so, there is room for—indeed, there are some examples of—yet further ex-

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*Law as a System of Justice: An Outsider’s View, 37 Syracuse L. Rev. 851 (1986) (which draws upon Thompson's biography of Morris).*

tension in modern culture. The record is not simply one of insensitivity shaped by calculation.

My purpose is not unbounded. I do not take on the runaway task of invalidating the relations between justice and the Christian tradition. Such tradition represents the archetypical code for much of our civilization, and the task of invalidating it would be inordinately complex. That complexity, in the fluidity of the natural law tradition, leads to many examples of proposition and counter-proposition. Admittedly, there have been untold acts of great witness and justice inspired by Christian thought and tradition.

But there is also a truthful criticism in the worldliness of Chaucer’s pilgrims. Chaucer is a useful reference in the face of Grant’s thesis that the modern technological outlook undermines most completely. As Grant himself acknowledges, elementary justice is in the greatest danger of being lost in the quest for perfect justice (Technology & Justice, p.55). The definition of what is due is changed substantially by substituting saintly emulation of divine charity for status. In light of this, how can a phenomenon such as the crusades be explained?

Grant suggests integration of the Greek and Christian traditions as a cultural shift away from pure classification and status in the rendering of what is due. But Grant demonstrates that he speaks of extension rather than replacement in the amalgam of the traditions (Technology & Justice, p.54). As a result, further analysis is required. The wrongs that flow from justice measured in the inappropriate terms of personal status are not simply historic. Legal and social schemes based upon status are returning to ascendency and acceptability. We can view the notion of welfare rights in such terms; we can look at the classes of available medical care in the United States and Britain as a piece of a similar model. There are many other and perhaps better examples, including affirmative action concepts emerging directly from remediation of historically unjust traditions. We cannot simply accept Grant’s return to the traditional definition if we are to work these issues through in a just manner.

Modern science alone did not erode and change what we know so as to render obsolete the traditional account of justice as affording that which is due. The natural law tradition, of which this definition is a cornerstone, has been remarkably supple. One cut of radical legal scholars finds the tradition so fluid as to be fundamentally useless, while politically like-minded colleagues use the tradition as a tool for social

change.\textsuperscript{40} Within the natural law tradition, there exists a recognition of uncertainty as powerful as that which emerges from modern science and skepticism. With it comes a corrective concept useful for justice. The idea found in Jefferson (although it has a longer, deeper tradition) is that the earth belongs in trust to the living.\textsuperscript{41} We humans are of short duration, measured in decades, in the face of a biological or geographical time equatable to eternity. We have a duty to others, and to those who come after, to order our affairs in a way that promotes not only our own immediate interests but future well being. This is a powerful corrolary to Grant's traditional concept of what is due because it expands the idea of what is due by imposing restraint in the face of uncertainty. We breach the trust by greed, but also by indifference in the face of uncertainty.

What is troubling, indeed what we may say Grant objects to, is the prospect of where this takes us. Grant knows that something is due to all humans and he believes he knows why. He is also convinced that something undefined, but different, is due to non-humans. By Grant's account human beings are fitted for the activity of living well together in communities because we are distinguishable from other animals. Appearances suggest that only humans are capable of rational language and thought about the whole (\textit{Technology \& Justice}, p.42).

This species-oriented construct from human reason (or from man's special relationship with his Creator in Grant's theological account) is also found in the justice-oriented language of human rights. The homo-sapiens-only exception and the defining characteristic of justice could become as obsolete as the just status of slaves or as distasteful as the inferior status of non-Caucasian races. Our modern science has come a long way from the Darwinian evolution that Grant expressly accepts. On a genetic level, humans are very similar to other species. For example, the forty-eight chromosomes of the chimp have more similarities than differences when mapped against the forty-six chromosomes of the human.\textsuperscript{42} We cannot comfortably go back to an old definition. We must confront justice for our time under new conditions in the face of new challenges.

\textsuperscript{40} For the positive radical view of natural law, see Franklin, \textit{Law, Morals and Social Life}, 31 Tulane L. Rev. 485 (1957). For an opposing view, see Mensch, \textit{The History of Mainstream Legal Thought} in \textit{The Politics of Law: A Progressive Critique} 18 (D. Kairys ed. 1982) [hereinafter \textit{The Politics of Law}].

\textsuperscript{41} This connection was also set forth by the late Mitchell Franklin in his seminar on the legal and philosophical origins of the Bill of Rights. See Schofield, \textit{A Tribute to Mitchell Franklin}, Critical Legal Studies Newsletter, Dec. 1976; see also Telos, Winter 1986 (containing series of articles on Franklin).

\textsuperscript{42} R. Dawkins, \textit{The Blind Watchmaker} 123 (1986).
Grant's presentation of the issue is helpful to the process, but the achievable solution is fundamentally complex.

III. ENGLISH-SPEAKING JUSTICE

_English-Speaking Justice_ has a character as a book which is more satisfying than that of _Technology & Justice_ because it is written as an elegant, sustained argument. The disparate pieces of _Technology & Justice_ are of a theme but sometimes overlap or fail to develop, flaws which detract from their power. The argument of _English-Speaking Justice_ is a philosophic battle with liberalism fought in a historical milieu. Grant starts with the place and role of liberalism in our society in terms similar to his treatment of technology in the early theoretical chapters of _Technology & Justice_. In the course of this exposition, Grant develops the twin evils of empire and corporatism which undermine immense societies. Grant essentially equates the effect of these corruptions with the cause of a retreat to private life.

Grant's own stance toward liberalism is set forth up front: "It is disturbing to find that a belief that does not appear to one rationally convincing is nevertheless the dominating belief in the world one inhabits. If one wants to communicate, it is constantly necessary to use language which cannot express one's own grasp of reality." (English-Speaking, p.8). He proceeds to question modern liberalism "at its theoretical heart" (English-Speaking, p.12). Grant casts aside the more deficient utilitarianism to reach the question of whether an affirmation of justice based on contract is ever sufficient to support a politics of consent and justice. Grant's answer is a resounding "no."

The structure of Grant's argument is historically based on Rawls' _Theory of Justice_. Rawls' account is first compared with the contractual accounts of Locke, and then with those of Kant. Locke's social contract follows Hobbes and is based upon necessity, seeking to avoid violent, imminent death in the state of nature outside civil society. Knowing that this is our alternative, we choose society. Kant's departure from Locke and Hobbes substituted the freedom of human will (which legislates narrowly for men in society) for the fact of reason. Reason is what fuels our knowledge concerning justice. What we are provided with by our reason is an essentially egalitarian justice not dependant upon our knowledge of the state of nature outside the social construct.

Rawls is sufficiently modern and grounded in the school of analytic

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43. J. Rawls, supra note 5.
philosophy so as to deny that we can know the state of nature. Rawls' account posits an abstract and imagined condition of fairness as the basis for framing the terms of the social contract. Grant sees Rawls as taking away Kant's fact of reason by placing his account of justice in an abstraction where there is no knowledge for the exercise of reason (English-Speaking, p.46). The calculation of self-interest in formulating the contract is derived from nothing more than "American bourgeois common sense" which requires substantive equality in addition to the broadest possible liberty. Grant does not retreat very far when he adds that there is at least some sense in this dominant account of the political situation (English-Speaking, pp.39-40). Rawls' original position is objectionable because there is no place for knowledge or public affirmation of what is good. The state is morally neutral and the original position imposes a veil of ignorance. Grant accepts neither ignorance nor moral neutrality.

Grant all but ridicules Rawls for his omission of the influence of empire and corporate mammoths from the union of individualism and egalitarianism as an expression of a theory of justice. Rawls expresses a lack of interest in both the existence of dominating corporate power and abstraction from the "facts of war and imperialism"; Rawls is oblivious to the influence of such actual powers because he brews an account of justice in an imagined state of ignorance (English-Speaking, p.41). Rawls' "analytic account of philosophy" does not allow him to think that our knowledge of self-interest can be derived from the knowledge we have of the way things are as a whole (English-Speaking, p.45).

But Grant is not much interested in this level of criticism of Locke, Kant or Rawls. Grant asks a more fundamental question of whether justice can be derived from calculation of self-interest in general. Grant requires justice beyond bargains.

He traces our political, social and philosophic traditions as a conglomeration of religious and secular contractual foundations. Our arguments enhanced the contractualism while our reverence aided in the preservation of our justice. Contractualism was at every step buttressed and political justice was given firmer bite by Biblical religion within English-speaking institutions (English-Speaking, p.66). The step outside of philosophy to observe two pieces of the historical cultural fabric is convincing beyond doubt. It is likewise characteristic of the insight of Grant, who proceeds with the argument against the undermining objective discoveries of the sciences.

It is difficult to convey the power of Grant's short argument in words better than those used in Grant's own conclusion:
Clever people generally believed that the foundational principles of justice were chosen conveniences, because of what they had learnt from modern science: nevertheless they could not turn away from a noble content to that justice, because they were enfolded more than they knew in long memories and hopes. They were so enfolded even as they ridiculed the beliefs that kept those memories alive among the less articulate. Intellectual oblivion of eternity could not quickly kill that presence of eternity given in the day to day life of justice. The strength of those very memories held many intellectuals from doubting whether justice is good, and from trying to think why it is good in the light of what we have been told about the whole in modern science.

(English-Speaking, pp.67-68)

The final theme of Grant’s text is intentionally and highly confrontational. The subject is the holding of the United States Supreme Court that the Texas abortion statute at issue in 

\textit{Roe v. Wade} was unconstitutional.\footnote{Roe v. Wade, 410 U.S. 113 (1973).} Grant, in characteristic, articulate fashion, enters into the controversy with what Justice Blackmun describes as the “deep and seemingly absolutely held convictions that the subject inspires.”\footnote{Id. at 116.} Grant writes of “beings of the same species”\footnote{Grant’s terminology comes from \textit{English-Speaking} at 71-73.} when describing what his opponents would refer to with the biological terminology of “zygotes,” of which a majority are naturally aborted or expelled as part of life’s process.\footnote{R. Dawkins, \textit{supra} note 42, at 263.}

To define is to limit, and definition is almost never neutral.

For Grant, the 

\textit{Roe v. Wade} decision defines the concept of justice in modern liberalism. By Grant’s account our justice has moved to a lowered content of equal liberty. The decision is the cup of poison to our liberalism (\textit{English-Speaking}, p.73). This is both an example of Grant’s political use of the language of liberalism—because it frames the debate—and an example of the limits of the traditional definition’s allocation of due by reference to status. An extra little injustice of Justice Blackmun’s majority decision is a finding that the ancient Greek view (and much Christian tradition) did not widely accept proscriptions against abortion.\footnote{See D. Russell, \textit{supra} note 26, at 51-52.}

The suggestion that community conceptions of justice play a fundamental role in determining the power of the legislature to intervene in such matters is, in part, an indication of why the decision is troubling. Grant would urge a stricter standard than the current majority might...
wish. He ignores a different minority concerned with the role of public opinion in deciding the issue.

Grant focuses his outrage upon Justice Blackmun's majority opinion. This is the easy target by reason of the choices made within that compromise decision. Nonetheless, Grant needs the modern complement to enhance the traditional justice that he has urged as superior.

Grant discusses the liberal justice inherent in the *Roe v. Wade* decision. In his criticism, he is dependent upon the freedoms of religion and expression afforded to dissenters. In the United States, as every grade school child knows, this right or freedom is enshrined in the first amendment to the Constitution as a cornerstone of the Bill of Rights. The principle is just as deeply enshrined in English constitutionalism. Indeed, its cause was championed by my favorite Enlightenment radical, Joseph Priestley, who so successfully debated the right of free expression and dissent with Blackstone that the latter was driven to apologize for his views. Priestley's legacy should be measured by this victory, which influenced Madison's expression of the first amendment.

Grant contends the *Roe v. Wade* decision restricting anti-abortion statutes could not have been rendered with meaningful justice. Alternatively, perhaps on a different order of magnitude, a decision of such consequence requires the most meaningful articulation of principles as can be brought to bear upon the issues. As Grant contends elsewhere, "interest balancing" trivializes the issues.

A further point of criticism of equal importance is not raised by Grant. Blackmun did not make use of the ninth amendment retention of rights by the people, including what has tentatively developed as a right of privacy. In constitutional terms, such rights—although not enumerated—are not to be disparaged or denied. The argument is found in the concurring opinion by Justice Douglas. This question of approach and rationale is not an historic issue from the 1970s when *English-Speaking Justice* was in its formative stages. The fragile, underdeveloped ninth amendment remains in need of viable preservation. Privacy in matters of conscience transcends specific textual support in the American Constitution, but is implicit within it. Privacy in matters of conscience has preserved much of the tradition cherished by Grant in tandem with outspoken opposition to injustice.

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This part of the dissenting tradition is something different from the modern retreat from public life in search of pleasure and in weary belief that the bureaucracy is immovable. Grant's earlier criticism of this aspect of modern political life is not applicable in this context. Justice Douglas' argument for protection of private matters of conscience fits within a proper concept of justice within the Constitution and a meaningful reading of the ninth amendment.\textsuperscript{51} I think Grant, shedding his Canadian "otherness" for the moment, might be troubled to the extent that he did not agree. I would wish that the Justices of the Supreme Court would be likewise troubled, but this seems unlikely.

To accept Grant's view that our options are shrinking as our technology develops enhances the value of the unenumerated ninth amendment rights of Americans, especially that of the free exercise of the right to privacy. Segments of Grant's overall argument lend conditional support to the concurring opinion put forth by Justice Douglas. When the legal decision in \textit{Roe v. Wade} is set before us in a Grant-versus-Douglas context, ordering of values comes to the forefront despite Grant's critiques of the language of values as a plural bit of evidence for the erosion of modern society.

If Grant is forced to confront Douglas in the context of a traditional, endangered piece of the fabric that has kept authority from becoming tyranny, his task is more difficult than the one he takes on in opposing Blackmun. At the deepest level, Grant and like-minded individuals could be compelled to confront a fundamental issue as a matter of conscience, unaided by matters of statutory law. This is not necessarily bad, even assuming that Grant prevails and dramatically changes the fabric of our society in so far as it reflects the prevalence of abortion.

\textbf{IV. A PATH OF JUSTICE}

Earlier in this review/essay I suggested that Grant and those who fit to a degree within the rubric of what was the New Left continue to share a path not wholly disparate.\textsuperscript{52} The common path is one of retrenchment, but with solidity of purpose and a sense of the good. Many drop out along the way and definition is always difficult, as Grant knows particularly well.

The idea that exceptionally good political philosophy or legal his-\textsuperscript{\textcopyright}
tory can stand in itself as a radical act troubles me. Robert Gordon, who has made this argument, is one of the humane, bright stars of the Critical Legal Studies movement. The question that emerges from Gordon's argument is that of the relationship between such radical acts and a deeper, adequate notion of justice.⁵³

We could also concede that Grant and Gordon can share a sometimes common appreciation for that which is extraordinarily good. But they would not always agree, and neither can their findings define universal justice in the many hard cases. However necessary, it would not seem that intellectual effort or individual appreciation of the good is in any sense sufficient in a quest for justice. I would not suggest that this essay could be a measurable contribution to such an endeavor.

What does seem obvious is that justice will most often appear radical to the extent that it emerges as real. Justice is implicitly linked with radical acts, sometimes only little things but also sometimes acts of witness which assume a monumental and societal character. In saying this, I am not unaware that massive injustices have been undertaken in the name of radical politics such that proposition and counter-proposition could again be brought into play.

We could write a history of the past twenty years in which once radical junior faculty become deans who urge that university investment in South Africa is complicity, and bright students become scholars changing what we study and what we know. Some brave men and women remain examples for our courage in the effort to secure more justice.

Grant would intervene and go back fifty years to reference Simone Weil at this point. But I, myself, could devise a personally meaningful list from within the past twenty years. It is the task of the reader to test the proposition that courage preserves justice (more fully than exact definition) by reference to experience; in this way the names of champions propagate and we begin to see the medium by which some measure of justice is preserved.

For many in our time, politics has metamorphosed from grand illusions in youthful rebellion to a recognition that meaningful activity encompasses that which is small enough to be won yet big enough to be

⁵³. Gordon, Historicism in Legal Scholarship, 90 YALE L.J. 1017 (1981); see also Gordon, New Developments in Legal Theory in THE POLITICS OF LAW, supra note 40, at 281. Gordon's claims for the inherent political content of "new" legal history are parallel to Roberto Unger's statements on philosophy: "philosophy is revolutionary even when it appears conservative . . ." R. UNGER, supra note 17, at 29. Edward W. Said, Professor of English and Comparative Literature at Columbia, has argued that "the intellectual origins of literary theory . . . were insurrectionary." E. SAID, THE WORD, THE TEXT AND THE CRITIC 3 (1983).
important. My quibbles with Grant's argument are small, even as his call for the preservation of justice is a big enough matter.

Grant has changed focus from the preservation of his country under the dominance of cultural imperialism to a thinking through of the threats to our notions of justice, both in the heartland and in the struggling “colonies” (or “spheres of influence” if one prefers more subtle terminology). Clearly, this is not retrenchment in any normal view. Grant is not simply active in some vast theoretical sense.

Grant understands praxis or the relation between theory and practice. The essays in Technology & Justice encompass examples tilted toward each of these axes. English-Speaking Justice more clearly unifies efforts directed at each, yet within a related text. At the outset Grant contends that only his immediate practicality in addressing issues of abortion and euthanasia will provoke objections: “[i]n capitalist democracy, differences about practice are seen as important, while theoretical differences are seen as people's private business.” (Technology & Justice, p.10). In part, this essay is a modest endeavor intended to do no more than prove that prediction optimistic.

The Grant who recognizes the practical is the Grant who is never disillusioned and who never surrenders. It was Grant who asked what is socialism “if it is not the use of government to restrain greed in the name of social good?”54 Grant, in his traditional sense, now writes that people who wish to rule for their own self-interest are destructive: “Because such tyrants were the most dangerous for any society, the chief political purpose anywhere was to see that those who ruled had at least some sense of justice which mitigated self-assertion.” (Technology & Justice, p.57).

In our circumstances, which Grant evokes as “interlocking emergencies,”(Technology & Justice, p.16), justice is always fragile and in need of aid and comfort. In his exceptional way Grant is a model of vigilance. The task requires transcending political categories. The need is never fully met. It is perhaps romanticism in search of traditional justice which derives a sense of comfort in the dialogue with George Grant. Justice requires the courage to confront injustice at each encounter. Perhaps Grant would view this as simply according to each his due.

54. LAMENT FOR A NATION, supra note 19, at 59.