

THE STATUS OF **TRUTH** IN THE STRUGGLE FOR **JUSTICE**

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**The Argument:** (1) The biblical God, as God of truth & justice, favors human efforts to converge the two & (b) condemns human efforts to divide the two. (2) Accordingly, the discovery & display of truth is fundamental to God-approved judicial proceedings (legal process, lawsuits, court actions, litigations, prosecutions, trials, jurisprudence--the spread the Germans cover with their word "Prozess"). (3) Any effort, on the part of any participant (the accused, the prosecutor, the defense, the court [judge & jury]) to withhold or obscure the truth is antiGod. (4) Such withholding/obscuration perverts justice no matter the trial's outcome. (5) All the above applies not only to "court justice" but also to "social justice." (6) Since any betrayal of truth poisons the headwaters of the stream of justice, appropriate legal sanctions (teeth, punishments) should be enacted & acted against the betrayers: they are criminals whether or not the formally or informally accused are criminals. (7) Church "social action," which has focused on the baneful effects of unjust "habits of the heart" (Toqueville's expression for the mix of traits making up a national character), structural injustices, & inequitable jurisprudence, should expand to consciousness-raise about abuses against truth in our common, legal, & ecclesial life. (8) Paralleling truth's ontological status is right's relational status, the latter derivative from & dependent on the former & both of them fundamental to justification & justice, the interfaced themes of upcoming Craigville Theological Colloquy VII. (9) What happens to truth, in both court & social justice, is more important than what happens to the human beings immediately involved; for abuses of truth reverberate through society & history, affecting far more human beings than are immediately involved ("Truth is king," as the Apocrypha says).

1. In this series (I-XXVII) I've dealt extensively with the Hebrew-Greek-Latin words for all the concepts in "The Argument." I hope my readers will feel some vibes.

2. Some lawyers agree with "The Argument." I knew a young one who became U.S. Ass't. in Defense, decided the public & the courts needed the truth in them & so leaked "the Pentagon papers." Yes, he was soon out of the Department of Defense, & into teaching (Harv. Law, where Loree & I visited him in his Cambridge home). He made no bones about it: he thought what happened to truth was more important than what happened to the people immediately involved, viz ass-coverers "inside the Beltway." His papa was editor-publisher of the TIMES (no, not NYT: THE PEKIN [IL] TIMES), a courageous paper. "Courageous": that means considering what happens to truth more important than what happens to the people immediately involved, including himself. Such courageous journalism is "social action" & deserves more church support than it usually gets. (Jn. McNaughton leaked the Pentagon Papers to an assistant, Daniel Ellsberg.)

3. Yesterday, Ted Koppel's ABC round table with reps of all the political forces in S.Africa showed how painful it is to face discomfiting truths about you & yours, & there was plenty of pain to go around. Not the least pain was the failure of everybody's truth-evasions, which can succeed only, as the phrase goes, "in the family," ie among the like-minded (but what an unfortunate, inappropriate analogy!). In that confrontation calls the bluff of truth-evasion (by wilful ignorance, concealment, & distortion--in the service of selfishness, prejudice, & ideology), ABC & Ted Koppel were servants of God (as TK was also in his interviews with Pres. deKlerk & Nelson Mandela).

4. In biblical light, is it ethical for a criminal **defense attorney** "to make the worse side seem the better" (Socrates' words accusing the Sophists), ie to defend an accused whom he/she considers guilty? No, she/he's a private defender first of the truth; just as the prosecutor is a public defender first of the truth. Do both public & private defenders sometimes victimize truth in the interest of winning? Will a state's attorney, on being exposed for abusing truth, suffer for malfeasance? Improbable. If a defense attorney is exposed for same, will he/she, suffer legal process? Impossible: no penalties for winning, as the truth burden is entirely on the state. Does the judge accept this onesided truth-obligation as the two attorneys stand in his presence (*coram iudice*)? Yes. Does the Judge accept this onesided truth-obligation as the two attorneys stand in His Presence (*coram Dei*)? No. Should "the struggle for justice" include pressure toward legal reform to elevate the status of truth in court proceedings? Yes. Who have primary responsibility for this pressuring? Lawyers of biblical persuasion, Christian & Jewish. Leaders of biblical flocks, Jewish & Christian. Biblical theologians. Jewish & Christian social actionists. Why? Because biblical people believe that God is dishonored when winning is placed above truth on either side of the bench, & God is pleased when truth is honored

above winning.

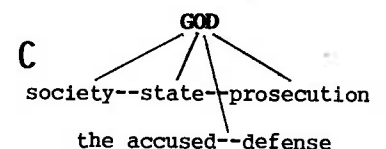
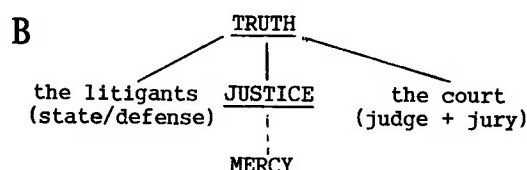
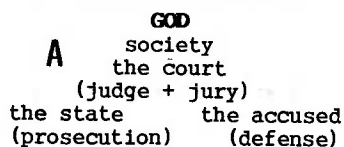
5. Who are the enemies of such reform? Almost all defense lawyers. Why? It would cut their practice down to those whom they consider innocent, which means to the minority of the accused. What sanctional counters could there be to outweigh a defense lawyer's temptations to (1) self-deception & (2) social deception, ie to pretend to believe an accused is innocent? A scale of threats against practicing the profession, from temporary to permanent suspension of license. How could it ever be known that a lawyer practiced this deception? In or beyond court, an accused may confess guilt he/she (1) thinks the lawyer was unaware of or (2) knows the lawyer was aware of.

6. Granted that such reform would serve truth: would it also serve justice? Indeed. How? (1) More honor to truth, the foundation of justice, is automatically more honor to justice. (2) Money, the great unequalizer, would not talk so loud. The innocent poor would stand a better chance in court than the guilty rich.

7. Aren't you exaggerating defense attorney's disdain for truth? Not at all. Hear the eminent & TV-prominent Harv. law prof. Alan M. Dershowitz (TRIAL DIPLOMACY JOURNAL, Mar/84): "It's the prosecutor's job primarily to bring out the truth and it's the defense attorney's job primarily to suppress the truth. Those are completely different functions. ¶ If I am right, and I have never heard any defense attorney disagree with this, the vast majority of criminal defendants that we defend are guilty. Obviously, then, it's our job to make sure that the truth, the whole truth and nothing but the truth does not come out." Again, on Wash.DC's Channel 5, 10 June '86, he said, in a case in which he believed his client innocent, "Let's put more evidence in. Let's get to the bottom of this thing. Let's not try to keep evidence out." Then to the TV audience he said, smiling, "When I have a guilty defendant, my job is to keep the evidence out. When I have an innocent defendant, my job is to bring it in, for the most part." In his notion of justice, he's schizoid from truth, which doesn't matter (in that guilt or innocence do not matter)....One more example: Truth is on the scaffold rather than in the court in the instance also of Baltimore defense attorney William Murphy. On Wash.DC TV recently he said "To a defense lawyer, the question of guilt or innocence doesn't matter. Because two things are at stake: what's going to happen to your client, and what's going to happen to the system of justice, which is the bedrock of American society." (He'd just lost a case in which he'd defended the gang responsible for distributing, in the D. of C., 1,700 lbs. of cocaine per month, the eleven of them taking in as much as \$20,000,000 per month.)

8. Are Dershowitz & Murphy cynical? No, just ordinary, everyday, corrupt adversarial. Am I against being adversarial? I'm for being adversarial for truth: the state fights for the conviction of one whom the state considers guilty; the defense fights for the release of one the defense considers innocent; & in the process, both are honoring truth & thus also God. Would that truth & God were more honored in the current verbal combat on abortion, "the Palestinian crisis," Nicaragua, the underclass, S.Africa, the theological relation of Jews & Christians, the national debt! National-church-offices' position papers on public issues seem to me ca.60% ideology & ca.40% truth...Equity includes the right of self-defense before a jury of one's peers; secondarily, the right to be represented by an attorney convinced of your innocence.

#### 9. Visualizations:



Model A is the objective litigious hierarchy. Prosecution & defense have equal opportunity *coram iudice* (before the court); & all, including the society, are *coram Dei* (under the Judge). Model B is the values hierarchy, illustrating this Thinksheet. Model C is the subjective litigious hierarchy as the accused sees/feels it.