

# ATONEMENT, LAW, AND JUSTICE

*The Cross in Historical  
and Cultural Contexts*

Adonis Vidu

  
**Baker Academic**  
a division of Baker Publishing Group  
Grand Rapids, Michigan

Adonis Vidu, *Atonement, Law, and Justice*  
Baker Academic, a division of Baker Publishing Group, © 2014. Used by permission.

(Unpublished manuscript—copyright protected Baker Publishing Group)

© 2014 by Adonis Vidu

Published by Baker Academic  
a division of Baker Publishing Group  
P.O. Box 6287, Grand Rapids, MI 49516-6287  
www.bakeracademic.com

Printed in the United States of America

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means—for example, electronic, photocopy, recording—without the prior written permission of the publisher. The only exception is brief quotations in printed reviews.

Library of Congress Cataloging-in-Publication Data

Vidu, Adonis.

Atonement, law, and justice : the cross in historical and cultural contexts / Adonis Vidu.  
pages cm

Includes bibliographical references and index.

ISBN 978-0-8010-3919-5 (pbk.)

1. Atonement—History of doctrines. 2. Jesus Christ—Crucifixion. 3. Law and gospel.

I. Title.

BT265.3.V53 2013

232'.3—dc23

2014007212

Unless otherwise indicated, Scripture quotations are from the Holy Bible, New International Version®. NIV®. Copyright © 1973, 1978, 1984, 2011 by Biblica, Inc.™ Used by permission of Zondervan. All rights reserved worldwide. www.zondervan.com

Scripture quotations labeled KJV are from the King James Version of the Bible.

Scripture quotations labeled NRSV are from the New Revised Standard Version of the Bible, copyright © 1989, by the Division of Christian Education of the National Council of the Churches of Christ in the United States of America. Used by permission. All rights reserved.

14 15 16 17 18 19 20 7 6 5 4 3 2 1

For Anthony C. Thiselton,  
my *Doktorvater*, with gratitude for all your  
writing, teaching, and friendship



# Contents

Acknowledgments	ix
Abbreviations	xi
Introduction	xiii
<b>1. Justice, Law, and the Cross in Patristic Thought</b>	<b>1</b>
<b>2. Medieval Atonement and the Legal Revolution</b>	<b>45</b>
<b>3. The Reformation: Luther, Calvin, and the Tradition of Penal Substitution</b>	<b>89</b>
<b>4. Modernity: Atonement and the Cure of the Soul</b>	<b>133</b>
<b>5. Atonement and the Postmodern Critique of Law</b>	<b>177</b>
<b>6. Atonement and the Perfection of Divine Agency</b>	<b>235</b>
Index of Ancient Sources	273
Author Index	000
Subject Index	000



## Acknowledgments

This book was written during a sabbatical leave from Gordon-Conwell Theological Seminary. I would like to thank the Trustees, President Dennis Hollinger, and the administration of the seminary for granting me this opportunity and for supporting our sabbatical program. I would also like to thank my colleagues in the Division of Christian Thought for endorsing my sabbatical application, and in particular my colleagues in the systematic theology department for shouldering the teaching load.

As a systematic theologian I often felt out of my league in having to write on historical theology. I was fortunate enough to find invaluable help and advice from my colleagues in the church history department, Gordon Isaac, Gwenfair Adams, and Frank A. James III. My colleagues in the department of systematic theology, Richard Lints, Patrick Smith, Don Fairbairn, and especially Jack Davis and David Wells read various parts of the manuscript and provided much needed feedback. I would also like to thank Sean McDonough for taking time to read part of the manuscript, and for our many and always stimulating conversations. My gratitude also goes to Jens Zimmermann and to an anonymous reader at Baker Academic for their comments on earlier drafts. My editors at Baker Academic Robert Hosack, Robert Hand, Jeff Reimer, and Bethany Murphy are to be commended for their expert attention and patience.

Thanks are also due to a number of students who have contributed to this project as it was unfolding. Two of my research assistants proved extremely reliable: Robert Frazier and Andrew R. Johnson. Former students Larry Locke and Matthew Wong also made helpful comments.

I am also deeply grateful to my colleague Meredith Kline for locating and obtaining countless inter-library loans and for suggesting a number of additional resources on the atonement.

None of my work would have been possible without the unflinching support and encouragement of my wife, Adriana, and our daughter, Hannah. I look forward to ways of atoning for depriving them of my mental and physical presence during the past two years.

This book is dedicated to my doctoral supervisor at the University of Nottingham, Prof. Anthony C. Thiselton. The writing of this project, in addition to other pressing deadlines, sadly prevented me from adding to a *Festschrift* presented to Tony by colleagues and former doctoral students in celebration of his extraordinary career and personal impact. I am still discovering the many ways, some visible, some subtle, in which I am indebted to him.

# Abbreviations

## Anselm

CDH *Cur Deus Homo*

## Augustine

*C. Faust* *Contra Faustum*

*De Trin.* *De Trinitate*

*Enchir.* *Enchiridion de fide, spe, et caritate*

## Calvin

*Comm. Exod.* *Commentary on Exodus*

*Comm. Isa.* *Commentary on Isaiah*

*Comm. Rom.* *Commentary on Romans*

## Irenaeus

*Ad. Haer.* *Adversus Haereses*

## Gregory of Nyssa

*Or. Cat.* *Oratio Catechetica*

## Ritschl, Albrecht

JR *The Christian Doctrine of Justification and Reconciliation: The Positive Development of the Doctrine*, ed. H. R. Mackintosh and Alexander Beith Macaulay (Clifton, NJ: Reference Book Publishers, 1966)

## Thomas Aquinas

ST *Summa Theologiae*



# Introduction

Atonement theory has been undergoing something of a renaissance over the past decade or so. While some excellent monographs have been written, few writers have embraced the task of writing a history of atonement theories. This is somewhat understandable, given the already-existing reliable and penetrating analyses from the likes of Ritschl and Dillistone, and more recently Fiddes, Schmiechen, and Weaver,<sup>1</sup> in addition to a number of notable edited volumes.<sup>2</sup>

There are some gaps in these histories, though. With the exception of Weaver, none of these authors engages with the last thirty years or so of the conversation. The initial motivation of this work was to provide an introduction to the bewildering variety of recent proposals about the atonement. Another gap is that none of these histories have been written from a position sympathetic to the theory of penal substitution. While the reader will notice that I do not hesitate to critique certain aspects of this tradition, I am in broad agreement with a penal substitutionary model.

Nevertheless, the reader should not expect to find an exhaustive history of atonement thinking in the following pages. That task is quite clearly above

1. Albrecht Ritschl, *The Christian Doctrine of Justification and Reconciliation: The Positive Development of the Doctrine*, ed. H. R. Mackintosh and Alexander Beith Macaulay (Clifton, NJ: Reference Book Publishers, 1966); F. W. Dillistone, *The Christian Understanding of Atonement* (Philadelphia: Westminster, 1968); Paul S. Fiddes, *Past Event and Present Salvation: The Christian Idea of the Atonement* (Louisville: Westminster John Knox, 1989); Peter Schmiechen, *Saving Power: Theories of Atonement and Forms of the Church* (Grand Rapids: Eerdmans, 2005); J. Denny Weaver, *The Nonviolent Atonement*, 2nd ed. (Grand Rapids: Eerdmans, 2011).

2. Charles E. Hill and Frank A. James III, eds., *The Glory of the Atonement: Biblical, Theological, and Practical Perspectives* (Downers Grove, IL: InterVarsity, 2004); Ivor Davidson and Murray Rae, eds., *God of Salvation: Soteriology in Theological Perspective* (Aldershot: Ashgate, 2011).

my own expertise as a philosophical and systematic theologian. What I am trying to offer is, quite simply, a *critical reading of the history of atonement theories*. As opposed to a history as such, a “critical reading” engages with selected patterns, recurrent concepts, and attempts to discern broader themes, all from a critical perspective. My own angle is quite clearly connected to my theological sympathies.

I suggest that *the history of atonement thinking could be read as an ongoing conversation with the history of thinking about justice and the law*. Not that this should come as a surprise for the theologically astute reader. Numerous commentators have pointed out the influence of contextual theories of justice on atonement theologians. However, as far as I am aware, there has been no book-length study of this topic.<sup>3</sup> A few studies of the relationship between atonement and the law have indeed been written,<sup>4</sup> but most of them are apologies for penal substitution and thus do not apply themselves to other theories of atonement.<sup>5</sup>

This book sets out to fill that gap. I have discovered that the cross-fertilization between the two intellectual discourses is quite extraordinary. I will attempt to tell the story of atonement thinking by connecting it to the development of law-and-justice theories. Let me make it very clear that I am not trying to *explain* the development of atonement theory by showing how it was influenced by changing juristic contexts. While such historical explanations are theoretically possible, they are extremely risky, not least because, as I will show, the pollination goes both ways. Not only are theologians influenced by the legal philosophies of their day, but theology also inevitably influences and changes legal structures and ideologies.

Yet *explanation* is not the only possible benefit of such a critical reading. Awareness of this ideational traffic yields a better *understanding* of atonement thinkers by situating them in their intellectual contexts (especially the juridic and philosophical dimensions of those contexts). In addition, exploring the way in which atonement theology influences the legal culture throws light on the *significance* of atonement thinking for important aspects of practical life

3. Some articles, though, deserve mention: Jeffrey C. Tuomala, “Christ’s Atonement as a Model for Civil Justice,” *American Journal of Jurisprudence* 38 (1993): 221; James E. Gregg, “Penology and Atonement,” *The Biblical World* 49, no. 4 (1917): 203–8; Jerome Hall, “Biblical Atonement and Modern Criminal Law,” *Journal of Law and Religion* 1, no. 2 (1983): 279–95.

4. John McLaughlin Armour, *Atonement and Law: Or, Redemption in Harmony with Law as Revealed in Nature* (Philadelphia: Christian Statesman, 1885); Albert Barnes, *Atonement in Its Relations to Law and Moral Government* (Philadelphia: Parry & McMillan, 1859).

5. One exception is Horace Bushnell, *Forgiveness and Law: Grounded in the Principles Interpreted by Human Analogies* (New York: Scribner, Armstrong, 1874). Also of notice is Robert C. Moberly, *Atonement and Personality* (London: John Murray, 1901).

(politics, law, penal systems, etc.). Clearly there is a dialectic here, for an understanding of “use” and “significance” at least contributes to—if it doesn’t entirely determine—an understanding of “meaning.”

The uniqueness of this book, then, is that it offers an interdisciplinary reading of the development of atonement theory from the perspective of its engagement with intellectual discourses relating to law and justice. This is not entirely unrelated to my own theological bias in favor of penal substitution. It is no accident that most of the books that have tackled this relationship defend this particular understanding of the cross. The doctrine of penal substitution belongs to a family of theories that prioritizes the place of justice in the understanding of the atonement. Both Anselm (satisfaction theory) and Calvin (penal substitution) argue that God could not simply gratuitously forgive us without compensating his justice in some way.

As my study will show, all atonement theories want to affirm that God preserves his justice in the process of redemption. But not all theologians operate with the same understandings of justice. Theories of justice and attitudes to law constantly develop and change. I propose to follow both of these intersecting trajectories.

But this project is not simply descriptive. It also asks: Have these writers properly described the action of God in Christ? I will very briefly summarize the constructive dimension of this project and then explain how the book unfolds.

Atonement theology seeks to ascribe a particular action to God. To put it differently, it seeks to assign responsibility for a particular action. We more or less know the Easter events, but the question is, What precisely is God doing in those events? Does he send Jesus to the cross? If so, does he punish Jesus through the cross? Does he intend his death more like a ruse to fool the devil? Or perhaps Jesus goes to the cross as a demonstration of his love for God and God’s love for us? The conflicts among these theories arise over assigning value to the facts. In other words, the conflict is over ascribing responsibility to God.

What these theologians are doing is not unfamiliar. We witness such exercises daily in criminal courts. Prosecutors and defense attorneys both try to make a case for or against the responsibility of a defendant for a particular act. Without getting into a philosophical discussion of responsibility, I would like to isolate one inevitable dimension of this confrontation. That is, *the assigning of responsibility for a particular action is partly based on knowledge of the agent’s character*. In other words, both prosecution and defense try to make it either plausible or implausible, respectively, that *this* agent could have done *this* deed. When a connection needs to be established between an act and an agent, we naturally correlate the quality of the act with the qualities we know the agent to possess. To take a mundane example from criminal cases:

Is the defendant violent, does he have a history of harmful acts, and does he have it in him to kill someone? To establish this, we draw on everything else we know about him. We try to bring to bear his whole personality and character in order to establish whether he might have been *capable* of such a deed.

Clearly these are not the only considerations that go into assigning responsibility. But they are a necessary dimension of this process. Now, atonement theologians engage in a similar process. They have the “facts,” so to speak. But how are these facts to be interpreted? What are the *actions* within these events? What is God doing in this “killing”? So theologians seek to correlate various actions (God deceives Satan; God punishes Jesus; God accepts a satisfaction; God establishes a moral example or a moral influence; God deconstructs systems of scapegoating; and so on) with the known character of God.

And so atonement theology becomes the doctrine of God. Conflicts over the meaning of the cross are in fact conflicts about the very nature and moral character of God. This again reveals the bearing of the law-and-justice conversation. Is God just? What kind of justice characterizes his being? How does this justice correlate with his love? Which is the more fundamental?

There is, however, an important disanalogy between God and human agents. Descriptions of human character will inevitably reveal persons that are more powerful than wise; more just than loving; more or less patient, true, honest, constant, faithful, charitable, and so on. Both prosecution and defense will seek to marshal their view of the balance of an agent’s attributes to buttress their case.

But God is not that kind of agent. Divine attributes are not more or less balanced. They do not exist in a certain *combination*. They don’t because, as the church has traditionally affirmed, *God’s being is simple*. God does not *have* attributes: he *is* his attributes. This matters a lot when we’re trying to understand divine agency. I will argue that God is the perfection of agency. As a result, God will be understood to stand in the background of his actions in a very different way (though not unrelated) to the way in which human agents stand in the background of their actions. To put it more simply: God is present in his actions in a different way than we are present in ours. Moreover, divine actions have a quality not shared by human actions.

In short, I will be appealing to the doctrine of divine simplicity and to the extraordinary import it has on the doctrine of the atonement. Thus the constructive dimension of this project consists in pointing out that understanding the “perfection of divine agency,” or divine simplicity, strictly qualifies the way in which we may ascribe actions to God. In relation to my own sympathies for penal substitution, divine simplicity rules out certain caricatures of this doctrine, both friendly and unfriendly.

A final word about the structure of the book. I have divided the whole history of the atonement into five different periods, or paradigms, if you will: patristic, medieval, Reformation, modernity, and postmodernity (for lack of a better term). I am not claiming that these periods are self-contained paradigms, totally unique in relation to one another. There is a tremendous amount of continuity between them. I am not denying that. Yet at the same time the material has to be divided into manageable segments. I therefore readily accept that there is a fair amount of generalization going on. I am betting on the heuristic value of such a procedure, but I am also aware of the risks involved.

For discussion I have also selected a number of individual theologians from each period, rather than attempting a less detailed overview of the whole period. Thus there are sustained discussions of certain well-known contributors to atonement theology, but also of theologians, while not less known, less discussed in relation to the atonement. Unfortunately, choosing to go in-depth with certain thinkers means that not all important contributors to this conversation can be accounted for.<sup>6</sup> Nevertheless, my aim was not to write an exhaustive history, but to test in various writers the cross-pollination between atonement, justice, and law.

It should also be clarified that, strictly speaking, this is not a work of constructive theology. I do not enter detailed debates about the biblical justification of each theory. While I explain how various authors anchor their theories scripturally, I focus my attention on their interaction with their legal context. Since this is primarily a critical reading of the history of a particular doctrine, I do not spend time on the Old Testament or New Testament development of key atonement concepts. I take that to be the “data” these theologians attempt to unpack and interpret, precisely in light of their cultural presuppositions.

The first chapter engages with patristic theories of the atonement in their relationship to ancient conceptions of justice and law. The significant factor in relationship to this first period is that God and the pagan gods are regarded as being above positive law. The interests of the gods in relation to justice are not first and foremost the preservation of the law. Laws are very much secondary to a justice understood primarily as order. This will be seen to cohere very well with the thought of both Gregory of Nyssa and Augustine.

Chapter 2 reveals a momentous shift that took place in understandings of justice and law. Scholars call this the legal revolution of the twelfth and thirteenth centuries. In both law and theology, justice comes to be approximated as law. Law is now regarded as defining the framework for human and

6. I would have liked, for instance, to include discussions of Irenaeus, Athanasius, Faustus Socinius, Hugo Grotius, Richard Hooker, Karl Barth, and many others. Also missing are much-needed discussions of global theories of the atonement, especially in an African context.

divine relationships. Not surprisingly, atonement theologians like Anselm and Thomas Aquinas in particular reflect this renewed interest in law. This is not to say that the legal revolution yields a uniform effect on atonement theory. Operating from within the same legal revolution, the work of Peter Abelard and John Duns Scotus will reflect their own unique understandings of justice.

The time of the Reformation consolidates the legal revolution began in the twelfth century, but with different emphases. The medieval theology of merit upon which both Anselm's and Aquinas's respective theories of the atonement were built is eroded. But Luther and Calvin display conflicting attitudes toward law. On the one hand, Luther tends to see the law as God's "alien work." Thus Christ's work is not to be understood as serving a logic of the law, but rather as transcending it. On the other hand, Calvin tends to identify law with the very nature of God, leading to the classic doctrine of penal substitution. Thus the third chapter is an extended discussion of Luther's and Calvin's theologies of the cross.

The fourth chapter tackles three modern theologians/philosophers: Immanuel Kant, Friedrich Schleiermacher, and Albrecht Ritschl. Modernity is shown to be a departure from the framework of medieval understandings of justice. The primordial emphasis here becomes moral transformation, especially as expounded by Kant. Both Schleiermacher and Ritschl craft their theological proposals in critical conversation with Kant's philosophy of law and justice.

The penultimate chapter tackles so-called postmodernity. The distinctive characteristic of this period, of tremendous relevance for our topic, is its generalized suspicion of law, especially the ability of law and legal institutions to mediate justice. God himself, then, must not be understood as acting within and thus legitimizing such human systems of justice. Postmodern atonement theories are primarily concerned with nonviolence, including a rejection of the violence of any law. I discuss several theologians in this chapter, from the work of René Girard and S. Mark Heim, to John Milbank's work on the atonement, to the work of Asian American scholars (namely, Andrew Sung Park), to feminist and postcolonial theologians.

The final chapter also serves as a constructive conclusion. I argue that the concept of divine simplicity is particularly relevant for our atonement theories. It both rules out certain theories that prioritize one or another of the divine attributes (whether love or justice), and cautions us about the way we think about the unity of the divine action in Christ. While my conclusions are in general sympathetic to penal substitutionary theory, the way I tell the story of penal substitution will not always be familiar. In other words, I am not arguing that the theory of penal substitution is "the one ring to rule them all," but I would insist on the *sine qua non* of its main intuitions.



# Justice, Law, and the Cross in Patristic Thought

## Justice in Ancient Greece and Rome

Ancient Greek and Roman reflection on justice and law is one of the determinative contexts for understanding patristic theories of the atonement. As I pointed out in the introduction, it is not that Hellenistic and Roman jurisprudence and moral philosophy *explain* the emergence of particular atonement theories, in the sense of determining its development. I will show that Christian theologians were not uncritical with respect to this context. Instead, an understanding of such contexts provides us with an insight into the *plausibility* of such contextual atonement theories.

It is a well-known fact that patristic reflection on the cross did not normally take the form of a full-fledged theory of penal substitution, or of a theory of moral example or influence. While some would like to trace the doctrine of penal substitution precisely as understood by Calvin all the way back to Athanasius, Irenaeus, or Augustine, this is usually done at the cost of grossly distorting their thought.<sup>1</sup> Nobody in this period gives any thought

1. See, for example, Steve Jeffery, Michael Ovey, and Andrew Sach, *Pierced for Our Transgressions: Rediscovering the Glory of Penal Substitution* (Wheaton: Crossway, 2007). We can

to the *necessity* of God's prosecuting his retributive justice as a *condition* of his forgiveness. The thought that God could not gratuitously forgive becomes a major assumption of atonement theories only after Anselm's *Cur Deus homo* in the eleventh century. While some in the patristic era held that there were other roadblocks in the way of divine victory, no such obstacle stood in the way of divine forgiveness. God's forgiveness is purely gratuitous (Isa. 43:25; Rom. 5:8, 20) in the sense that he is above any constraints placed on his being from the outside in the exercise of his love. This means that the goings-on at the cross need not be seen as a case of divine punishment administered on the human Son, as a satisfaction of God's retributive justice, which is a necessary condition of the full manifestation of divine love.

### *A Christian Innovation?*

In this gratuitousness of divine love, some authors see a radical departure from the religious and cultural assumptions, typically encapsulated in the principle of *lex talionis*, eye for an eye (Exod. 21:23–24; Lev. 24:20; Deut. 19:21). Such retributive justice, with its assumed necessity of punishment as physical harm proportionate to the crime, is assumed to have been the cultural norm. In such a context, it is argued, the Christian doctrine of love of the enemy appears utterly dissonant. This, then, is supposed to be the great difference that Christianity makes. In a context of reciprocal killing in the name of justice, it offers a vision of justice understood as love and peace.

This case has most recently been made by Nicholas Wolterstorff, who argues that Christianity's greatest contribution, in terms of thinking about justice, is the idea that forgiveness as refusal to demand punishment does not contradict or undermine justice.<sup>2</sup> While ancient culture had an account of "lenient punishment," sometimes praising the importance of equity and mercy in the treatment of the criminal, "nobody in pagan antiquity proposed that it is right sometimes to forgo imposing the appropriate penalty. Some were dubious about equity as opposed to abstract *dikē* in determining proper punishment; nobody was in favor of forgoing the proper punishment."<sup>3</sup> This interpretation tends to focus all attention on a contrast between ancient pagan retribution

---

distinguish between penal substitutionary theory and penal substitutionary themes, the latter of which are undoubtedly present in these early writers, as I shall point out.

2. Nicholas Wolterstorff, *Justice in Love* (Grand Rapids: Eerdmans, 2011). See also his "Does Forgiveness Undermine Justice?," in *God and the Ethics of Belief: New Essays in Philosophy of Religion*, ed. Andrew Dole and Andrew Chignell (Cambridge: Cambridge University Press, 2005). Wolterstorff draws significantly on the work of Martha Nussbaum, "Equity and Mercy," *Philosophy and Public Affairs* 22, no. 2 (1993): 83–125.

3. Wolterstorff, *Justice in Love*, 226–27.

(sometimes tempered by equity) and Christian love and forgiveness, with the implication that Christianity rejects an account of retributive justice *in favor of love, forgiveness, and peace.*

A closer look at “pagan antiquity,” however, shows a much messier picture, which in fact greatly reduces the contrast sketched by Wolterstorff. In the first part of this chapter, what I shall endeavor to show is that pagan antiquity did not exclusively favor retribution, as Wolterstorff argues, but that alongside retribution there was precisely the idea of a (divine) gratuitous forgiveness, precisely in the name of peace and order (and thus justice). Pagan antiquity, on the contrary, witnessed a contest between rival conceptions of justice, one of which was precisely that which Wolterstorff thinks was inaugurated by Christianity and Judaism. The plausibility structure of ancient culture, within which the patristic writers operated, clearly contained the idea of gratuitous divine forgiveness. Whether or not this explains the failure of these writers to see retribution in the cross—precisely because they did not necessarily expect God to exact it—is a matter I cannot settle here. But the undeniable fact is that the idea of divine forgiveness that is both unconditional and just (Rom. 3:26) was not at all foreign to ancient culture.<sup>4</sup> It is now time to unpack this historical claim.

I will focus on four distinct writers or schools to demonstrate my case: Homer, Aeschylus, the philosophers Plato and Aristotle, and Roman jurisprudential thought. Needless to say, this does not represent an exhaustive or even fair representation of all the ancients had to say about law and justice. My purpose is much more modest. On the one hand, I wish to substantiate my assertion that gratuitous forgiveness was not absent from ancient culture; on the other, I hope to highlight those jurisprudential and moral principles that patristic writers also embraced or rejected.

We readily think of justice as an attribute of God (Jer. 50:29; Isa. 45:21; Deut. 32:4; Col. 3:25; 2 Thess. 1:6; Heb. 6:10), of human beings, of society, or of actions. Indeed, as our study progresses, one will notice that much of the debate over the atonement is in fact a debate over how justice may be defined, how it applies to God, and how it relates to other divine attributes. It is not by any means an exaggeration to say that the doctrine of the atonement is a consequence of one’s understanding of the divine nature.

But before “justice” was thought to be *a quality* that applied to God, it wasn’t even a clear concept. The great Hellenist scholar Eric A. Havelock points out that prior to the invention of *dikaioσynē*, that is, until Greek culture matured, justice was not objectified, or reified, into a thing. “*Dikē* and *dikaioσ*

4. Supporters of penal substitution may wish to make an even stronger claim: that the difference and contribution of Christianity consists precisely in its account of how God can forgive without doing violence to justice (namely, by exercising retributive justice).

refer to the maintenance of reciprocal relations of right: they connote ‘rights’ rather than ‘righteousness’; they were indexes of a purely external behavior, whether of gods or of men. With the appearance of *dikaiosynē*, it occurred to some that this kind of reciprocal propriety corresponded to personal virtue, the *propriety* of an individual.”<sup>5</sup> The process we shall chart does indeed lead from Homer to Plato, *from propriety to property*, from justice understood as order to justice internalized as a virtue of the soul.

### *The Justice of Homer*

Homer (9th–8th cent. BC) illustrates much of this early notion of justice as order, as Alasdair MacIntyre notes:<sup>6</sup> To behave according to *dikē* is to fulfill one’s role in society. Goodness is predicated of a person simply on the basis of a *fitting performance*. There is no interest in whether motivations for the act are pure or impure but simply in external form, on the propriety of the action. A person can neither demand praise for a good intention nor request forgiveness: “You cannot avoid blame and penalty by pointing out that you could not help doing what you did, that failure was unavoidable.”<sup>7</sup>

Often, in such a world, the causes and motivations of one’s actions are not simply natural. The gods play an active part in prompting people to certain actions. Importantly, however, this does not nullify responsibility. I am responsible for the external quality of my actions, no matter what inward or supernatural compulsion led to those actions. Hugh Lloyd-Jones makes the same observation. People, he argues, may blame the gods for prompting them to wrong action, but they may never disclaim responsibility for their decision.<sup>8</sup>

The fundamental prerogative of the gods is to preserve the order. As Havelock points out in the same context, “*Dikē* means basically the order of the universe, and in this religion the gods maintain a cosmic order.”<sup>9</sup> The gods are not the creators of this order, but they merely enforce it and preserve it. While some authors, such as Demosthenes, ascribe the laws that govern this order to the gods, saying that “every law (*nomos*) is an invention and gift of the gods,”<sup>10</sup> the general

5. Eric A. Havelock, “*Dikaiosynē*: An Essay in Greek Intellectual History,” *Phoenix* 23, no. 1 (1969), 51.

6. Alasdair MacIntyre, *A Short History of Ethics: A History of Moral Philosophy from the Homeric Age to the Twentieth Century* (London: Routledge, 1998), 7.

7. *Ibid.*

8. Hugh Lloyd-Jones, *The Justice of Zeus* (Berkeley: University of California Press, 1983), 161.

9. *Ibid.*

10. Quoted in Rémi Brague, *The Law of God: The Philosophical History of an Idea* (Chicago: University of Chicago Press, 2007), 21.

assumption in ancient Greece is that the gods only govern and enforce this order, without having created it. According to Rémi Brague, “The laws are imposed on the gods rather than produced by them.”<sup>11</sup> “To be sure,” Brague points out, “the gods are invoked as guaranteeing sworn rights, and they punish the guilty. But they are not the source of law. A god never issues a commandment.”<sup>12</sup>

This is highly significant because it suggests a necessity pressing on the gods themselves. The necessity, however, does not apply to the enforcement of the laws, but to maintaining the order. In other words, while the gods are “sworn” to uphold order among human beings, they do not uphold that order by strict enforcement of the law. This brings us to a tension running throughout legal history between justice—here defined as order—and the laws that govern the affairs of human beings. The gods, as will be shown, sometimes maintain order and peace precisely by choosing to neglect certain laws. This Olympian relaxation of laws, however, should not be mistaken for grace, much less love. For, as Lloyd-Jones points out, while Zeus condescends to punish crimes, “he is not their [human beings]’ creator, nor their benevolent father in heaven. . . . The gods govern the universe not in men’s interest but in their own, and have no primary concern for human welfare.”<sup>13</sup>

According to Homer, the gods prefer to settle disputes by peaceful means rather than legal procedures. While, as we have shown, a notion of retributive justice is clearly in place, it is by no means thought to exhaust the sense of justice. There isn’t only one way of dealing justly with a crime, namely, exacting a proportionate amount of harm from the criminal. While such a response to crime is indeed sometimes appropriate, *more often the way of arbitration and peaceful settlement best serves the cause of justice.*

David Luban takes a very hard line on Homer’s sense of justice. In *Hymn to Hermes*, Homer’s Zeus is concerned above all with harmony and friendship among the Olympians, and not with punishment. While this may seem to pit justice against peace, Luban observes that this dilemma does not arise for the Homeric age because *dikē* was accomplished through peaceful settlement, not legal action.<sup>14</sup> *Dikē*, as Michael Gagarin notes, is society’s system for settling disputes peacefully. The legal process in early Greece is thus one of peaceful arbitration.<sup>15</sup>

11. *Ibid.*, 20.

12. *Ibid.*, 22.

13. Lloyd-Jones, *Justice of Zeus*, 161.

14. David Luban, “Some Greek Trials: Order and Justice in Homer, Hesiod, Aeschylus and Plato,” *Tennessee Law Review* 54 (1986): 279–326 (here, 280).

15. Michael Gagarin, “*Dikē* in Archaic Greek Thought,” *Classical Philology* 69, no. 3 (1974): 186–97.