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**Don Herzog: Cunning**

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☞ “I do not marvel in any ways to see such a multitude of people assembled . . . to behold the unfortunate tragedy of this my wretched life. For the case is rare. . . .”<sup>1</sup> He loved his wife, insisted John Kello at the scaffold. He denied that he’d dabbled in magic. But “the wicked spirit” had urged him to kill his wife to advance his career. (He never explains how she was an obstacle. Was she just set against his promotion? or having to move to some wretched small town? Then, you’d think, they’d talk about it or endure some marital spats. But murder? It sounds like a parody of men devoted more to their jobs than to their families.) He tried poisoning her, but she vomited. So he strangled her instead, leaving himself with the usual dilemma, how to dispose of the corpse. Picture him, please, the jittery husband, gingerly embracing his wife as if trying to patch things up after a fight and awkwardly presenting a valedictory gift, a necklace too cumbersome to please, still, his wife complaisant, sweetly uncomplaining: he circled a noose around the corpse’s neck and left the body hanging as if she’d committed suicide.

Kello already had drawn up his will, leaving all his property and the children’s care to her. A loving husband could do no more. And he already had spread rumors that she was “tempted terribly in the night.” Leaving his house keys inside, he slipped out the seldom-used back door of his study. A later tradition of uncertain provenance has it that after killing her, he sailed off to preach—Kello was a minister—and then invited some of the congregation back to his home, where he was shocked, shocked, to discover the dangling body.<sup>2</sup> Then he anguished over whether those commit-

<sup>1</sup> *The Confession of Maister Iohn Kello Minister of Spot, togidder with His Earnist Repentance Maid upon the Scaffald befoir His Sufferring, the Fourt Day of October. 1570* (Edinburgh, 1570). The pamphlet is reproduced with extensive variations in spelling and punctuation in Richard Bannatyne, *Journal of the Transactions in Scotland, during the Contest between the Adherents of Queen Mary, and Those of Her Son* (Edinburgh, 1806), pp. 39–51. I’ve modernized spelling in the text throughout, but only capitalization in footnoted titles, to assist those wishing to track down the sources. Yes, Kello was a real historical figure: see Hew Scott, *Fasti Ecclesiae Scoticae: The Succession of Ministers in the Church of Scotland from the Reformation*, new ed., 9 vols. (Edinburgh: Oliver and Boyd, 1915–61), 1:417; *The Diary of Mr John Lamont of Newton: 1649–1671* (Edinburgh, 1830), p. 227.

<sup>2</sup> William Roughhead, *Twelve Scots Trials* (Edinburgh: William Green and Sons, 1913), pp. 1–15.

ting suicide could be saved. “And that my affection towards her might appear the greater,” he denied that God would suffer so innocent a creature to succumb “to the temptation and rage of Satan.”

Kello was hanged in Edinburgh in 1570. The historical context makes the episode a bit less murky. After the Reformation hit Scotland, just ten or twelve years before Kello’s turn at the scaffold, the kirk or church was severely understaffed,<sup>3</sup> so he could well have glimpsed attractive job openings. By 1574, Scottish ministers were prosperous enough to provoke sumptuary legislation prohibiting them and their wives from wearing fine clothes, jewelry, and silk hats.<sup>4</sup> The locals were used to duels and assassinations, also to “seizers,” zealous officers who the year of Kello’s death had two men burned alive for sodomy—and who kept up their savage enforcement of religious commandments into the 1700s.<sup>5</sup> (Remember them the next time someone assures you that Islam just needs its own Reformation.) As far as I know, though, the execution of a minister was no everyday yawner. None of this tells us what Kello had in mind for his career or what his wife objected to. Here, too, the historical record is frustratingly opaque.

Kello might have gotten away with it, but the grumbling and gossiping of some of the faithful were getting under his skin. And “above all,” another minister penetrated “the inward cogitations of my heart” and interpreted a troubled dream he’d had. Staggered by the interpretation, Kello “persuaded myself God spoke in him.” *I persuaded myself* will easily bear the sense of *I came to believe*. But it’s tempting to construe it as admitting that he talked himself into it. Now why would he? And why would he report the dream in the first place? Was he afflicted by the fabled guilty conscience, plaguing the perpetrator, confronting him with knowing accusers at every turn, transmuting others’ casual glances into caustic glares? Maybe, but

<sup>3</sup> Rosalind Mitchison, *The Old Poor Law in Scotland: The Experience of Poverty, 1574–1845* (Edinburgh: Edinburgh University Press, 2000), p. 11. For an incisive overview of kirk history, see Jenny Wormald, *Court, Kirk, and Community: Scotland 1470–1625* (London: Edward Arnold, 1981), chaps. 5–8.

<sup>4</sup> David M. Walker, *A Legal History of Scotland*, 6 vols. to date (Edinburgh: T. & T. Clark Ltd., 1988–), 3:279.

<sup>5</sup> Allan Massie, *Edinburgh* (London: Sinclair-Stevenson, 1994), pp. 37–38; Ebenezer Henderson, R. L. Wright, and William Haldane, *The Annals of Kinross-Shire*, ed. Hon Rhoderick and Alison Moncreiff (n.p.: Fossoway & District Community Council, 1990), p. 30; Ebenezer Henderson, *The Annals of Dunfermline* (Glasgow, 1879), p. 377.

many guilty people don't seem to suffer from such inexorable consciences. Some innocent people do.

What is a guilty conscience, anyway? Just the detritus of years of conditioning, some irrational quirk that happens to be shared by others and vigorously promoted by pompous authorities? If so, can the agile murderer wriggle away from morality? Imagine the psychotherapist's ad: "Counsel for those in the clutches of the indefensible superstitions of morality. Triumphant testimonials on offer from prior clients now viewed by the base cowards around us as psychopaths." No, she's not offering merely to help out those in sweaty paroxysms of guilt over trivial faults. She's offering her patients the chance to burst the confines of morality into lives where they never hesitate over what's right or wrong, good or bad. Would you enter such therapy? Should you? Do you flinch at the prospect?

Or is a guilty conscience the still, small voice of God within?<sup>6</sup> Recall how it feels when you want to do something questionable, when you've persuaded yourself that it is the right thing to do, and then you suddenly know that it's wrong. Even then, is conscience inescapable? or are some tone-deaf to its stern song? Are they culpable? negligent? or, not to put too fine a point on it, damned? Maybe Kello succumbed to visions of hellfire and the desperate seductions of being a deathbed convert. But how religiously orthodox could he have been? Yes, there's a distinguished tradition of people killing for God, even when they embrace Him as the Prince of Peace. But not killing their wives to advance their careers.

What kind of minister does such a thing? Linger over Kello's activities during the weeks he's planning the murder. Sometimes he's writing his will, figuring out how to get poison without leaving an incriminating trail, and sadly confiding in his parishioners about his wife's alleged nocturnal temptations. Sometimes he's officiating at marriages, baptizing infants, and solemnly urging the faithful to repent for their sins. You'd think he has to be play-acting in those latter activities, right? After all, he's dead serious

<sup>6</sup> See 1 Kings 19:12. The crucial text in the reception and transformation of this notion in ethics is Bishop Butler's *Sermons* of 1726, an argument for the authority of conscience. (In his sixth Sermon, Butler flirts with blasphemy by casting "our nature" as "the voice of God within us.") For intellectual context and commentary, see J. L. Mackie, *Hume's Moral Theory* (London: Routledge & Kegan Paul, 1980), esp. pp. 35–43; and Stephen Darwall, *The British Moralists and the Internal "Ought": 1640–1740* (Cambridge: Cambridge University Press, 1995), esp. chap. 7.

about disposing of his wife and you'd think he'd have to be shuddering inside—or at least be ironic?—when he issues his menacing or beseeching warnings of damnation. But maybe not. Maybe he's entirely serious in both sets of activities. Maybe there's a sort of firewall in his mind separating the lethal plotting from the earnest praying, so that when doing one he never thinks of the other. Then again, maybe both sets of activities run seamlessly, promiscuously, together. As he launches into his homily, he says to himself, "No, damn it! can't use a knife, I'd never be able to hide it"—and maybe he says it without even breaking stride, his earnest cadences washing over the assembled faithful. Maybe when he paints his lurid portraits of hell, he grimly concedes to himself that he'll roast there, too. Maybe; maybe not. It's hard to imagine what's buzzing around in his head. Then again, it's often hard to imagine how we handle the conflicting demands of our own lives. Does the predatory real estate broker flinch when she leans over to embrace her granddaughter? Does the unctuous used car salesman, whose sales commissions depend on his glib dishonesties, flinch when he assures his suspicious wife that she can trust him? Does she smirk?

But the question is not just, what kind of minister does such a thing? It's also, what kind of person does such a thing? True, there's an especially pointed conflict between his role and his action. But it's not as though an insurance broker or a potter may murder people without a second thought. Even a butcher, who can slash other animals without a second thought, knows not to deploy his professional expertise or cutlery on human beings. The problem with Kello isn't or isn't only that he departed from the demands of being a minister. Then too, some roles seem to permit or even demand unscrupulous actions. If Kello seems remote, consider instead the dirty little not-so-secrets of our own world, close at hand. Should a prison guard beat a prisoner now and then, just to remind everyone who's boss? Should a criminal defense lawyer suborn perjury—or let slide testimony she knows to be false? Sure, the rules prohibit such things. But maybe she should break the rules sometimes. Should a department store clerk shoplift choice merchandise to help a needy friend?

Each could plead that the actions in question would make good sense or that they'd be rational. "You want me to keep order in this prison, right?" our guard might demand. "I know that cruelty is bad and I'm no sadist. But I don't propose any gratuitous cruelties. If I don't keep the

inmates in line, we'll need to use far worse violence on them." The defense lawyer might acidly note that the local DA is not above his own cheating—everyone knows that cops on the witness stand lie all the time—and so insist that it isn't only unfair to make her play by Queensberry rules, it's also perverse: it keeps her from offering her client the vigorous advocacy to which he's entitled. The clerk might sigh, "I suppose it's wrong to steal others' property. But I'm not doing it for myself. My friend needs it much more than the corporation does. Besides, they already figure shrinkage into these prices. Why do you think this stuff costs so much?"

Here's an enticing labyrinth full of problems, with the paths of morality, roles, and rationality crossed, confused, confusing. Tradition bequeaths us stirring rhetoric on these matters: "do the right thing"; "go about your allotted business in good cheer"; "choose means calculated to efficiently advance your ends." I want to seduce you—or corrupt you; you can decide later—into seeing these time-honored slogans not as shining nuggets of wisdom but as laughable bromides. And I want to proceed not with stirring visions of what's good, but by pursuing the twists and turns of cunning, my thread through the labyrinth. So we'll meet rogues as fiendish as Kello, even worse, but also more quirky and amiable types: a political astrologer, a car salesman, an outfit offering online exorcisms, and more, some of them from history and literature, some from our own world. Some really are rogues—I don't propose to defend wife-murdering as a tactic for advancing your career. But some of them can rightly plead powerful excuses to mitigate their faults, and others, however we may initially cringe, are probably doing the right thing. Just don't think you already know who falls into each category and why.

But why cunning? Was Kello cunning? I grant that he wasn't the most cunning guy around. Had he been, we'd have no gallows confession to savor. Maybe the really cunning leave no traces, unless indeed they choose to gloat in posthumous autobiographies. But in his faltering way, was Kello cunning? To be coy, that depends partly on what you mean. Kello was self-consciously scheming, deceptive, selfish—or so he must have thought, but he could have been mistaken—and amoral. So is that what *cunning* means? There's no point in trying to stipulate a definition of cunning. Definitions come at the end of the day, if at all. Anyway, dictionaries are often unhelpful. (Try looking up *love* or *justice*.) Notice, though, that *cunning* brings to mind *crooked*, *shifty*, *slippery*, *elusive*, *evasive*. The cunning actor bobs and

weaves past obstacles to prevail. As Dewey noticed, that's just to say he's intelligent.<sup>7</sup> But it's also to raise the worry that some obstacles should be respected, not dodged, that some kinds of intelligence are sleazy or worse. *Cunning* suggests *clever*, not *wise*, and promptly forces us to wonder about being too clever by half. So the familiar contrast between "low cunning" and genuine wisdom. We might well applaud Houdini's daredevil stunts, his wiggling his way out of ropes, chains, and locked trunks. But when the obstacles are the dictates of morality or our social obligations, should we applaud those who evade them? Ambrose Bierce's *Devil's Dictionary*, delightfully exempt from my complaints about dictionaries, nails some problems:

*Cunning, n.* The faculty that distinguishes a weak animal or person from a strong one. It brings its possessor much mental satisfaction and great material adversity. An Italian proverb says: "The furrier gets the skins of more foxes than asses."

Can you be cunning in pursuit of an unambiguously good end? Try this: "Mother Teresa cunningly extracted a pledge of support for the Home for the Dying Destitute." Do you balk? Because you can't imagine such a saintly figure stooping to cunning tactics? Or because nothing done for such a lofty reason could properly be described as cunning? Or again, can't you be cunning and selfless? What about the dad who secretly works for gangsters in order to keep bread on the table for his beloved children? Or the politician who wallows in sleaze not to secure his reelection but to cut a better deal for the workers or the environment? Yet again, can you be cunning without noticing it? Wouldn't it be cunning to deceive not just those around you, but yourself? A wary onlooker challenges you: it's got to be easier to insist vehemently on the utmost integrity of your actions when you believe in it yourself. Can you cunningly tell the truth? What if you're talking to someone who distrusts you and you want deliberately to muddy the waters? "You bet," you chuckle, "I'm the kind of person who would seduce your partner." Then you go ahead and do just that. As you imagine these scenarios, do you cast them with men or women? Why? And how does the style of the performance depend on that choice?

<sup>7</sup> John Dewey, *How We Think: A Restatement of the Relation of Reflective Thinking to the Educative Process*, new ed. [1933], in Dewey, *The Later Works, 1925–1953*, ed. Jo Ann Boydston et al., 17 vols. (Carbondale and Edwardsville, IL: Southern Illinois University Press, 1981–90), 8:223.

I want to sharpen our grasp of cunning, to reckon with its twists and turns, allures and horrors, insights and blindnesses. But I also want to use it for my own purposes and blithely shove it aside when I've exhausted its usefulness. So cunning will be front and center much of the time, but it will also be my stalking horse for sidling up to some vexing puzzles about rationality, roles, and morality. I tend to worry about focusing on what's good. It makes it too easy to sound syrupy, high-minded, like a bad Sunday school sermon or an inspirational greeting card. The sheer nasty cleverness of the cunning will keep me honest. It will force me to give the devil his due, every step of the way.

The book falls into three parts. First, I explore some canonical moments of cunning: stories about Odysseus and texts by Machiavelli. I introduce a time-honored but radically deficient scheme, the thought that the world is divided into knaves and fools. (Perhaps we should add honest people, who need only to unmask the knaves to protect themselves.) Second, I explore a host of ways in which the familiar distinction between appearance and reality is an inadequate guide to social life, ways then in which unmasking can't be a matter of stripping away pretext and revealing underlying reality. I also chart what qualifies as another sort of problem with appearances: for our knowledge of the world, we're inescapably dependent on what others tell us. But the way it seems to them may not be the way it really is, and anyway they might want to paint a misleading picture. Such complications make the problems of cunning look bleaker, more intractable, than the scheme of knaves and fools suggests. Third, then, I amplify our grounds for despair. The villain conscious of his knavish intentions is another stylized and deceptive figure. Cunning is compatible with self-deception, with simple ignorance too. No consolation is to be found in the prospect of doing one's duty or adhering to the obligations of one's roles, nor in turning to the resources of religion or a familiar strategy of justification from moral philosophy. I close by telling a tale not wholly unlike Kello's, this one from early seventeenth-century England.

My goal throughout is to deepen and refine our sense of what's troubling in this terrain, not to reassure. I go narcoleptic when theory starts feeling like the view of the social landscape from three miles up in a hot-air balloon—and I'm cranky enough to suspect it starts feeling that way too often. Is the right prior to the good? Do expressive considerations muck up the appeal of efficiently marshalling one's means in the pursuit of

one's ends? Does reason itself dictate the pursuit of some ends or the respect of moral side constraints? Does nature? Or are we left only with passion? Plenty of people write about these abstract issues head-on, with the occasional Tinkertoy example introduced to illustrate a broad theoretical point. I know how to talk and write in this mode, but I don't trust it. To be blunt, even peremptory, about it, I think that such work reveals far more about the intelligence and sensibility of the author than it does about the predicaments of social life.

Every day, we wrestle our way through a tangle of competing commitments that show up in extravagantly stylized and artificially coherent ways in theories of instrumental rationality, deontology, consequentialism, and so on. That we should adopt one such theory and live by its dictates seems to me intellectual madness worthy of the projectors Gulliver marvels at in *Lagado*, indeed worthy of the more malodorous experiments of that distinguished academy. Here I stage a mock tragedy in which familiar overbearing creatures descend from the airy heights of Theory's Cloudcuckoo-land and do each other in, leaving the stage full of bloody bodies. But I allow them to dispatch each other—actually I urge them on with some sadistic glee; an astute critic might insist it's a comedy—not to defend skepticism, nor to remind us of what we knew all along, despite theory's false consolations, namely that the world is weird and complicated and that theories tend to be oversimplified. I am not a Kantian, I am not a utilitarian, and I am not going to offer any intriguing conceptual structure to explain how to merge the best of each tradition. But mine finally is no counsel of despair: going local is a strategy for gaining knowledge, not a surrender to some exotic skepticism. So I return to the nitty-gritty grounds of practice and puzzle afresh over tantalizing dilemmas. I think the examples are richer, more provocative, than the off-the-shelf abstractions that have dazed our senses and dulled our imaginations.

As a reader, I have my wits about me and I instantly try to position myself as a mischievous equal of the author, not a slack-jawed receptacle of whatever she has to say. I'm glum when I feel like the author is condescending, catechizing, deigning to spoon-feed me answers. I'm happy when the author furnishes illuminating devices to help me find my way through dark and uncertain terrain. As a writer, I assume my readers are the same, that they can take—and will welcome—teasing and insinuation right alongside ordinary declarative sentences and logical arguments. Put

differently, I've nothing against a rhetoric that goads and provokes objections. Nor do I have anything against laying out a dispassionate account of the way things seem to me. Just don't expect me to tell you which I'm doing at any moment. And don't trust me if I do.

That stormlet of brash pique subsiding abruptly, I lapse back to my usual serene melancholy about the state of theory. Let me amplify some earlier comments and offer an only slightly disingenuous sketch of how cunning gives us a tractable handle on three annoyingly puffy theory dilemmas. One: what is captivating, what disgusting, about what economists have enshrined as hardboiled instrumental rationality, efficiently using one's means to realize one's ends? Sometimes we admire the rational actor for his discipline; sometimes we revile him for his ruthlessness. Two: think of a social role as a bundle of rights and obligations and distinguish two ways you can occupy the role. You can distance yourself from the role and demand some further account of why you should adhere to its rights and obligations. ("I know I'm supposed to hold office hours, but why should I?") Or you can identify with the role and more or less automatically follow its dictates, at least if no pressing worries come up. Sometimes we embrace role distance as autonomy; sometimes we denounce it as alienation. Sometimes we embrace role identification as happy or secure; sometimes we denounce it as bovine or robotic. Three: what is the justification of morality? Why be a slave of duty? Wouldn't a little furtive cheating be sensible? Then why not more than a little? Why not as much cheating as you can prudently hope to get away with? I suspect that these three dilemmas are closely connected, that they may even be at bottom the same dilemma. And I suggest that cunning lets us see how. The cunning agent is unflinchingly methodical in the pursuit of his ends, insistently distant in his roles, lethally ready to be immoral at the drop of a hat. Or anyway he seems to be, or we fear that he is, or he flirts with that stance, or he taunts us for not daring to adopt it as our own.

"*Cunning*," warned a 1770 advice manual, "wears the face of a *virtue*, but is the base representative of it, and no more like it, than an *ape* is like a *man*. It is the art of dissimulation and deceit, which foolish people practice, because they know no better; or being wickedly inclined, act against their better judgment." Raising the stakes, the manual continued, "It deforms the beauty of truth, and renders the charms of simplicity and sincerity, as haggard, as one of those poor old women, who in days of ignorance, were

called *witches*.”<sup>8</sup> As we’ll see, there’s a lot packed in here. But can the manual’s ready moral condemnation be vindicated?

Perhaps in style, surely in strategy of attack, this essay is different from much of my previous work. I take it no one has any burning interest in my intellectual biography, so suffice it to say that I continue exploring what an unvarnished pragmatist sensibility might mean for doing theory. I remain resolutely antifoundationalist about justification, fascinated by contingencies, bored and stolidly unmoved by the fact/value gap, and temperamentally more inclined to pick apart flabby categories than to try to find sweeping generalizations. But you needn’t sympathize with any of that, you needn’t even have a view about it, to enjoy reading this essay, or to find it disturbing. Or so I hope.

I presented previous work on these materials at Harvard University, Indiana University, Ohio State University, Stanford University, Swarthmore College, the University of California at Berkeley, the University of Chicago, the University of Virginia, the University of Wisconsin at Madison, and Vanderbilt University. Thanks to patient audiences there for helping me to see what I’m up to. Thanks to the usual suspects, and some new ones, for comments on drafts: Liz Anderson, Jill Horwitz, Sue Juster, Jennet Kirkpatrick, Larry Kramer, Danielle LaVaque-Manty, Mika LaVaque-Manty, Daryl Levinson, Katie Lorenz, Kirstie McClure, Bill Miller, Deborah Moores, Adela Pinch, Jim Reische, Lynn Sanders, Andy Stark, J. David Velleman, Adrian Vermeule, Mark West, and Liz Wingrove. And thanks to the University of Michigan Law School, a fabulous place to work.

<sup>8</sup> Jonas Hanway, *Advice from a Farmer, to His Daughter, in a Series of Discourses*, 3 vols. (London, 1770), 3:253.