

## Chapter 1 of *The Debate*, Vol. 2 by B. Douglas Robbins

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“You need to keep in mind, he killed his **brother** for godsakes, and no one did a damn thing.”

I had been a debater since I was fourteen. I had only kissed two girls, my entire life, barely done anything, and I was arguing about Kantian ethics, the global effects of a nuclear winter, and the communist utopia. I was a maniac.

“He approached his sleeping kin, his lord, and gingerly poured a vial of poison into the receptive ear. Fratricide! King Killer!”

We used to stay up late to flow the eleven o'clock news. It was called flowing because the sound was supposed to roll through you onto paper like lyrics. It wasn't just the process of taking notes, it was taking small, highly compact signals that once converted into ink, could be processed and analyzed at absurd levels of speed. Debate is often thought of as an oral activity; it in fact spends half its life underground, on the flow.

We flowed on legal sized paper—surreptitiously primping to be lawyers, like little boys who dress up in daddy's ties. The flow, the inscription, the notes, went down the left margin like a spike. The arguments in red. Then immediately to the right, again no thicker than the margin, we would dream up another spike of answers to the contrary. We wrote those in black ink. Flow and answer. We were always black, they were always red. Two pens strapped together like logs on a tiny river raft. Pens taped north to south. Black and red, black and green, fat four color pens with the click at the top.

Dave Macelhadden would say Saddam Hussien is hiding weapons of mass destruction. We would answer why not. Wrote them with little lines attached to Macelhadden's claim, like kites. First, bad evidence. That one was easy. Even the best evidence has perforations. Macelhadden said there were areas in Iraq inaccessible to U.N. inspectors. From there he deduced that something to hide meant weapons to hide. That's assuming guilt in the absence of evidence. First little black kite. Second, non-unique.

That meant that Iraq's so called weapons of mass destruction would be far from the unique cause of death by violence in the middle east. Desert Storm killed more people than Iraq's chemical biological bombs ever have. We would deduce that most people in the region would already be dead and gone anyway, with or without CBW's. You can't kill what's already dead. Another little black kite, and on like that.

“A healthy king dies in his sleep and there is no examination? Why isn't the queen and loyal spouse calling for an investigation into her husband's murder? It seems to be a crime for which no one has the authority or the backbone to investigate. Nobody is lifting a finger.”

I practiced spreading the *Wall Street Journal*, tongue tripping over all those god-awful numbers. You couldn't sound them out, you had to be seconds ahead. Gut spreading was the act of reading and speaking at tremendous speed. Jamming it all in. The faster the spread, the more arguments could be made in the allotted time, the less likely your opponent would be able to get to them all. It was called the spread because you were spreading air from your lungs, you were spreading time out like a thin ribbon, you were spreading your head wide open, exposing the brain-guts, churning and spinning, and all the words came surging out, fast as thought.

“It is the confused and bumbling wrath of a son that eventually takes retribution for a crime that affects the kingdom as a whole. Remember what's rotten in Denmark? Remember the miasma? Yet still! No one else is willing to vivisect the sick sore.”

I had my choice among a number of very good universities. I chose Stanford primarily for the debate. I was very glad I did because it was there that I met Jared Kaneman, my partner. Jared and I were taking Shakespeare and the Law with Professor Berlinski. Jared didn't like Berlinski. Thought Berlinski was full of himself, which he was, but he was also brilliant.

“Now, American law says only the senate can impeach the president. Referendums won't work, and neither will initiatives. A state like California or Oregon may not impeach the federal executive, only a particular half of the legislature may do that.”

Jared was precisely my height, a fact he used to exaggerate until I bluntly faced him with certain finality. He was more substantial in the arms and shoulders like a stevedore. I was more analogous to the wire shrouds. He had a dark Moroccan complexion, even during the winter and a closely shaved head, like a Buddhist Monk.

“Locke argues that an oppressive sovereign may be justifiably toppled, such is our right as humans under divine law. Impeachment, is a moderated form of that notion.” He swatted his open hand back and forth as if it were a racquet, “The three branch system of government allows the people to maintain the government, and still oust the king. This is a novel concept in statecraft. Under monarchies you would have to demolish the whole regime. Stiiiiill, impeachment is a highly scrutinized and protected process. Only the official elites may oust one of their own. Only the nobility, now the Senate, may dethrone the king, now the President. Much like the peticular relationship between our Prince and his rotten uncle.”

“I’m dropping this class,” Jared whispered to me.

“Why?” I asked, “It’s a good class.”

“It’s schlag.”

I didn’t want him to drop. It was fun having a class with my best pal, “No, it’s good. Listen to what he’s saying.”

“Rule of law gives me the itches.”

“Come on.”

“I just cut a stack of C.L.S. stuff and now rule of law makes me itch. No joke.”

“You’re kidding,” he had to be kidding.

“**You** read the cards,” he was emphatic, “I’ve got them right here. They’ll make you itch too. I got to drop the class.”

“Mr. Grundle!” Berlinski boomed like bass skins, “Maybe **you** would like to answer the question.”

I pointed to myself. Berlinski was one of a kind at Stanford. All the other professors were as laid back as palm leaves in the breeze; that was the Cardinal culture. Berlinski was stodgy and European in every way. He held disdain for palm leaves and their ilk. He was a Socratic Method Man. A real pain in the ass.

“I’m sure whatever intriguing insights you were expounding to your friend, ah Mr. Kaneman is it? can be put in abeyance while you join the class in **learning**.” Nervous laughter leapt. Cowardly laughter. Berlinski pulled a hard backhand, and left his arm high in follow-through, “I think that’s what this university was built for, if I’m not mistaken. Now, I would appreciate your insight into this most abstruse of questions. If the rule of law is a check on tyranny why is the executive, the potential tyrant above the common law? Why cannot the people dethrone him? Why executive privilege?”

I didn't know. I had no idea. The lecture hall was hard on all sides and white in the corners and very quiet while everyone awaited my return.

Jared drifted a tag line into my receptive ear, "Rule of law is a hoax."

"Because in all likelihood," I said flipping my pen, "The rule of law is a hoax of law." I had fizzing in my chest and my throat clenched and my jaw tattered as I sent it back into his court; a dropshot bluff.

"A hoax! Like a rabbit in a hat?" Berlinski paced the stage in wool gabardine hiked to the waist like an Italian, "That's very interesting. Two-hundred years of American law and vanishing rabbits. What do you mean by hoax, Mr. Grundle? Please enlighten us." A pattycake return.

Jared coached me up to volley; small words, "*Stare decisis*. Precedent."

I smiled at Berlinski's mallet jaw, "I think notions like *stare decisis* and precedent are problematic within the ostensible themes of the rule of law."

"You're talking in circles, Mr. Grundle. 'Problematic,' 'hoaxes,' I don't think there is a serious scholar alive who is going to agree with your nascent legal analysis..." a hard volley from the forecourt, as if ready to claim the set.

There was a pause. He wanted a response. Nothing would have been adequate. Any argument I made would have been dismissed as circular or juvenile. He was an expert, I was fodder.

Jared pulled a silky file from his back pack. The manila shined like fabric. He began thumbing through it.

"Really, you need to think these things **through** before you say them!" Berlinski jut his hip like a cannon mount, one hand buried in his arm pit, the other smeared with chalk, swatting a hard volley down the line. He bared perfectly straight teeth, shining daggers in the corners, "No one is ever going to take you seriously if you spout off whatever new and seditious idea that comes into your muddled head."

It was in, on the line, chalk in the air and I couldn't get to it. Too fast. Too far. Amidst the powdery haze of white words and vicious incisors, Jared pulled a brief and pointed to the bottom card, "Read."

"Uh, I think an emphasis on precedent and *stare decisis* legitimates tyranny, argues Lynne Henderson, professor of law at

Indiana University.” I dove with arm out, racquet extended, hoping to just make contact, just keep it in play, “She writes in 1991

*The demand on the part of some scholars for strict adherence to original intent, obedience to text, deference to the political branches—particularly the executive branch—and strict fidelity to precedent and stare decisis, combined with arguments emphasizing stability, order, predictability and control, is especially troubling. To the extent that such positivist views of judging can be associated with authoritarian legal systems, these arguments can legitimate tyranny.*

Jared began scratching himself.

“What is that there?” Berlinski was reddened in retreat for the lob.

“This is the text of the piece, *Indiana Law Journal*, vol. 66:379 p. 384,” I said in sing song, bored and lazy.

“Yes, Mr. Grundle. Very clever. Does Professor Henderson **pay** you to carry her work around or do you do it as some kind of homage to insurgent literature?” Belated laughter, as Berlinski scrambled to the service line and ponged it back.

Jared rose his voice, “Elric has answered your question. He has done so with support from a reputable author and full source citations. Your response is an *ad hominem* attack. I don’t think there is a serious scholar alive who would take your approach to this subject seriously,” a nice clean drop-shot. He pulled fingernails across his forearms.

Berlinski smiled all over his stubbled face. He’d never heard anything so amusing. Like talking animals, “Very good Mr. Kaneman. *Ad hominem* indeed. But notice Mr. Grundle in the frying pan and you in the fire: if Professor Henderson is correct and authority can be associated with authoritarianism, what is ever a legitimate authority?”

“Moral authority.”

“Well that works fine for Hamlet, but what if you’re not a prince?”

“That didn’t work fine for Hamlet. He ended up dead,” a pop here and then over there like corn of nervous laughter. Each chuckle a defection.

“Really, Mr. Kaneman,” straight teeth again, like proof of pedigree, “without rules, without laws, without **authority**, the

commonweal would dissolve into anarchy, into chaos. Are we to revert to the state of nature where our lives would be solitary, poor, nasty, brutish and short?” A trick shot spun sideways, hit the tape and just made it over.

Jared moved up easily, as if expecting this kind of play, “That’s disingenuous.” He thumbed through paper. Berlinski put his teeth away and stood on tip-toes as if trying to see what Jared would pull out of his silken folder next. I had to smile. Jared’s doubles game was impeccable, “Clayborn Everly from the *Columbia Law Journal*, argues in 1994:

*The notion, usually attributed to Hobbes, that absent laws people revert to animalistic blood-letting, is a trope for use in the most cynical sort of debate. The use of “chaos” as a rhetorical tactic seldom encourages deep introspection into the nature of human drives, instead it aims to induce panic and demand acquiescence in the face of the sociocultural order.*

Half the class turned in their seats. So many big eyes, and tentative grins. Mouths like sea caves. Berlinski was at a loss. He’d never encountered anything like this before. “That’s not true,” his shoes clunked sluggishly on the hardwood stage, “Chaos is a real threat. The state of nature is a constant.”

“Where’s your evidence?” Jared wore a locked jaw, and eyes slowly crossing, “I cited my sources. Where are yours?” He folded an elbow behind his head, scratching his back, as if about to step high and release an overhead smash in the full tonal sweetspot.

Our Professor was cold-eyed, “I **am** my own source.” The ball blew the racquet out of his hand. He stood blinking.

After lecture, Jared asked Berlinski to sign his add/drop card. He was dropping the class. “Yes, I think that’s for the best,” Berlinski cinched the corners of his lips toward the outer edges of his eyes like a smile in severe traction.

We trekked toward the Tresidder Student Union. On the walls of the Union, among obtuse varieties of art were two enlarged pages from the *San Francisco Chronicle*, “Champs Meet the Chief,” May 10, 1991,

*President Bush meets with Taylor McBride and Daniel Pipinaught and other members of the Stanford University National Champion Debate Team Thursday during a ceremony at the Roosevelt Room at the White House. Senator Allan Cranston*

*of California and Stanford President Donald Kennedy also attended. Pipinaught of San Mateo gave Bush a Stanford sweatshirt... "I don't hate George Bush. I think he sincerely has no idea what kind of negative impact he has on he world," said Pipinaught 22, part of the two person team that won the individual team championship. "I do respect the office," he added, "So in a detached kind of way it was a thrill to meet the office." The school also won the overall national title defeating U.C.L.A. last month in Bellingham Washington.*

Those monstrous plaques hung heavily on the wall for me, for most of the Stanford Debate Team I imagined. McBride and Pipinaught were legends.

Jared said solemnly, "This wall will soon be ours."

"You're certain."

"Oh, I'm certain. We have a secret weapon."

Jared and I grabbed some coffee and sat in a big frumpy yellow couch against the windowed wall. It was like slumming in the seventies except the Co Ho, short for the Coffee House, was shackled like an old western cantina, and U2 played "War" then "End of the World", on the jukebox.

"That was very cool," I said, "when you slipped me the card and I put the pimp on."

"Yeah, hommie choked on the serious cock-block," Jared imitated inner-city youth, "You better drop that class Elric, or he's gonna spend the rest of the quarter getting even, and you're gonna have to haul around a dolly of backfiles just to keep up."

"I almost felt sorry for him," I stirred the colors floating on the coffee.

"Don't. He's a bad trip, charged with sexual harassment four times."

"Wow."

"Each time there was insufficient evidence. He argued it was circumstantial and they bought it each time. He's good," Jared nodded in the kind of admiration you have for your very best enemies.

"Maybe he's innocent. That's the rule of law you know, assume innocence."

“Maybe,” Jared laughed like air, “Unlucky bastard and innocent. I don’t know. I think he’s a fuckin’ prick, okay? I’d just assume he’s guilty and lucky if it’s all the same with you.”

“Well, he wasn’t lucky today.”

“Cock-block,” he reiterated, “Well, he made me itch at any rate. The weirdest thing!”

“**Yeah**,” I nodded and rolled my eyes.

“I’ve always been a **little** itchy.”

“Have you seen a dermatologist?”

“Yeah. She says she can’t find anything. She gave me some Elocon anyway. I personally suspect it’s a matter of balance. I think I’m out of balance.”

“And that’s why you’re itchy?”

“Yeah, maybe. The only time I feel even half-way balanced is when we’re debating and we’re kicking the living crap out of some top seed, like Cornish and Wiezen, remember at the Heart of America? Right, like that. I felt amazing and not itchy at all.”

“We’re going to take Nationals, aren’t we?”

“We’re taking Nationals buddy,” a loud clap smacked through the Coffee House as our palms high fived above Bono’s prophesy for the end of the world.