

# THE FREE MAN AND FREE GOVERNMENT IN POLITICAL PHILOSOPHY

by

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*The Sabbath was made for man, and not man for the Sabbath.*

*Mark 2:27*

Liberal modern constitutionalism on the Anglo-American pattern posits free men as citizens and free governments resting on consent of the governed. This magnification of the individual human person in his political capacity is both commonplace and unique—commonplace to our thinking and unique in world experience. My purpose here is briefly to explore the depth of meaning inherent in these political symbols and its theoretical grounding. To that end I shall consider the anthropology of liberty and something of its institutional manifestations. This will involve a certain amount of archeology but my intention is to recall intimations of the living truth of our core convictions and their infrastructure as they coalesced in the Founding and discern some hints as to their meanings. At the center of it all, viewed from philosophy and from revelation, stands the individual person living in the presence of divine Reality. How is this to be understood?

**1. A constitutional preamble.** To begin in the middle—i.e. with the political and constitutional layer of metaxic reality—there is the *liber homo* of Magna Carta, a primary beneficiary of some of the key provisions of that most celebrated constitutional

document. Most famously there is cap. 29:

No Free-man [*Nullus liber homo*] shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in anyway destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land [*per legem terre*].—To none will we sell, to none will we deny, to none will we delay right or justice.<sup>1</sup>

We can rightly join Sir Edward Coke in seeing this, from his perspective in the seventeenth century, and related passages of Magna Carta as forming the cornerstone of individual liberty in the Anglo-American constitutional tradition of rule of law with jury trial as an essential validating and enforcement mechanism. These developments were evident already in the fourteenth century through parliamentary enactment of six laws between 1331 and 1368 that interpreted “lawful judgment of peers” to mean trial by jury, the phrase “law of the land” to mean “due process of law,” and by expansion of “no free man” to include all men *equally* by first rendering it “no man” and then “no man of whatever estate or condition he may be.”<sup>2</sup> In the habit of the common law mind all of this, and the Great Charter itself, was seen as confirmation of immemorial law and not innovation, in unchanging effect since the memory of man runneth not to the contrary as Sir John Fortescue quaintly said and Coke repeated. In the 1460s Fortescue, Lord Chief Justice and briefly Chancellor of England elaborates the constitutional implications for a mixed monarchy that he calls *regimen politicum et regale*, a political and royal regime,

one that secures liberty under law by parliamentary restraint of the monarch. English laws, Fortescue never tires of insisting, are based on consent, in contrast to the *lex regia* of the civil law of France, by which whatever pleases the prince has the force of law and, consequently, where tyranny masquerades as monarchy. English laws guarantee liberty along with an array of individual rights very much the same as those claimed 300 years later in the American Declaration of Independence and assured by the Bill of Rights of 1791. Echoing Magna Carta Fortescue mentions jury trial, a required plurality of witnesses, security against billeting troops in private houses, payment for lodging them in public establishments, security of private property against arbitrary invasion or taking, no legal use of torture to extract confessions, no taxation or changing of the law except with parliamentary assent.<sup>3</sup> The common lawyer's devotion to immemoriality and appeal to the past as precedent (*stare decisis*) thereby to fashion a historical jurisprudence is transformed before our eyes, as it were, into a natural law jurisprudence that Englishes that of Fortescue's master, St. Thomas Aquinas. The mixed republic of the ancient Israelites that he so admired is declared by Fortescue to be the very model for the English monarchy itself.<sup>4</sup> Centuries later, Lord Acton enthusiastically recognized Aquinas as the first Whig for his part in this discovery as it embraced mixed monarchy like that in England as the best *practicable* form of government.<sup>5</sup>

However that may be, what we familiarly call "free government" itself was theorized in the process, became a living force in the land in the turbulent passage from Tudor rule to Glorious Revolution, and taught Englishmen in America the lessons of

liberty under law they put to the test in the Founding. John Locke had reminded readers of the noble principle of the *consent* essential to free government as laid down by the Judicious Hooker and taken to heart in America: “Laws they are not which public approbation hath not made so.”<sup>6</sup> The Barons at Runnymede had sought a restoration of their *property* and insisted that scutages and aids could only be levied by *consent* to be given by mustering in that pre-parliamentary era all the tenants-in-chief of the Crown—but this was by then already customary practice.<sup>7</sup> Edmund Burke would later say that *liberty* is no abstract thing but “inheres in some sensible object.” In England it had always related to taxing, and he recognized the authentic genealogy in the colonists’ plea for “no taxation without representation.”<sup>8</sup> Americans accepted from Fortescue and elsewhere the blend of common law constitutionalism and natural law teaching some thought inimical to it: Liberty was instilled into human nature by the hand of the Creator Himself, he taught.<sup>9</sup> The laws of nature and nature’s God thus implied not merely *duties* but correlative inalienable *rights* as well, and with them came a stubborn vision of free men living in brotherhood under free government as thereby according with divine Providence.<sup>10</sup> Constitutionally and legally, it was said, under such a regime it was far better that twenty guilty men go free than for one innocent man to be punished wrongly. The blend of Coke, Locke, and natural law can be seen as the debate in America intensified after passage of the Declaratory Act with John Adams claiming: “Rights antecedent to all earthly government—Rights that cannot be repealed or restrained by human laws—Rights derived from the great Legislator of the universe.... British liberties

are not the grants of princes or parliaments, but original rights, conditions of original contracts...coeval with governments.” And elsewhere it was asserted: “that it is an essential, unalterable right, in nature, engrafted into the British constitution, as a fundamental law, and ever held sacred and irrevocable....that what a man has honestly acquired is absolutely his own, which he may freely give, but [which] cannot be taken from him without his consent.”<sup>11</sup> George Washington at the First Continental Congress in 1774 did not need to consult Locke to express his resolve never to submit “to the loss of those valuable rights and privileges, which are essential to the happiness of every free State, and without which life, liberty, and property are rendered totally insecure.”<sup>12</sup> This was the common sense of the subject.

**2. Libretto and Music.** The experiential and theoretical grounding of free government as institutionalized in our constitutional order lies in historical tradition and long political practice as shaped especially by Hellenic noesis (much of it mediated by Cicero) and biblical revelation, i.e., by philosophy and Christianity. Thus, Sir Lewis Namier contends that “what matters most about political ideas is the underlying emotions, the music to which the ideas are mere libretto, often of very inferior quality.”<sup>13</sup> We may have just been hearing noble strains of this music, and something like it also is evidenced in Patrick Henry’s famous cry, “Give me liberty or give me death!”—plainly no syllogism. But the partition is artificial and all dichotomies suspect. The analytical and doctrinal abstractions arising from noetic insight and pneumatic vision can be discerned as a kind of Cliff Notes post-mortem autopsy of human experience. But, of

themselves, they have little vitality or persistence when cut off from the engendering living truth they coolly articulate, anymore than does the technical notation of the score give you the composer's melody. Again, we are in the middle, the pre-eminently human *metaxy* or In-Between reality of experience standing astride the thing itself taken to be cognizable and true and our symbolic representations of it in words, images, definitions and assorted tools of knowing. From the perspective of human affairs it is consciousness that does this work, viz., the concrete consciousness of some individual person—a Plato, Augustine, or Aquinas, for instance, and bids us to look and see if this is not the case. The In-Between (*metaxy*) as the participatory sphere of human striving in politics is itself such a experience-symbol, representing the before and after of reflection, the birth and death of the individual's life span, the beginning and end of creation and within that expanse of unfolding history, the height and depth of the cosmos, from the mysterious *apeiron* or unbounded of Anaximander to the articulate Nous as the Third God in Plato, for instance (*Laws* 712e-714a). The institutional residue of a mature political tradition forming the habits of liberty and justice in a citizenry, and preserving it through routine operations of government, is the prudential triumph of the music of man's experience of order in reality.

This flotsam and jetsam of the contemplative lives of individual human beings—the spiritual virtuosi of millennial stature, who illumine mankind's understanding of our common reality—includes also representations of political existence in terms of the individual human person. The *polis is MAN* writ large, Socrates playfully taught. The

model of the polity is the psyche of the individual human being, its order and disorders that of the souls of its citizenry, the constitution the soul of society, the soul the constitution of the man, and so on. This is called the anthropological principle, elaborated by the old Greeks as an enduring primary interpretive insight into the structure of political reality. Side by side with this comes the obvious question: But whatever is a Man? He is the self-reflective part of being, In-Between reality bridging the distance from the animals to God and partaking of both in a most disconcerting and inconvenient manner. Kierkegaard's dour comment comes to mind: Man is created a little lower than the angels, yet more often than not lives like his dog. Thus man, despite all mutilations and waywardness, is ineluctably *theomorphic*. He must have a true theology before he can have a true account of himself or be condemned by his own obtuseness or rebelliousness to live a lie, Plato argued—the *alethes pseudos* or True Lie as Socrates called the ignorance of the soul about being.<sup>14</sup>

Analytically the old Greeks, as you remember, elaborated a tripartite model of the soul—reason, passions and something in between these difficult to discern and called spiritedness or heart (*thymos*), the ally of hegemonic reason in constraining obstreperous passion or the appetites and helping to govern it in individual conduct, so that we do the right thing even when tempted to act unjustly or lustfully. The virtuous or good man manifested wisdom, courage and temperance in a stable equilibrium oriented toward the transcendent Good and, thereby, was said to be just in himself. The vision of *Agathon* or infinite Good beyond being experientially forms the soul of the spiritually responsive

person so that participation in the divine animates his life and enlivens the derivative lesser goods or personal excellences identified as various virtues—of which Aristotle made a lengthy catalog for our guidance. He forever stressed that not knowing but *doing* is the core of prudential science, that we know the philosopher or mature or prudential man (*spoudaios* or *phronimos*) through exemplification rather than definition—the incarnation of goodness as *arete* or excellence as the fulfillment of human potential in actual life. Such a life of mind, character and existence will be happy, and if graced by the divine Reality blessed (*makarios*), discernible in the contemplative’s life of questing openness partaking of the divine as a process of immortalizing (*athanatizein*) whose happiness rises far above that attained through the other excellences of character and mind.<sup>15</sup> Philosophy itself may then be emblemized as the imitation of Socrates, just as Christianity is the imitation of Christ. With the intervention of *revelation* the love of wisdom exemplary in antiquity takes on new meaning to become the questing soul’s *fides quaerens intellectum* or faith in search of understanding in Anselm of Canterbury (d. 1109), the founder of medieval Christian philosophy.<sup>16</sup> Once you are in possession of revelation, Gilson writes, “how can you possibly philosophize as though you never heard of it?”<sup>17</sup> The question remains.

All of these processes lie within the existential sphere of the *individual* human being concretely considered to be the pre-eminent human reality, a view taken also by Thomas Aquinas.<sup>18</sup> So far from being a merely mortal or a Lockean possessive individual, or much less a Marxian nodal point gathering in the sum total of social

relationships, the human person's distinction is that he partakes of immortality and is "capable of God."<sup>19</sup> He finds his perfection (happiness, felicity, beatitude) in communion with the divine Reality in which he participates and is constantly formed and nurtured. Not merely is the materialist reduction rejected, but *spiritual* individualism persuasively emerges as the true human *differentia specifica* and the crown of personal openness to the ineffable transcendent. The Christian vision of sojourner man as potentially *imago Dei* augments the Greek philosophical analysis. Augustine's trinitarian anthropology elaborates the insight in a memorable passage:

We indeed recognize in ourselves the image of God...[one which] is yet nearer to Him in nature than any other of His works, and is destined to be yet restored, that it may bear a still closer resemblance. For we both are and know that we are, and delight in our being, and our knowledge of it...I am most certain that I am, and that I know and delight in this....For, as I know that I am, so I know this also, that I know. And when I love these two things I add to them a certain third thing, namely, my love, which is of equal moment....Further, as there is no one who does not wish to be happy, so there is no one who does not wish to be. For how can he be happy, if he is nothing?<sup>20</sup>

Faith and reason thus experientially fashion a mutually reinforcing texture supporting man's—every man's—differentiated tensional existence under divine presence and our understanding of the human condition itself. These classical and Christian perspectives on human existence were familiar and fully propagated in mid-18<sup>th</sup> century America

through the sermons attended by the generality of the population and in the colleges attended by those destined for leadership in the country. The revivals, in effect, moved personal meditation and prayer from the internal forum to the open public forums of congregations and assemblies in the streets and fields. There auditors were exhorted to move by individual decision and continual perseverance from ruin to restoration—as Augustine had sketched the dynamic of human destiny—going on to perfection as New Men by accepting the call of Christ’s saving grace through faith.<sup>21</sup> While the golden age of the classics reigned in academe, the Bible was the university of the general populace.<sup>22</sup> One scholar even concludes that America was a nation with the soul of a church.<sup>23</sup>

**3. The captain of my ship.** There remains in all of this an untidy ambiguity to be addressed if not resolved. The rugged individualist imagines himself to be the captain of his ship and the master of his fate. True to a point, taken absolutely this becomes egophany and narcissistic rebellion against the divine ground as understood in both philosophy and faith.<sup>24</sup> For all of his grandeur and nobility, the individual human being’s dignity is limited by his place in the hierarchy of being, in the comprehending reality of which he is uniquely a self-reflective participant. The limitation is signaled in many ways—by his ineluctable mortality emphatically, and symbolized as well in the Creator-creaturely relationship announced to all in the Declaration of Independence and in Locke’s insistence that we are not wholly our own property but also God’s—as Genesis originally said and Aquinas affirmed.<sup>25</sup> The “autonomous Man” claim (positivist, Marxian, Nietzschean, fascist or liberal) is a libidinous deformation of the truth of being

and fallacious occlusion of reality, the *hubris* of antiquity and very *superbia vitae* that animates the contemporary rebellion of ideologues of all stripes. It implies or directly asserts the death of God. The egophanic rebellion itself, despite its pretensions to the contrary, can only be propagated through the very destruction of personhood, of man in the name of man with which we are painfully familiar. The reduction of human beings to atomized individuals bereft of attachment to God or love of their fellow men thereby makes of them suitable material for the building of socialism or for effectuating the Nazi utopia (Arendt), or other mass movements fulfilling the totalitarian impulse.<sup>26</sup> The true rugged individual of our tradition and ontology, on the other hand, is anchored in commonsense reality while, at the same time, acknowledging his own human *inability* as nobility enough for a person engaged in the divine-human collaboration whereby the ineffable becomes effable in biography, history, and human affairs, an intimation of divine Providence. Thus, he serves—each on his own in a unique way—as an under-workman in the vineyard of liberty, as John Adams remarked. This was glory enough even for that crusty old Argonaut, on his journey through time in partnership with God with his resolute band of brothers.

This implies a further limitation of the individual which is at the same time also a liberation: he is naturally political, to accept Aristotle's argument—and to qualify the textbook account of Locke's—, and by reason of his moral sense lives in communities grounded in agreement about good and evil, right and wrong, justice and injustice.

Whether this *moral sense* (the Greek *storgé*) is merely natural or is “infused” into the

soul by God was part of the heated debate between Francis Hutcheson and Jonathan Edwards as well as Wesley and Witherspoon, but its presence and centrality as a defining human trait were acknowledged on both sides.<sup>27</sup> It provides the foundation of association and free government in *homonoiia*, whereby persuasion can succeed at least some of the time in fostering agreement to rational policy and just law—thus allowing God and reason alone to rule through consent, to the extent that may be practicable in fractious human affairs. The person is freest when he serves truth and justice and is not enslaved to error or vice, our sources persuasively argue. The possibility of a government of laws and not men implied such an anthropology when Aristotle first elaborated it. That same anthropology was woven into the fabric of the Constitution by the Founders in pitting the reason of the law against the passion of the human governors by incorporating institutional self-equilibrating checks and balances into the operational process. They thereby sought to foster liberty and just dominion grounded in consent—beginning from the sober assumption that government is itself the greatest of all reflections on human nature, a true masterstroke.<sup>28</sup>

**4. The politics of aspiration.** The notions of free and responsible individuals and of *liberty* as the cardinal good underlying free government and the market economy has to be contextualized roughly along lines I have indicated to be fully persuasive representations of the Founders’ consensus. Ours is a politics of *aspiration*—it is devoted to “the pursuit of happiness”—by inheritance, tradition, and rational conviction. Self-love and love of God are not in Manichaeian (Gnostic) opposition to one another or they could

never have been brought together to form the Great Commandment and its corollary, a delicate matter to be sure.<sup>29</sup> This is more than merely an Anglo-American prejudice, and we need to remind ourselves that the universal appears only in particulars as their exemplifications. The broil of scorched earth interest-based politics and raw self-centered ethics may serve the material well-being of free societies, but—vital as they are for securing economic vigor and the free market against the radical collectivizers and secularizers of our time—, there is more. They *alone* do not and cannot suffice for the politics of aspiration central to our institutions and their ultimate foundations. They have been and must be held in check by our abiding theoretical principles, habits, and institutions expressive of a sound anthropology or “true map of man” as John Adams called it.<sup>30</sup>

What then? Aspiration to what? *Good*. This less than startling answer is the one offered since Plato, one amplified and democratized over the millennia. It forms the core of our own civilization and remains the enduring center of personal, historical, and ontological order. Infatuated with novelty as we are, I wish the truth seemed less tedious and the answer about it less predictable. But perhaps unoriginality is the mark of truth in human affairs? In any event, this answer best accommodates the politics of free men and free governments open to creativity and human flourishing. As John Dickinson insisted in the Federal Convention, “Experience must be our only guide. Reason may mislead us.” The foundation is judgment informed by common sense.<sup>31</sup>

From his perspective in the same century with which we began, that of *Magna*

*Carta*, Thomas Aquinas theorized the ancient Greek insight that all things aim at the Good as the foundation of moral natural law and politics. This is the self-evident first principle of practical reason he said. It is arguably still self-evident, if anything is, even in our own discordant age. The logic is driven by its empirical appeal to reflective experience: Look and see if this is not the case, Thomas in effect asks. It is *love* (as inclination) that drives the analysis guided by reason—for ourselves and self-preservation most immediately, then for propagation of children, their education and familial well-being, and lastly for what is most properly human, viz. knowledge of the truth about God (*summum bonum*) and the terms of living together in discrete polities.<sup>32</sup> The ontological and axiological ascent brings to mind the insight of the meditatives and mystics—themselves spiritual individualists—that all love is a love of God, even when most unaware of itself.<sup>33</sup> These glories largely lie beyond our immediate concerns here, although never entirely: the biological man is also the economic, political, intellectual, and spiritual man simultaneously in every instance and every moment of life.<sup>34</sup> It is important to notice that the experiential orientation disclosed by the First Epistle of John, chapter four, which proclaims that “God is love” and that “we love Him because He first loved us” (verses 8 and 19) underlies much that is centrally relevant and immediately intelligible to any Bible reader. These readers included most of the population of America at the time of the Founding, especially when the matter is considered against the backdrop of the Great Awakening and its enduring effects.<sup>35</sup> It also had inspired the great philosophy of man elaborated by Aquinas in terms of *fides caritate formata* as grounded in *amicitia*, which is

arguably the culmination of Scholastic philosophy.<sup>36</sup> A comparable understanding of spiritual reality cannot be discounted as foreign to leading Protestant Americans and the evangelists of our time period (such as Jonathan Edwards, Ezra Stiles, John Witherspoon, and John Wesley's Methodist missionaries), as I have attempted to show more fully elsewhere.<sup>37</sup>

However: to be stressed at the same time is the fact that the human pilgrimage is lived in the In-Between or metaxic reality where politics and economics necessarily and rightly command great attention. The pursuit of lesser goods than the transcendent Good need not involve the stark contrast originally envisaged by Augustine—the British moral and common sense philosophers have persuasively argued. *Amor habendi* turns out to have a silver lining after all. As the sage Josh Billings neatly summarized things, “Most of the happiness in this world consists of possessing what others can't get.” Private property, long experience convinces us, is central to human liberty and personal fulfillment in our tradition, as was clear in Magna Carta, in Burke's insistence on tangibility, and as Aristotle insisted against Socrates in the *Politics* when he said: “There are two motives that most cause men to care for things and be fond of them, the sense of ownership and the sense of preciousness;...[T]o feel that a thing is one's private property makes an inexpressibly great difference in one's pleasure; for the universal feeling of love for oneself is surely not purposeless but a natural instinct.”<sup>38</sup> Moreover human *dominion* over the earth as showing man's political nature and vocation is tied to property and its sanctity—and to the individual bearing his own arms as the mark of a free man—in limiting

government's reach, the Founders vociferously argued. To add John Witherspoon's voice, that of the most influential professor in American history : "If we take tradition or Revelation for our guide, the matter is plain, that God made man lord of the works of his hands, and puts under him all the other creatures.... Private property is every particular person's having a confessed and exclusive right to a certain portion of the goods which serve for the support and conveniency of life." "There is not a single instance in history in which civil liberty was lost, and religious liberty preserved entire. If therefore we yield up our temporal property, we at the same time deliver the conscience into bondage."<sup>39</sup> From this influential perspective, self-love is ameliorated by benevolence in every human breast (whether naturally or by divine infusion), the energetic competition for scarce goods including honors and wealth among free men yields not merely individual prosperity but inadvertently also serves the common good of the whole of society—"the greatest happiness for the greatest numbers."<sup>40</sup> Passionate competitive, even tumultuous, conflict among individuals and groups seems subtly guided by Jupiter's "invisible hand" in the guise of Providential purpose, further evidence of the inscrutable role of divine grace in human affairs, one more mysterious illustration of *felix culpa*.<sup>41</sup> And thereby did God and Mammon finally sweetly kiss in America. Worldly success thus betokens divine favor and, seen soteriologically, is perhaps a cheerful augury strengthening hope for election.

**5. Conversion, Homonoia, and Salus populi.** We now must briefly consider these key issues, however inadequately. Alexis de Tocqueville grappled with related problems in studying the place of religion in American life in the 1830s and in seeking to

explain individualism and self-interest rightly understood. In addition to the happy relation between making money and serving God he thought so striking, what he found “unprecedented” was the spectacle of a society converted to the truth of the transcendent Good apparently reserved by the classic philosophers for the few. As one scholar has recently observed:

America, from that view, is evidence that the Christians are right and the classical philosophers wrong about the human soul: Most human beings do not live trapped in some political “cave” oblivious to the truth...the Americans all display the spiritual restlessness that the aristocrats believed was possible for only a few.

Tocqueville writes “it was necessary that Jesus Christ come to earth to make it understood that members of the human species are naturally alike and equal.” And that’s because “The most profound and vast geniuses of Rome and Greece were never able to arrive at [that] idea.”<sup>42</sup>

The comparability or *equivalence* of the turn of the individual man from error (ignorance, *doxa*, sin) toward transcendent truth symbolized in Plato’s *periagoge* in the Allegory of the Cave and in Christ’s *metanoia* in the Gospel, both representing crucial conversion experiences, is readily conceded.<sup>43</sup> This complex subject cannot detain us here beyond the acknowledgment, and further general agreement, that the implication of human equality is indeed more pronounced in the Christian horizon, as Tocqueville says—although it is by far not absent from Plato and Aristotle: what makes a human being is equal possession of a common nature by all such beings, whatever the scope, variety, and

degrees of actualization in individual cases and the empirical evidence of slaves by nature; the Pamphylian myth that concludes the *Republic* (614b) is the tale of everyman. But Christ came to all, not merely to some elite, is the unequivocal point.<sup>44</sup> Thus, to be stressed is that the biblical “*metanoia* is the human act of penitence *and* the divine act of salvation; it is both a human task and a divine gift.”<sup>45</sup> This divine-human collaboration is clearly recognized philosophically in Jonathan Edward’s Christian neo-Platonism and elsewhere.<sup>46</sup> And more than this, Christ is present to all human beings as their substance and indestructible dignity, the chief burden of Matthew 25:40, 45: “Inasmuch as you have done it unto one of the least of these, my brethren, you have done it unto me.” The assurance of equality and the brotherhood of man in diversity of talents is already the teaching of Plato’s Phoenician tale (myth of the metals, *Republic* 414c). That insight is amplified in the Apostle Paul’s powerful account of the divine charismata apportioned to every person by God as participants in the mystical Body of Christ (1 Cor. 12). The culmination of these differentiations of equality under the dispensation of grace comes with the glorious understanding of each faithful man as priest and king (1 Peter 2:9; Rev. 1:6).

The character of the political community freely binding together individual men and women by consent and the necessity that unites them may be noticed. If we begin from *homonoia* (“concord”) as Aristotle termed<sup>47</sup> the fundamental intellectual and spiritual consensus distinctive to human beings when organized into the *political* communities natural to them—a notion akin to the New

Testament *isopsuchos* (translated as “like-minded” in KJV, e.g. Rom. 15:5)—, we find articulate identification of the core American unity from leading figures at the time of the Founding. Thus, in *Federalist No. 2* Publius (John Jay) wrote: Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government...who have nobly established their general liberty and independence....as if it was the design of Providence...an inheritance so proper and convenient for a band of brethren....<sup>48</sup>

In justifying political union of this brotherhood under the Constitution, Publius (James Madison) later on appeals to the fundamental convictions of Americans: “to the great principle of self-preservation; to the transcendent law of nature and of nature’s God, which declares that the safety and happiness of society are the object at which all political institutions aim and to which all such institutions must be sacrificed.”<sup>49</sup> Publius thus invokes Aristotle, Cicero, and the over-arching principle of *salus populi*—as so often also had been done by John Selden, Sir Edward Coke and the Whigs in the 17<sup>th</sup> century constitutional debate. As Samuel Rutherford drolly phrased matters during the English civil war: “The law of the twelve tables is, *salus populi, suprema lex*. The safety of the people is the supreme and cardinal law to which all laws are to stoop.”<sup>50</sup> This was claimed as the ultimate ground of all free government and the basis for exercise of legitimate authority (not tyranny) over free men—the *liber homo* of Magna Carta and English common law.<sup>51</sup> James Madison and the other founders knew and accepted it as a

fundamental of their own arduous endeavors as an ineluctable requirement of true governance.

Decades later, John Adams in a letter to Thomas Jefferson sought to recall the principled basis undergirding America's fragile cohesion during the Revolution and wrote:

What were these *general Principles*? I answer the general Principles of Christianity, in which all those sects were united: And the *general Principles* of English and American Liberty, in which all those young Men United, and which had United all Parties in America, in Majorities sufficient to assert and maintain her Independence. Now I will avow, that I then believed, and now believe, that those general Principles of Christianity, are as eternal and immutable, as the Existence and Attributes of God; and those Principles of Liberty, are as unalterable as human Nature and our terrestrial, mundane System.<sup>52</sup>

**6. Truth and Resistance to Untruth: Conclusion.** The defiant fervor of the sentiments just remembered may be observed. Perry Miller once remarked that a cool rationalism such as Jefferson's might have declared the independence of such folk but could never have persuaded them to fight for it. This may be an injustice to Jefferson but the larger point stands. Justice and truth lay at the heart of liberty as the Founders understood it to define the American cause—a cause assimilating all philosophy and revelation taught to propel a noble enterprise, one that helped to change the world and still helps change it. Even in old age James Madison, last of the Founders, still admired the

acuity of his generation in seeing the hand of tyranny in a 3-penny tax on tea.<sup>53</sup> If philosophy can be said to have been born in resistance to untruth in Hellenic antiquity, with untruth and injustice able to crush Athens' best man by legal decree, so also does statesmanship at its best serve truth and justice in those times of crisis that try men's souls. This is the practice of politics in an intellectual cosmion where "You shall know the truth and the truth shall make you free" (John 8:32) is more than mere slogan and shibboleth but words to live by. Aristotle's virtuous life as one of no regrets is nurtured by Paul's fighting the good fight and keeping the faith. Augustine's pronouncement that "an unjust law is no law at all" resonates as we read Plato's *Apology*, and it fortifies every resistance to injustice since then, down to Martin Luther King's *Letter from Birmingham Jail* and our own civil rights revolution. As Eric Voegelin bluntly told the resplendent professorate and assembled studentry at the University of Munich, convened for his inaugural lecture there in 1958, many of whom had enjoyed promotion and prosperity from Hitler's largesse:

The spiritual disorder of our time, the civilizational crisis of which everyone so readily speaks, does not by any means have to be borne as an inevitable fate; ...on the contrary, everyone possesses the means of overcoming it in his own life.... No one is obliged to take part in the spiritual crisis of a society; on the contrary, everyone is obliged to avoid this folly and live his life in order.<sup>54</sup>

**In sum:** the individual person is free, and what he does counts in all spheres of

endeavor. Everything in the history of the world was done by somebody. Adam sinned, and we all fall short of the glory of God. While we dutifully acknowledge the collective achievement of the Founders and capitalize the word in respect, Ralph Waldo Emerson was on to something when he suggested that all history is biography. A historian friend, in a moment of unguarded lucidity, opined that without George Washington and Abraham Lincoln there would be no United States of America. Another wrote: “Had James Madison never lived, the Constitution of the United States would probably not have been written.”<sup>55</sup> Alfred North Whitehead thought the whole history of philosophy merely a footnote to Plato. And we well may wonder what would have happened to Britain and our civilization without Winston Churchill, or how there could have been a Velvet Revolution without Ronald Reagan. Surely the butcher of Bagdad would still tyrannize Iraq but for George W. Bush.

So three cheers for the free man and the liberty we cherish! As we celebrate we remember our own favorite philosophers’ considered sentiments: “Figure out what’s right and go ahead,” said Davy Crockett. “Work as though you’ll live a hundred years, pray as though you’ll die tomorrow,” Poor Richard taught. And thereby you may achieve, Mark Twain hoped, “the serenity of a Christian holding four aces.”

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## Endnotes

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1. *The Third Great Charter of Henry III, Granted A. D. 1224-1225*, in *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, ed. with an intro. by Ellis Sandoz (Columbia: University of Missouri Press, 1993), Appendix, p. 264. The text is that of caps. 39 and 40 in the original 1215 document.
  2. J. C. Holt, *Magna Carta*, 2<sup>nd</sup> ed. (Cambridge: Cambridge University Press, 1992), 10.
  3. Fortescue, *In Praise of the Laws of England, and Governance of England*, ed. Shelley Lockwood (Cambridge: Cambridge University Press, 1997), chaps. 32 and 36.
  4. *Ibid.*, 84 (*Governance*, chap. 1) and 128 (*Nature of the Law of Nature* 1.16); “Fortescue’s political thought represents to a large extent the ‘Englishing’ of Thomist theory...” Lockwood, editor’s intro., *ibid.*, xxxviii. See Ellis Sandoz, *The Politics of Truth and other Untimely Essays: The Crisis of Civic Consciousness* (Columbia: University of Missouri Press, 1999), chap. 6: “Sir John Fortescue as Political Philosopher.”
  5. John Emerich Edward Dalberg-Acton, *Selected Writings of Lord Acton, vol. 1, Essays in the History of Liberty*, by ed. J. Rufus Fears (Indianapolis: Liberty Fund, n.d.), 34
  6. Richard Hooker, *Of the Laws of Ecclesiastical Polity* 1. 1. 10, quoted by John Locke in his *Second Treatise of Government* §134.
  7. Cf. Holt, *Magna Carta*, 295-96.
  8. Edmund Burke, *Speech on Conciliation* (March 1775) in Peter J. Stanlis, ed., *Edmund Burke: Select Writings and Speeches* (Chicago, 1963), 158.
  9. Fortescue, *In Praise of the Laws of England*, chap. 42: “Freedom was instilled into human nature by God.” Cf. Sandoz, *Politics of Truth*, 103; also from the New Testament: “Where the spirit of the Lord is, there is liberty” (2 Cor. 3:17); “Stand Fast in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage” (Gal. 5:1, KJV) quoted *ibid.*, 203n28.
  10. The argument is convincingly given by the Whig martyr (1683) Algernon Sidney in *Discourses Concerning Government*. See Sandoz, *Politics of Truth*, 115-20.
  11. Quoted from Edward S. Corwin, *The “Higher Law” Background of American Constitutional Law* (1929, 1955; rpr. Indianapolis: Liberty Fund, Amagi Books, [2007]), 74-75.
  12. Quoted in *Founding Fathers: The Essential Guide to the Men Who Made America*, intro. Joseph J. Ellis, *Encyclopedia Britannica* (Hoboken, N.J.: John Wiley & Sons, Inc., 2007), 211-12.
  13. Quoted by J. C. Holt in Sandoz, ed., *Roots of Liberty*, 55.

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14. Plato, *Republic* 382a-b.
15. Aristotle, *Nicomachean Ethics* 1177b35.
16. Anselm, *Proslogion, proemium* ¶3. See Étienne Gilson, *The Spirit of Medieval Philosophy*, trans. A. H. C. Downes (New York: Charles Scribner's Sons, 1940), 5; Eric Voegelin, "Quod deus dicitur," in *Collected Works of Eric Voegelin*, vol. 12, *Published Essays 1966-1985*, ed. Ellis Sandoz (Columbia: University of Missouri Press, 1990), 386; also Robert McMahon, *Understanding the Medieval Meditative Ascent: Augustine, Anselm, Boethius, & Dante* (Washington, D. C.: Catholic University of America Press, 2006), chap. 4.
17. Gilson, *Spirit of Medieval Philosophy*, 5.
18. Thomas Aquinas, *Summa contra gentiles* 3. 2. 113: "That the rational creature is directed by God to his actions not only by an ordering of the species, but also according to what befits the individual"; trans. Vernon J. Bourke (Garden City, N. Y.: Image Books, 1956), p. 120.
19. The expression is John Wesley's: "Man is capable of God; the inferior creatures are not.... This is the specific difference between man and brute—the great gulf which they cannot pass over." Quoted from his 1782 sermon, sermon no. 60, entitled *The General Deliverance* in *The Works of John Wesley*, vol. 2, *Sermons II*, ed. Albert C. Outler (Nashville: Abingdon Press, 1984). 441. For discussion see Sandoz, *Republicanism, Religion and the Soul of America*, 18-25.
20. St. Augustine, *City of God* 11.26, trans. Marcus Dods, intro. Thomas Merton (New York: Modern Library, Random House Pubs., 1950), 370-71. The affinity with Descartes' *cogito* may be observed.
21. Matthew 5:48; Ephesians 4:22-24.
22. Meyer Reinhold, *Classica Americana: The Greek and Roman Heritage in the United States* (Detroit: Wayne State University Press, 1984), 95; see Sandoz, *A Government of Laws*, chaps. 3 and 4; Sandoz, *Republicanism, Religion and the Soul of America*, chaps. 1 and 3 and the sources cited therein; also more generally Ellis Sandoz, *Political Sermons of the American Founding Era*, 2 vols., 2<sup>nd</sup> edn. (1991; Indianapolis: Liberty Fund, Inc., 1998), *passim*.
23. Sidney E. Mead, "The Nation with the Soul of a Church," *Church History* 36 (1967): 262-83.
24. On egophanic revolt see Eric Voegelin, *Order and History*, vol. 4, *The Ecumenic Age* (1974), chap. 5, §2.
25. John Locke, *Second Treatise of Government*, §6; Thomas Aquinas, *Summa theologiae* I-II, q. 94. a. 5.
26. The classic study is Hannah Arendt, *Origins of Totalitarianism* (New York: Harcourt, Brace & Co., 1951) who describes atomistic mass individualism in terms of "the radical loss of self-interest" and "the passionate inclination toward the most abstract notions as guides for life, the

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general contempt for even the most obvious rules of common sense” (310).

27. See the discussion in Sandoz, *Republicanism, Religion and the soul of America*, 27.

28. Aristotle, *Politics* 3.11.3-5 1287a20-35; *Federalist No. 51*. In Cicero’s summation, “We are all the laws slaves that we may be free” (*Pro. A. Cluentio Oratio* 53, 146).

29. See Matthew 22:37-39: “On these two commandments hang all the law and the prophets” (22:40). Also the *shema* of Israel and its corollary (Deuteronomy 6:5; Leviticus 19:18). On the politics of aspiration of the open soul and open society see Henri Bergson, *Two Sources of Morality and Religion*, trans. R. A. Audra and C. Brereton (New York: Henry Holt Pubs., 1935), 255-57 and *passim*.

30. See the discussion in Ellis Sandoz, *Republicanism, Religion and the Soul of America* (Columbia: University of Missouri Press, 2006), chap. 1, §8, pp. 47-52; rpr. in *Regent University Law Review* 20:1 (2007-2008) 57, 95-100.

31. In Max Farrand, ed., *Records of the Federal Convention of 1787*, 4 vols. (1911, rev. ed 1937; rpr. New Haven: Yale University Press, 1966), 2:278.

32. See Thomas Aquinas, *Summa Theologiae* I-II Q.94 a.2.: “Now as ‘being’ is the first thing that falls under the apprehension simply, so ‘good’ is the first thing that falls under the apprehension of the practical reason, which is directed to action, since every agent acts for an end under the aspect of good. Consequently the first principle in the practical reason is one founded on the notion of good, viz., that *good is that which all things seek after*. Hence this is the first precept of law, that *good is to be done and ensued, and evil is to be avoided*. All other precepts of the natural law are based upon this....” Quoted from Dino Bigongiari, ed., *The Political Ideas of St. Thomas Aquinas* (New York: Hafner Pub. Co., 1969), 45. Italics as in the original. Cf. Richard Hooker’s summary version in *Of the Laws of Ecclesiastical Polity [1593]*, 1.5.1-3, Cambridge Texts in the History of Political Thought, ed. Arthur S. McGrade (Cambridge: Cambridge University Press, 1989), 66-67.

33. Cf. Gilson, *Spirit of Medieval Philosophy*, chap. 14, esp. pp. 289-303: “St. Bernard makes no distinction between *amor* and *cupiditas*. He follows a classical terminology, St. Augustine’s namely, for whom cupidity is merely love itself in its aspiration to the object loved” (293n\*). “The soul’s substance is indestructible.... Charity begins the work of restoration; ecstasy realizes it as far as it can be realized in this life; it is consummated in the beatific vision.... [C]harity is not merely the soul’s love for a being that loves it in return, but its love for the very substance of love, the end beyond which no other end exists” (300-301). See the related discussion in Colin Morris, *The Discovery of the Individual 1050-1200* (New York: Harper & Row, Pubs., 1972), 156-62; Morris writes regarding Bernard of Clairvaux’s account of Union in the mystical ascent: “In the spiritual marriage, then, the individual retains his identity. It is the fulfillment, not the annihilation, of the self, and Bernard....was prepared to speak with remarkable boldness about the continuance of the human will and personality. It is scarcely too much to say that the fulfillment of man is, in the last resort, the fulfillment of the believer’s self, which discovers its true identity

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in a unity of wills with God...the individual is the true beginning and end of [Bernard's] system of thought" (ibid., 157). See also Louis Dumont, "A Modified View of Our Origins: The Christian Beginnings of Modern Individualism," *Religion* 12 (1982): 1-27; and Robert Bellah et al., "Responses to Louis Dumont's 'A Modified View...'" *ibid.*, 83-91.

34. This is the insight of Aristotle's analysis of the composite or synthetic nature of man in the first book of the *Nicomachean Ethics*. George Santayana drew the lesson with his observation that biologically we are all born and remain proletarians. Santayana, *Dominations and Powers: Reflections on Liberty, Society, and Government*, intro. John McCormick (1951; rev. ed. New Brunswick, N. J.: Transaction Pubs., 1995), 455.

35. See Sandoz, *Republicanism, Religion and the Soul of America*, §§4 and 5, pp. 15-37; also Ellis Sandoz, "Religion and the American Founding," *Regent University Law Review* 20:1 (2007-2008): 17-30.

36. Thomas Aquinas, *Summa contra gentiles* 3. 2. 91, and 149-53. Thus, quoting John 15:5: "without Me you can do nothing;" Lamentations 5:21: "'Convert us, O Lord, to Thee, and we shall be converted.' From which it is clear that our conversion to God is preceded by God's help which converts us"; and Ephesians 2:8: "by grace you are saved through faith; and that not of yourself, for it is a gift of God." And Thomas explains: "By grace man is so established as a lover of God, through the love of charity, that he is also instructed by faith that he is first loved by God...1 John (4:10): 'In this is charity: not as though we had loved God, but because He hath first loved us.'" quoted from Image books edition, Bourke translation, pp. 229, 237, 238.

37. Cf. Sandoz, *Republicanism, Religion and the Soul of America*, *passim*; also, "Religion and the American Founding," and sources cited therein.

38. Aristotle, *Politics* 1262b22-25, 1263b1-4, trans. H. Rackham.

39. Witherspoon quoted with pertinent citations in Sandoz, *A Government of Laws*, 214.

40. Hutcheson quoted by the editors in Adam Smith, *The Theory of Moral Sentiments*, ed. D. D. Raphael and A. L. Macfie (1976; rpr. Indianapolis: Liberty Fund, Inc., 1982), 12.

41. *Ibid.*, 184-85; Witherspoon's theodicy (which is indebted to Leibniz) is expressed in his famous sermon, *Dominion of Providence over the Passions of Men [1776]* in Sandoz, *Political Sermons of the American Founding Era*, 529-58. For the "invisible hand" in politics as seen by George Washington and James Madison see Washington's *First Inaugural Address* as quoted in Sandoz, *A Government of Laws*, 186-89.

42. Kenneth L. Deutsch and Joseph R. Fornieri, *An Invitation to Political Thought* (Belmont, CA: Thomson-Wadsworth, 2009 [*sic*]), 413 incorporating n31, quoting Tocqueville from *Democracy in America* 2, 1, 3. See Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer, trans. George Lawrence, 2 vols. in 1 (Garden City, N.Y.: Doubleday & Co., Anchor Books, 1969), 439; "it is often difficult to be sure when listening to [American preachers] whether the main object of religion is to procure eternal felicity in the next world or prosperity in this" (*ibid.*, 530); "I should

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be surprised if, among a people uniquely preoccupied with prosperity, mysticism did not soon make progress” (ibid., 535). See also Sandoz, *Republicanism, Religion and the Soul of America*, 50.

43. See Plato, *Republic* 515-19; Matthew 4:17; Mark 1:15; Hebrews 6:4-6.

44. Thus: “I am the door: by me if any man enter in, he shall be saved.... I am come that they might have life, and that they might have *it* more abundantly” (John 10:9-10.)

45. Stefan Rossbach, *Gnostic Wars: The Cold War in the Context of Western Spirituality* (Edinburgh: University of Edinburgh Press, 1999), 41 (italics as in original). See John 6:40, 44.

46. Particularly *The Nature of True Virtue*, written in 1755 and published posthumously in 1765; see discussion and citations in Sandoz, *Republicanism, Religion and the Soul of America*, esp. 28-37.

47. “Concord [*homonoia*] ... mean[s] friendship between citizens.... Now concord in this sense exists between good men, since these are of *one mind* both with themselves and with one another, as they always stand more or less on the same ground....” Aristotle, *Nicomachean Ethics* 9.6.2-3 1167b3-9, trans. H. Rackham, Loeb Classical Library (Cambridge, Mass.: Harvard University Press, 1975), 542-43. Italics added.

48. *Federalist No. 2* in *The Federalist Papers*, ed. Clinton Rossiter (New York: New American Library, n.d.), 38.

49. *Federalist No. 43*, *ibid.*, 279.

50. Rev. Samuel Rutherford, *Lex, Rex, or The Law and the Prince; A Dispute for the Just Prerogative of King and People...in Forty-Four Questions* (1644; rpr. Harrisonburg, Va., Sprinkle Publications, 1982), Q. 25, p. 119. See Cicero, *De legibus* 3.3.8, trans. C. W. Keyes, Loeb Classical Library (Cambridge, Mass.: Harvard University Press, 1928), 466-67.

51. See §1 herein. For discussion see Sandoz, *A Government of Laws*, 116-118, 174, 197, 227. On “free man” in Magna Carta see Holt, *Magna Carta*, 2<sup>nd</sup> ed., 9-11 and *passim*.

52. John Adams to Thomas Jefferson, June 28, 1813, in *The Adams-Jefferson Letters: The Complete Correspondence...*, ed. Lester J. Cappon, 2 vols. in 1 (1959; rpr. New York: Simon and Schuster, 1971), 2:339-40. For discussion see Ellis Sandoz, *The Politics of Truth and Other Untimely Essays: The Crisis of Civic Consciousness* (Columbia: University of Missouri Press, 1999), 67-69.

53. “The people of the U.S. owe their Independence & their liberty, to the wisdom of desecrating in the minute tax of 3 pence on tea, the magnitude of the evil comprised in the precedent.” James Madison from his “Detached Memoranda” quoted with citation in Sandoz, *A Government of Laws*, 157.

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54. Eric Voegelin, *Science, Politics and Gnosticism*, trans. William J. Fitzpatrick, intro. Ellis Sandoz (1959; trans. 1968; rpr. Wilmington, Del.: ISI Books, 2004), 17.

55. Jack N. Rakove, *Beginnings of National Politics* (New York, 1979), 468; see Sandoz, *A Government of Laws*, 157.