

interpretation

A JOURNAL OF POLITICAL PHILOSOPHY

January 1987

Volume 15 Number 1

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Volume 15 number 1

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Annual subscription rates individual \$15; institutional \$18; student (3-year limit) \$7.50. There are three issues of INTERPRETATION a year.

Address for correspondence INTERPRETATION, Queens College, Flushing, N.Y. 11367, U.S.A.

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Equality, Liberty, Wisdom, Morality and Consent in the Idea of Political Freedom

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I have written many times that the American Revolution—and the American Founding—represent an idea: the idea of political freedom. This revolution and this founding do indeed also represent an event, or a series of events, which are recorded in what we call history. But our interest in these historical events is derivative, derivative from the fact that we discover at work in the events such an idea as that of political freedom. The particular historical circumstances in which the idea of political freedom took root are certainly interesting, but they can be neither as interesting nor as important as the idea itself. Not the time or place in which the idea was blazoned forth to the world, or when (or even how) it was put into practice, but the idea itself, deserves the first rank in our attention and esteem. Gladstone called “the American Constitution . . . the most wonderful work ever struck off at a given time by the brain and purpose of man.” But the “brain and purpose” is prior to the “work.” For it was the former which made the latter “wonderful.” The Creator must always take precedence of his Creation, in our wonder and admiration. The Constitution has become our inheritance, and we ought to honor the intelligence, the devotion, and the sacrifices, of those who bequeathed it to us. Yet such a legacy cannot be transmitted by inheritance, in the sense that money, land, or other external goods can be transmitted. A constitution, a regime, a way of life—no more than courage, temperance, justice, or wisdom—can be “willed” to posterity. In its origin our regime was proclaimed to be a matter of reason: “We hold these truths to be self-evident . . .” And truth is a possession of the mind—not of the will—and of the mind only when it is properly employed. Truth is the possession not of one to whom it is willed, but of him only who understands. There are no lawful inheritors or unlawful usurpers in the possession of truth. But we must also bear in mind that the understanding of truth—although in these premises the condition of virtue—is not itself virtue. Just as the individual virtues represent an habituation of the will to principles of reason, so a free society must not only understand the principles of freedom, but must implement them by those institutions of education and of government, by which such principles become the actual ground of the way of life of a people. I am sure that many of you will wonder why it was that a nation dedicated at its birth—as Lincoln said at Gettysburg—to the proposition that all men are created equal, continued for fourscore and seven years the institution of chat-

This paper was prepared for a Conference on the Constitution at the Center for the Study of Democratic Institutions, Santa Barbara, California, February 12, 1986.

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tel slavery. This is an important question, and deserves the most serious discussion. Yet I would assert a priori that, as an object of wonder and concern, it is far less significant than the question of how it was that a nation of slaveholders declared that all men are created equal. How was it that this nation declared its independence, not by an appeal to any virtues or rights that were distinctively its own, but to rights that it shared with all men everywhere—with human beings of every caste and class and every race and nation and creed. Is it, however, wonderful that having made this proclamation of the universal right to freedom of all men—the first time in human history that such a proclamation was made—the American Founders were yet puzzled as to how to implement it? The early history of the republic is one of the fiercest controversy. The ratification of the Constitution was fiercely disputed. In the 1790's, the party controversy among republicans and federalists surpassed in ferocity and rancor anything that we have witnessed in our time. And such animosity even divided some—such as Madison and Hamilton (the principal authors of the celebrated *Federalist*)—who had worked shoulder to shoulder in securing the adoption of the Constitution. Yet each now accused the other of an interpretation of the Constitution which would turn it into an engine, not of freedom, but of despotism. To repeat, no one before the American Founding had ever before proclaimed the principles of freedom—the principles of freedom for all mankind—as the principles of a particular people. Yet how to convert these principles into political institutions, even for themselves, was hardly a settled matter. And how to extend them to all those to whom they were rightfully bound to extend them, represented still another challenge. Nor was it a challenge that could be met merely by a recourse to the principles. Even in the lives of individuals, it is no easy matter to discover the connection between, let us say, good health and healthy habits. Yet even when that knowledge has been gained, it is frequently a matter of greater difficulty to implement the practices that the knowledge would dictate.

To repeat, our national existence began with the proclamation of certain propositions held to be true. The sense of these propositions was understood to be entirely independent of any “climate of opinion” of eighteenth century America, or of any other time or place. I recall being taken to task once at an English university, by an historian, for treating the Declaration of Independence—an eighteenth-century document, as he thought—as if it had been contemporary. I replied that I was confident that the one thing Jefferson never for a moment dreamed of himself as doing as he drafted the Declaration, was composing an eighteenth-century document. No one believed in the idea of progress more firmly than Jefferson, yet he wrote “Nothing is unchangeable but the inherent and inalienable rights of man.” “The rights of man” to Jefferson meant, moreover, the fundamental principles of political right *and* the moral principles that they embodied. Washington, in 1783, wrote that “The foundation of our empire was not laid in the gloomy age of ignorance and superstition but at an epoch when the rights of mankind were better understood and more clearly defined than at any

former period.” It was axiomatic for both Jefferson and Washington that “the rights of man” (or mankind) were no different in ages of ignorance and superstition than in ages of enlightenment. But, of course, where they are unknown they can hardly form the basis of governments. The Declaration of Independence itself speaks both of “barbarous ages” and of “merciless savages,” and by so doing indicates that barbarism and savagery are ever-present threats to civilization. They may have been more widespread at certain times and places than at others, but they may occur at any time and place. They are negations of enlightenment—and of the wisdom and virtue that may be founded upon enlightenment. The opposition between despotism and freedom is at bottom that of “right and wrong, between whose endless jar Justice resides” (*Troilus & Cressida*, 1.iii.116). The same thought was expressed by Lincoln, thus:

Slavery is founded in the selfishness of man’s nature—opposition to it in his love of justice. These principles are an eternal antagonism—Repeal the Missouri Compromise—repeal all compromises—repeal the Declaration of Independence—repeal all past history, you still cannot repeal human nature (Speech at Peoria, Illinois, October 16, 1854).

Before proceeding, some preliminary remarks about language are in order. The words “equality” and “liberty” are in reality adjectives that have been turned into nouns. In more pretentious philosophical discourse, they represent hypostatization—the linguistic transformation of attributes into substances. But attributes, except as attributes of substances, can have no real existence. There can be a red barn. And although one can speak of redness, we cannot see it—or even imagine it—except in a red something: a sunset, a dog, or a red-headed woman. Hence there cannot be equality, except between things that are equal. “Things equal to the same thing are equal to each other” is a Euclidean axiom. By it, equality may be said to subsist between the things that are equal to the same thing, but only in the respects in which that equality is said to subsist. A bed and a chair each of which cost \$100.00 may be said to be equal in their monetary value. They may also be said to be equally “furniture.” But a bed is not equally a chair, nor a chair equally a bed! There cannot be equality except as a relationship of the things said to be equal, and in the respects in which they are said to be equal. It is then perfectly vain to debate whether all men are created equal, without making clear *in what respects* we are asking whether such equality subsists. Chickens and human beings are two-legged animals, and it would be perfectly correct to say that all chickens and human beings are born equal, if one meant by it equally two-legged.

In defining justice and the just, Aristotle declares that the just subsists in equality, but he then distinguishes the equality that may subsist in exchanges from the equality that may subsist in distributions—of honors, emoluments, or other external goods. The one is called commutative justice, and the other distributive justice. One bed that exchanges for \$100.00 may be said to be “equal”

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to another bed (or any other commodity) that also exchanges for \$100.00. The two beds may be of different styles, materials, workmanship, but they are both equal to the same thing, namely, \$100.00, and *in that sense* equal to each other. This equality, moreover, defines a sense in which two things, otherwise different, are the same. The value of \$100.00 which is placed upon either or both of the beds is a single number. The equality is therefore numerical. There is identity, and no difference, in that respect in which the two beds are said to be equal. On the other hand, in the distribution of the dividends of a corporation, the owner of 200 shares will receive twice as much as the owner of 100 shares. We cannot and do not say that the man receiving twice the amount was receiving an unequal share. On the contrary, his share would be unequal if, having invested twice as much, he were to receive the same amount of dividends as the other man. Here the *same* amount is unequal, and the double amount is equal. Here equality subsists as an equality of *ratios* and not of *numbers*. The ratio of 2/1 in dividends corresponds to the ratio of 2/1 in shares. And so it is with honors and awards based upon merit: the gold medal goes to the winner, the silver to second place, and the bronze to the third.

With these preliminaries behind us, let us turn to the great proposition, "That all men are created equal," and to the axiomatic premises which accompany it, and which together constitute the core of the idea of political freedom. The philosophic source *par excellence* is without question, the opening section of the second chapter ("Of the State of Nature") of Locke's second treatise *Of Civil Government*. It is as follows.

To understand political power aright, and derive it from its original, we must consider what state all men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will, of any other man.

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection, unless the Lord and Master of them all should by any manifest declaration of His will set one above another, and confer on him by an evident and clear appointment an undoubted right to dominion and sovereignty.

Before considering this text by itself, we turn to the opening sentence of the "Declaration of the Causes and Necessity of Taking Up Arms," of the Continental Congress, July 6, 1775. The draftsmen were John Dickinson and Thomas Jefferson, but we do not know which of them was responsible for this sentence. It anticipates, however, lacking only two days to the year, the great trumpet call of the Declaration of Independence. And whether we consider the declaration of

July 6, 1775 or July 4, 1776, what we find are distinct reminders of Locke's famous phrases.

If it were possible for men, who exercise their reason to believe, that the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the Parliament of Great Britain some evidence, that this dreadful authority over them has been granted to that body.

The demand of the Congress that Parliament offer evidence that God had invested "that body" with the right of property—or "dominion and sovereignty"—over "the inhabitants of these colonies" is irony of cosmic grandeur. Sidney in his *Discourses on Government* had expressed a similar thought by saying that some men are not born with saddles on their backs, and others booted and spurred to ride them. (Jefferson would repeat Sidney's words in the letter written just before his death in 1826). The "saddles on their back" figure of speech means that there is no such natural difference among men, as there is between men and horses, to indicate that one is by nature the master and the other by nature the servant. It is fair to point out, however, that neither horses nor men are born with saddles on their backs! Horses are, however, born apt for serving the purposes of man, although it is left to men to train them to serve those purposes. There is a natural difference between men and horses that makes it according to the natural order, or natural right, that men ride horses. Although we say that men should treat horses humanely—that is to say, with the kindness consistent with the purposes for which the horses are properly used—we do not say that the horses' natural rights are violated, by taking them out of their herds and subjecting them to the service of men. For we reason a posteriori from the powers and faculties inherent in the species found in nature, to the distinctions in rank among them. And we say that it is just that the lower serve the higher. It is also true that there are many species of plants and many of animals that are good for food for other species. There is a natural aversion among human beings—as there is also among other species—to eating their own kind. But that some species should serve as food for others—whether we consider all plants and animals in relationship to man, or plants in relationship to animals, or the herbivorous animals in relationship to the carnivorous—also seems part of the order of nature and hence of natural right. In each such case, we discover "dominion" or the right to appropriate and to use, the right of property, inhering in beings held superior, in relationship to those held inferior, in the order of nature. A *prima facie* objection to this is, of course, that we have merely equated right with power. Within the lower order of Creation this is undoubtedly true. But as we shall see in due course, it is not true with respect to man. Man's sensibility of what is due to his own humanity, will be seen to result in the idea of power being controlled

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by right, by something called moral obligation. Even in man's dealings with brute creation, the unlimited power of man is not understood to result in permission to use that power indiscriminately. It is no accident that associations to monitor the dealings of human beings with brutes are called "humane" societies!

Turning to the text of John Locke, we are told, to begin with, that in order "to understand political power aright . . . we must consider what state all men are naturally in . . ." This is "a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of nature, without asking leave, or depending upon the will of any other man." But this is "a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another . . ." This state, of perfect freedom, but also of equality, is the state of nature. It is a state in which there is no political authority. No man is subject to another. Each is his own master. Each is free—equally free—to obey himself alone. Freedom—or liberty—and equality are then two names for two aspects of the same thing. The "balance between equality and liberty" must be sought in another relationship than that of men in the state of nature.

Locke writes that "there [is] nothing more evident than that creatures of the same species and rank, promiscuously born to all the advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection . . ." When Locke says that nothing is more evident, he means what Jefferson meant in saying that it was self-evident, that all men are created equal. For a proposition to be self-evident means that it cannot be made clearer, or better known, by any form of demonstration. If one grasps the terms of the proposition, one understands it as well as it can be understood. "Self-evident truths" may refer either to analytical or to empirical propositions. "Things equal to the same thing are equal to each other" is analytical—or, if you will, tautological. "That all men are created equal" arises from reflection upon our experience of a class of beings called "men." We abstract from the experience of a number of individual human beings the common noun "man." (A common noun differs from a proper noun as the name of a species differs from the name of an individual of that species. In "Fido is a dog," "Fido" is the proper noun, and "dog" is the common noun.) We do so in the same way that we abstract from the experience of a number of individual dogs, the abstract noun "dog." Having performed the act of inductive reasoning by which these common nouns are understood, we can articulate attributes which reflection shows were implied in the act of grasping that noun. We discover, for example, that in understanding "man," we not only distinguish the characteristics of individual human beings from "man in general," but we also distinguish man from "nonman." We distinguish the human from the nonhuman. And we distinguish, moreover, the nonhuman that is subhuman from the nonhuman that is superhuman. We conclude, for example, that there is no such difference between man and man, as there is between men and dogs, that makes men by nature the ruler of dogs, and

dogs by nature the servants of men. But that very experience of man and dog also instructs us that God is as much above man as man is above dog. Nor is it necessary to “experience” God in the same sense that one experiences man and dog, in order to arrive at this conclusion. It is evident that it is by the power of reason by which we draw this conclusion that man is elevated above the brute creation. But the power of reason by which man discovers his elevation in the scale of being, instructs him in the idea of a being higher in that scale, a being also possessed of reason but without the evident limitations upon the perfection and use of reason that every man discovers in his own soul, at the same moment that he becomes aware that he is a rational being. By the power of reason we form the conception of a perfectly reasonable Being, in whom there are no passions to act as impediments to reason. From this perspective, it might be said, reason forms an adequate idea of the essence of God, without necessarily implying His existence. But whether or not faith is necessary for the mind to make the transition from God’s essence to His existence, it is unnecessary to make that transition “to understand political power aright, and derive it from its original . . .” Natural theology, stopping at the idea of God’s essence, informs us of the meaning of the difference between man and beast, by informing us of the difference between man and God. Thereby we understand anew what Aristotle declares in the *Politics*, that man is the in-between being, the being that is neither beast nor God. We understand therefore that the rule of man over man must differ, not only from the rule of man over beast, but from the rule of God over man. For the difference between the idea of man and of God is such, that it would be absurd to suppose that God would need to secure the consent of man in order to exercise His providential government. It would be as absurd as that of men securing the consent of their dogs as a condition of exercising authority over them. Hence, it was that the men of Malden, Massachusetts, as independence approached (May 27, 1776), declared “we can never be willingly subject to any other King than he who, being possessed of infinite wisdom, goodness, and rectitude, is alone fit to possess unlimited power.” Hence Tom Paine declared that “In America, the law alone is King.” For the conception of God informs us of the idea of law—in Aristotle’s words, the rule of “reason unaffected by desire.” And therefore is it that all the elements of the rule of law—responsibility of the government to the governed, freedom of speech, press, and religion, subordination of military to civilian authority, separation of powers, independence of the judiciary, writ of *habeas corpus*, trial by jury, etc.—are discoveries of human reason, whereby the rule of men will, under the denomination of rule of law, be as free as possible from the effects of those infirmities by which human nature is understood to differ from that of God.

It is frequently objected to this, that the rule of law is an illusion, that laws must be interpreted and administered by men, and that there is no escaping the rule of men. If this means that the rule of law can never completely achieve its goal of being “reason unaffected by desire,” it is of course perfectly true. If how-

ever it means that the law can never approximate this goal, it is wrong. The signers of the Declaration of Independence appealed to “the Supreme Judge of the world, for the rectitude of our intentions.” No one expected them to ask God for a jury trial! But the very same reasoning led the framers of the Bill of Rights in the first Congress to insist (in Article VI) upon the right of trial by jury. No one would say that trial by jury in criminal cases yields perfect justice; that the guilty never escape, or that the innocent are never convicted. Yet criminal jurisprudence over the centuries has developed many safeguards against arbitrary judgments by juries. The rules of evidence have constantly been refined in the light of experience to enable judges better to concentrate the attention of juries upon the facts that are material, and to remove from their consideration facts that are immaterial. With this we have been quite reasonably able to impute a very high degree of reasonableness to the judgments of juries in criminal cases. We do not say that these judgments are perfectly reasonable, or that criminal jurisprudence has reached a state of absolute perfection. The debate today about such matters as the Miranda rule is sufficient evidence of this. Yet no one seriously proposes the replacement of the adversary system of our courts with an entirely different one. No one seriously doubts that the enfranchisement within the courtroom of equal and opposite interests—before a jury that (to the best of the knowledge of the court) shares no interest with either side—is well adapted to making judgments untainted by the interests of either of the contending parties. Nor could the court be impartial if there were no separation of powers, if the judge could be threatened or bribed by anyone who had an interest in the cases that came before him. We say, of course, that judges should, so far as possible, be incorruptible. But we take great pains to arrange things so that the corruption of judges is difficult, and that the probable losses of those who would participate in any attempts at bribery far outweigh their probable gains. At every step of the way, the idea of “reason unaffected by desire,” informed by a realistic understanding of human nature, improves the operation of the legal system, and acts to make the justice of the regime genuine.

But is it true, as Locke proposes, and as the Founding Fathers assumed, that “all men,” all human beings, “promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one to another without subordination or subjection . . .” Do not human beings differ greatly, both as to their natural endowments, and as to the degree to which those endowments are or may be cultivated? Are not these differences politically relevant? Is not government, like all the arts by which human life is benefited, itself benefited by being conducted by “the wise and the good”? Is it not best conducted, in the words of the 10th *Federalist*, by those “whose wisdom may best discern the true interests of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.” Is not the fact that man is the rational animal reason to place in authority—to use one of Locke’s ta-

favorite phrases—“the rational and industrious”? The answer to all these questions is, of course, an emphatic affirmative.

In considering the application of reason to human affairs, however, we are reminded of an argument advanced by Socrates in the first book of Plato's *Republic*. All the arts involve knowledge of opposites. Medicine is knowledge of health and disease. The function of the doctor, we say, is to preserve health and prevent disease, or to cure disease and restore health. To know how to do these things, however, the doctor must know equally well how to cause disease and prevent or injure health. The art of medicine—considered simply as the knowledge of the causes of health and disease—is an art or knowledge of opposites. And we know that medicine can be employed, and is employed—as in the invention of the instruments of nuclear and biological warfare—for killing as well as for curing. We also know that physicians have been known to enter into conspiracies against their patients. (For example, plots in collusion with heirs to collect insurance.) More profoundly, we know that despotic regimes—especially those peculiarly malicious forms of despotism which, in our time, are called “totalitarian”—regularly employ the medical art against those they call enemies of the regime. Hitler employed thousands of physicians—not only Dr. Mengele—to murder “undesirables”: Jews, gypsies, homosexuals, invalids, the chronically ill. The Soviet Union today has suborned the entire psychiatric profession within its borders to treat political dissidents as “insane,” to testify against them in court, and to turn their hospitals and sanatoria into prisons and torture chambers. These “doctors” inject their patients with mind and body-destroying drugs.

The “ethical neutrality” of the arts and the sciences (*τέχναι καὶ ἐπιστήμαι*) was recognized equally by Aristotle, in the *Nicomachean Ethics* when, in Book VI, he makes it clear that the exercise of none of the intellectual virtues requires moral virtue, with the exception only of prudence, or practical wisdom. This moral defect of the arts and sciences was recognized in the ancient world by the Hippocratic oath, taken even today by all physicians before entering into practice. Whatever may be the noble and just intentions that lead most young physicians into the medical profession, there is nothing in the art of medicine, considered merely as a knowledge of the causes of health and disease, that directs it towards healing and away from injuring. It is the addition of the Hippocratic oath to medical knowledge—that is to say, the addition of moral virtue to intellectual virtue—which together constitute what we call the healing art. From this example, which can be multiplied many times over, we conclude that something must be added to each of the arts, considered merely as forms of knowing, or know-how, or knowledge of causes, to assure that it will benefit those who are to be governed by it. Aristotle classified governments into those of the one, the few, and the many. But each kind of government could be either good or bad, depending upon whether the government was directed to the common good, or towards the private advantage of the government. A government, whether of the

one, few, or many, may be skillful or unskillful in the art of governing. But whether skillful or unskillful, it could not be good, if it directed its efforts to rewarding the rulers at the expense of the community as a whole. The principle of the “consent of the governed” is the supreme discovery of the political art for directing government towards the benefit of the governed.

When we go to the doctor, we subject ourselves to his regimen. We consent to be governed by him, in one of the most important respects in which, during our lives, we subject ourselves to the rule of others. We do so because we think that it is better to be governed by one with medical knowledge than by ourselves, with respect to our health. But we also think that it is essential, that the full extent of the doctor’s skill be devoted to our benefit. We want him to be neither negligent nor lackadaisical, because of any indifference towards us. Nor do we want him to be distracted in any way, by having any reason to ask himself, why he should exert himself fully on our behalf. We want assurance, or even reassurance, on this point. First of all, it is essential, for the “health” of our relationship, that it be voluntary. However much we may, or must, rely upon advice, both lay and professional, in choosing a doctor, it is essential that his government over us is based upon our consent. To the hypothetical objection, that this is a case of the wise depending upon the unwise, for the exercise of wisdom, the reply must be: the unwise have an interest in choosing well that goes a long way towards compensating for the defect of their knowledge. Of course, we are supposing a people who, however “unwise” as laymen, are nonetheless “enlightened,” aware of their ignorance, and therefore intelligent and vigilant in their own interests. The very proposition “that all men are created equal” (the ground of “the consent of the governed”) as a philosophical truth, implies a civilized understanding of civilization generally shared by the people as a whole. “If a nation expects to be ignorant and free . . . it expects what never was and never will be,” wrote Jefferson in 1816. We are not then considering people who would not know the difference between witch doctors and highly trained graduates of modern medical schools. And, in general, we do not expect that the choice of doctors by private individuals will be guided by nonmedical considerations. If you are in urgent need of medical attention, you do not look for someone whose diagnosis is intended to flatter you, rather than cure you! Or if, in some cases, some people are guided more by the doctor’s “bedside manners” than by his professional knowledge, this does not constitute a reason why in general the choice of physicians should not be voluntary. The medical profession as a whole, in a political society constituted by the principle of the consent of the governed, depends very much upon the reputation it enjoys with society at large. The chances are not great, therefore, that someone will choose a very bad doctor because he has chosen him for considerations that are less than strictly professional. Because our patronage of the medical profession is voluntary, the medical profession, through professional organizations, and through the licensing laws (usually administered in coopera-

tion with the professional medical organizations) has a great incentive to police itself. And however we may complain of our medical bills, we really want the doctor to be paid, and paid well, for his services. We want him to have the greatest possible incentive to apply his wisdom as skillfully as possible to *our* advantage. Paying him, however, is only one aspect of a system of incentives *and* constraints with which we surround him. It is important also that the payment be as nearly as possible a “market” price. The individual doctor ought to have the incentive to be able to charge higher prices because of the superior reputation for excellence he may gain in the course of his practice. A fixed price for a fixed service does not produce the unqualified incentive for unqualified devotion, each of us likes to think that the doctor is giving him. Further: we surround the doctor with a web of law (including the aforesaid licensing laws), civil law by which he may be sued for any form of negligence or incompetence (malpractice), and criminal law by which he may be prosecuted if he is thought to have deliberately inflicted injury, for whatever motive.

The Hippocratic oath reminds us that the medical art, taken merely as knowledge of causes, is amoral. But we expect our doctors to be moral men, whose moral intention combined with their knowledge makes their art the healing art. Yet we surround the practice of medicine with a myriad of institutional arrangements—with both rewards for good behavior and punishment for bad behavior—designed to assure that physicians will act morally, whether or not they are actually moral. In taking these precautions we do not regard their actual character as a matter of indifference. In fact, we recognize that habitual good behavior—whether of doctors or anyone else—even if begun for nonmoral reasons is a good foundation upon which genuinely good character may develop. All moral education is of this sort.

In health care, as in criminal justice, the aim is behavior reflecting the standard of “reason unaffected by desire.” Here “reason” refers to medical knowledge pure and simple, uninfluenced by any nonmedical considerations of economic (or other) advantage. Yet it is well to remember, when we consider the “government” of ourselves by medical doctors, that the good health we seek through their assistance depends only partly on the skill and virtue of the doctors. Our desire for health is indeed a powerful incentive to obey the doctors’ government. Patients who flinch at the least pain will undergo drastic surgery when the alternative is sufficiently stark. Those who are ordinarily self-indulgent to the last degree will follow regimens of abstinence and self-denial when the thread of life is slender. But the end intrinsic to medicine—which is to contribute to human health—is not a final end, but a means to human well-being. No doctor, we presume would want to be remembered as the man whose supreme skill in 1935 saved Adolph Hitler’s life (even if such a doctor rightly believed he was only doing his duty). If physicians are the moral men we wish them to be (and as moral men—and not merely as physicians—they will have higher ends than health)

then they too will recognize a distinction between repairing the ravages of gluttony, greed, or promiscuity and in providing that relief to the human estate which is required by the ills to which all flesh is heir.

There are those, however, who think that the modern project for the relief of man's estate justifies the abolition of what is sometimes alleged to be the greatest of all burdens upon the human condition: the burden of virtue. Modern philosophy conceives of a project in which a much higher degree of felicity is imagined, if the passions do not have to be controlled, and in particular if they are not controlled by reason. (In the comparison between the life of the tyrant, and the life of the just man, sketched in both the *Republic* and the *Gorgias*, they—in opposition to Socrates—choose the life of the tyrant. This is the starting point for Machiavelli, and for all modern political philosophy.) It does not, however, mean that men must become tyrants in the classical sense. The conquest of nature by science will make nature the universal slave, so that men can become tyrants in principle without becoming tyrants in fact. That is to say, science will enable them to live lives unrestrained by moral principle, yet somehow without injuring themselves and without injuring each other. This last is the greatest of the illusions of modern man. It imagines a surpassingly greater happiness, in the unfettered release or indulgence of the passions, and imagines that reason performs a truer function as a slave to the passions than as their ruler. In the light of this enterprise, the essential purpose of medicine is not health, as conceived traditionally (or by common sense). Health in the traditional sense was a good thing because it contributed to the *summum bonum*, happiness. A happy life was one lived well, because lived in accordance with the moral and intellectual virtues. The restraints upon the human passions imposed by the habits of the moral virtues are by this dispensation no longer regarded as goods in themselves. Whatever goodness is seen in restraint is such only as it may be a temporary necessity or exigency which will in due course make way for unrestraint. Thus, in Marxist-Leninist theory, the dictatorship of the proletariat will be followed in due course by the withering away of the state. Under the "pure communism" which follows, there will be no constraints upon human behavior, either political or moral. Pure communism represents the return to the Garden of Eden—but with this difference: there will be no forbidden fruit (and hence no possibility of a Fall, or expulsion from the Garden!). Contemporary ideological liberalism—or at least its libertarian wing—differs from Marxism-Leninism only in this: it sees no reason why anyone should wait for the Revolution, or the withering away of the state! For example, sodomy is not something one ought not to engage in, although it may be wise to abstain from it until a cure for AIDS is found. Meanwhile, unlimited resources may be demanded for finding a cure for AIDS. The reason for this demand is only incidentally to avert the evil of the disease. It is essentially for the sake of the felicity of unrestrained sodomy. Nor can medicine object to the use of drugs that are unhealthy, if they give pleasure through illusions beyond the natural powers of the mind or of the imagination. Doctors might advise patients to

abstain from them until an adequate antidote to their deleterious side effects might be found. But it is as much a purpose of medicine to find antidotes to pleasant “vices” as to find cures for painful diseases. The physician, *qua* physician, may not make moral judgments as to how his healing art may be exercised.

But what of the physician *qua* moral man? Is there not a contradiction in wishing doctors to be just, to genuinely care for the good of their patients, but yet to be neutral or indifferent to all other moral distinctions? Does not the goodness of the doctor depend upon an understanding of goodness rejected by those who would thus commandeer the art of medicine? Does not the good doctor, *qua* good man, have an obligation to refuse to serve Hitler or Stalin? Does he not also have an equal obligation not to serve a regime in which every man is as free to do as he likes, without regard to moral considerations, as a regime in which only one man—e.g. a Hitler or Stalin—is? Is not government by the consent of the governed (whether we think of medical government or political government) controlled inexorably by the idea of “reason unaffected by desire”? And does it not therefore inexorably commit us to the control of the passions by reason?

The example taken from medicine, may be repeated with law, engineering, architecture, and even strategy. Benedict Arnold was probably the greatest military talent in the American cause—until he attempted to betray that cause. It was he, more than Gates, who was responsible for the victory at Saratoga—the only substantial American victory before Yorktown, and the one that tipped the balance in favor of France’s decision to intervene on the American side. It is not immaterial that one reason for George Washington’s selection to command the American army before Boston in 1775, was his very considerable wealth, which represented a fundamental pledge of (or, if you will, hostage to) his loyalty to the American cause. Benedict Arnold, unlike George Washington, proved to be a talented but unreliable military adventurer. He lacked both Washington’s moral character and Washington’s stake in the community he was appointed to defend.

Two other reasons for Washington’s appointment by the Continental Congress are also noteworthy. They were his unusual—and highly regarded—military record, gained in the Seven Years’ War with France; and the necessity of having a Virginian in command of an American army outside Boston. For this latter consideration also sought to seal the loyalty of the commander—and his regional interests as a Virginian—to the larger cause of America as a whole. Had the Revolution broken out in Virginia, and had the American army been situated, let us say, on the Yorktown peninsula, it is probable that a Massachusetts man would have been sought for the command. Massachusetts and Virginia were, so to speak, the Dan and Beersheba of the thirteen colonies. But the rebellious colonists were Whigs, and had remembered as if it were only yesterday, the British experience of Oliver Cromwell. It was their intention, in the Revolution, and in both the state and federal constitutions which ensued upon the Revolution, to avoid the dangers of a professionally commanded army following a gifted com-

mander—the Caesarean formula represented to them by the army of Cromwell. Because of that experience, for nearly two hundred years commissions in the British army had to be purchased. It was thus assured that the officer corps would share an overriding interest with the propertied classes—and civilian society—which would keep them from ever “crossing the Rubicon.” Thus the constitutional axioms of the dependence of the sword upon the purse, and of the military upon the civilian authority. (The American Constitution makes the President, who must be a civilian, commander-in-chief of the armed services; but it makes him dependent upon the Congress for supplies. It also makes the House of Representatives—the more popular branch—the origin of all money bills, while it requires the consent of the Senate for the appointment of all the higher military offices.)

It is clear that British experience underlies much of American constitutionalism. Underlying this experience, however, is this relationship—rooted in the nature of things—of the subpolitical, or nonpolitical arts to the political art—or to political science. Different institutional (or other) devices may be required in different circumstances, but the purpose is the same: to bring the different practical disciplines of human life (whether, e.g. strategic, medical, or economic) under moral control, and under the control of the master discipline which is the political. The “consent of the governed” is the foundation, not only of the responsibility of the government to the governed in the political sense, but in the broader sense in which under such a government “wisdom” in all the arts and sciences may become beneficial to the whole community.

The natural equality of man, as we have seen, results in government by the consent of the governed. This consent must be uncoerced, although it becomes, in turn, the foundation of lawful coercion. But a civil society organized upon the principle of voluntary association alone can implement the voluntary principle in all those other relationships of life resulting from the cultivation of knowledge and wisdom. And it is by the voluntary principle that the means are found by which wisdom—and not freedom alone—becomes an effective force in the life not only of individuals, but of the polity. But the wisdom which “rectifies” (so to speak) all other wisdom, is wisdom in a more fundamental sense. And this is that political wisdom—defined originally by Aristotle—which stands in the supervisory or architectonic relationship to all other practical arts and sciences. The foundation of this architectonic discipline, within its Lockean context, is to be found in that “law of nature” by which “the state of nature” is said to be governed.

But is not the “state of nature” merely imaginary? Does it not refer to a hypothetical rather than a real past? Or if some time in the actual past a group of men came together to form civil society by a social compact, what relevance does that have for us today? Our natural liberty does not consist in being bound by what others have agreed to. These are typical of the objections to Lockeanism heard

today, and to any Lockean interpretation of the Constitution (such as that of Abraham Lincoln).

In reply, we observe that it is necessary, that we, living in civil society, understand what the law of nature is in the state of nature, to understand the foundation of our rights and our duties here and now. Whatever status the idea of the state of nature may possess, as a historical concept, it is a permanent attribute of our consciousness as members of a free society.

Everyone knows that he may, if necessary and at any time, take “the law into his own hands,” either to defend himself, or to defend other innocent persons from unlawful violence. No positive law can repeal this natural law. That every normal human being does understand this proves that we are conscious of the law of nature in the state of nature, whether we conceptualize this consciousness or not. Hence we also understand that where there are no police, or impartial courts in which to seek damages, it is not unjust to seek redress for injuries by whatever means are available, including force. Again, international law tries to supply the defect of the state of nature, when individuals—meaning here both individual nations, and individual citizens of different nations—having no common judge (Locke’s definition of the state of nature)—attempt to provide juridical means for redress. All of these examples are testimony that, however ineffective the law of nature might be in the state of nature, the understanding that such a law exists, is entirely independent of its enforcement. That is to say, the law of nature, as Locke says, is the law of reason. We thus look to the state of nature a priori to understand what is the law of reason, the law which ought to govern, whether or not it does govern. From this we instruct ourselves of the ground of our rights and duties in civil society, under government. Reason teaches us not to inflict injury upon other human beings, except as just punishment for offenses they may have committed. It instructs us that murder, theft, adultery, perjury, the abandonment or neglect of children, ingratitude towards parents, are injuries, offenses against reason, and therefore against the law of nature. They are offenses against the law of civil society because we understand antecedently that they are wrong, that they ought not be done, and if done, punished. This understanding of right and wrong is in us all, and we become aware of it when we become aware of our own humanity. By it we become aware of what we owe to others, because of the humanity that they share with us. That is to say, we understand that there is a ground of friendship in nature, apart from the more obvious ground in family, clan, nation, or any other form of personal relationship, arising from particular circumstances or shared interests. We understand, of course, that these other forms of friendship are naturally more intense, and nobler and better than those of mere humanity. But we also understand that these friendships are potentialities of our common humanity, and would not be possible without it. We understand ourselves—and our own humanity—in the light of this underlying resemblance we bear to each other. We understand particular manifestations of our humanity—including its negations in barbarism and savagery—in the light of

what is consistent with, or inconsistent with, this underlying resemblance. And this resemblance is understood, on the one hand, by the light of both the resemblance and the difference between all human beings and the lower order of Creation, and on the other, by the light of the resemblance and the difference between man and God.

The state of nature is then to be understood primarily in analytical terms: as an inference from man's place in that "great chain of being" that both links and distinguishes the higher and the lower natures. It recurs whenever men meet who have "no common judge." It may at some point become a feature of the history of a people as it progresses from family and clan and tribe to civil polity. Or it may arise in virtue of the revolutionary right of human beings both to dissolve particular societies, and to break up oppressive governments and institute new ones. But its most common utility is to be found, not in extreme situations, but in normal ones: and that is to understand the ground and purpose of our citizenship. It is to enable us to judge the tendencies, whether in ourselves or in others, away from, or towards, government that fulfills the purposes implicit in our human nature. It enables us to reflect upon that fact that, being neither beasts nor gods, we are yet a compound of both, with potentialities in ourselves, both individually and collectively, for descending into bestiality, or ascending towards the divine.

We may illustrate the foregoing from documents of the era of the Revolution and the Founding. In the Lockean language of the Massachusetts Bill of Rights (1780)

The body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be governed by certain laws for the common good

And the premise of this compact is that

All men are born free and equal, and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property: in fine that of seeking and obtaining their safety and happiness.

"Safety and happiness" constitute the alpha and omega of human beings joined together in a body politic. How safety is to be achieved, and how happiness is understood, are inferences from the understanding of human nature either expressed or implied in the compact by which civil society is formed. The powers granted—as well as the powers denied to—government, are also understood from the same implied reference.

The ubiquity of the social compact theory in the American Founding is nowhere better illustrated than in the thought of the Father of the Constitution, James Madison. In one of his last extended discourses in political theory ("Sovereignty," *The Papers of James Madison*, edited by Gaillard Hunt, Vol. IX, p.

569). Madison wrote that “it is proper to keep in mind that all power in just and free governments is derived from compact . . .” Throughout his career, Madison repeated over and over again that all free government is founded upon “compact.” What he meant he explained as follows.

To go to the bottom of the subject, let us consult the Theory which contemplates a certain number of individuals as meeting and agreeing to form one political society, in order that the rights, the safety, and the interest of each may be under the safeguard of the whole.

The first supposition is, that each individual being previously independent of the others, the compact which is to make them one society must result from the free consent of *every* individual.

But as the objects in view could not be attained, if every measure conducive to them required the consent of every member of society, the theory further supposes, either that it was part of the original compact, that the will of the majority was to be deemed the will of the whole, or that this was a law of nature, resulting from the nature of political society itself, the offspring of the natural wants of man.

Whatever be the hypothesis of the origin of the *lex majoris partis* it is evident that it operates as a plenary substitute of the will of the majority of the society for the will of the whole society; and that the sovereignty of the society as vested in and exercisable by the majority, may do anything that could be *rightfully* done by the unanimous concurrence of the members; the reserved rights of individuals (of conscience for example) in becoming parties to the original compact being beyond the legitimate reach of sovereignty, wherever vested or however viewed (*Ibid.*, pp. 570, 571).

“To go to the bottom of the subject”—the nature of sovereignty in the Constitution and government of the United States—it was necessary for Madison to consult a “Theory.” And this theory requires us—as we have said it must—to contemplate man in the state of nature: “a number of individuals (‘each individual being previously independent of the others’) meeting and agreeing to form one political society, in order that the rights, the safety, and the interest of each may be under the safeguard of the whole.” In order to be competent to make the contract, each must be free of any antecedent human authority, and be the equal of each of the persons with whom he is contracting. Having made the contract, each is under an equal obligation to cooperate in the establishment of the government. The rights that each individual possesses by nature, and the freedom and equality of each in the possession of such rights, defines the nature of the compact, and instructs us both in the nature of the powers of government which result therefrom, and in the limitations upon such power.

No one in the state of nature leaves the state of nature—to become a member of a body politic, properly so-called—except as a consequence of a compact or contract freely entered into. Subsequent generations born into a free society retain the right—upon coming of age—to accept or reject the polity into which they are born. Of course, civil society cannot be torn down and begun anew with each generation. But each individual succeeds to the same political rights as

those who preceded him, including the Founders. Everyone is equally born into a world that is not of his making, and everyone has the same natural right to accept or reject, in whole or in part, what he finds. That is to say, each one has the same right to choose among the alternatives he finds. No one can say that he rejects the society into which he is born, simply because it is not what he wants. He is of course at liberty to persuade others to join him in remaking it, but their relative contentment—if it be such—does not entitle him to reject its authority. But he must be permitted to leave, if he wishes. That there is a natural right of emigration is a corollary of the idea of civil society as a voluntary association. One's obligations flow from the fact that one is a voluntary member of a voluntary association. But the obligations that flow from the exercise of one's free will are themselves binding. Paying taxes and serving in the military are not optional, because one disagrees with some (or any) of the purposes of the laws which have resulted from the political process.

As a citizen of a polity constituted by the social contract, one has an equal right to share in the making of the law one is to live under. And those who make the law must live under the identical laws that they make for the rest of their fellow-citizens. There can be no privileged classes. To say "You—but not I—shall pay taxes" is another way of saying "You work, I'll eat." Still, we must recognize that the operation of laws may be unequal without intending to be so, and laws which are surreptitiously intended to be unequal may not appear to be so. A regime of equality cannot be expected to be perfectly so, either in appearance or in reality.

One must also recognize that there is no abstract answer to the question of what constitutes an "equal" share in lawmaking. Although the principle can and must be stated in abstract or universal terms—that all men are created equal—the means of implementing this principle must follow the dictates of prudence, taking into consideration circumstances that are not universal, but particular. The idea that proportional representation, for example, more nearly implements the principle of equal rights than other electoral systems, involves a fundamental misunderstanding. The purpose of voting in a free society is not to assure an equal weight in the voting process but, in Lincoln's words, "an equal voice in the government." How that "equal voice" may be achieved in any particular government—indeed, what sensible meaning may be assigned to it—cannot be discovered by any abstract formula. We cannot here enter more largely into the complexity of different electoral systems. Suffice it that proportional voting (of which there are many forms) generally encourages the fragmentation of the citizenry into splinter groups, who must then be compounded into working majorities. Since such majorities are not bound by party loyalties, they tend to be fragile, the resulting governments weak, and the rights both of majority and minority in jeopardy. A voting system—such as that of district representation, in which "the winner takes all"—that compels the coalescence of smaller minorities into a larger minority, and of minorities into a majority—produces stronger and more

stable governments. This is to the advantage of both majority and minorities. The electoral system in a free society ought to be designed to facilitate coalition building in the electoral process. This coalition building should, so far as possible, take place before the elections. The loyalties generated by the discrete minorities, to each other, as they form themselves into ever larger parties, assist the process of compromise, in the service of a common good. This makes possible a two-party system, the only system compatible, in the long run, with popular government. In a two-party system, the broad base of the major parties is such that each is competing for members of the other's coalition. In this way minorities may obtain political influence—and protection for their rights as minorities—far beyond what may be represented by their numbers. Thus the real interest of minorities is much better served than in a system of proportional representation, where their status as minorities is preserved by the voting, but where they are separated, if not isolated, from the political influence of loyal members of a major party.

Majority rule, says Madison, arises from the fact that the most essential purposes of government—not to mention lesser ones—could not be achieved if the action of the government depended upon the unanimity which lies at its foundation. That unanimity, in short, implies necessarily a willingness to be governed by the majority, either as a part of the “original compact” or as “a law of nature.” Henceforth “the will of the majority” will be “deemed the will of the whole.” The unanimous consent by which civil society is constituted, itself invests the majority with the authority of the whole. But this authority of the majority is not without limitations. The two criteria that limit the authority of the majority, according to Madison here, are unanimity and rightfulness. There is, we say, unanimous consent for majority rule. But that unanimous consent implies that the majority is the trustee of the rights of the minority. The majority does not act in its own name, but in the name of the minority as well. And the minority is supposed to look upon the decisions of the majority as its own decisions. (The man elected President of the United States is the representative of every citizen of the United States, not only of those who voted for him.) But this would not be realistic, if we did not understand the rights under the protection of our common government, to be at bottom the same. If fellow citizens looked upon each other, in the way that Protestants and Catholics looked upon each other, during the wars of the Reformation, or as medieval Christians looked upon medieval Jews, then Protestants, Catholics, and Jews could not be fellow citizens. Majority rule would be chimerical, because what divided majorities and minorities would be more fundamental than what united them. It is in this light that we recall Washington's declaration that the American Founding “was not laid in the gloomy age of ignorance and superstition.” And that age survives today in Khomeini's Iran, and in many other parts of the world as well. Nor are superstitions to be associated only with man's prescientific religious consciousness. The demon of perse-

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cution in National Socialism and Marxism-Leninism arises from an allegedly “scientific” interpretation of the world. The moral education of the whole community in the common natural rights of humanity, as the ground of the social compact, is a necessary condition of free society, of a polity in which majority rule may be combined with minority rights. And no free society can perfect itself beyond the point that has been made possible by its progress in this education.

The Virginia Bill of Rights of 1776 expresses the common faith of the Revolution, when it declares:

That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality and virtue and by frequent recurrence to fundamental principles.

By this it is implied that the citizens of a free community must be characterized by a morality that generates trust among them. And the moral virtues, as virtues of the will, are themselves grounded upon “fundamental principles” which are virtues of the mind or intellect. It is then not “individuals” of any description whatever, who are united into a polity by the social contract, but those possessed of a rational will who give unanimous consent to majority rule. By reason of their understanding of what unites them on the fundamental level, the citizens of a free society, while becoming partisans (and even “factions”) with respect to the interests that divide them, will be able to transcend these distinctions, when these threaten the genuine interests they share as fellow citizens. It will teach them, above all, as members of a majority, not to permit the endangering of those rights of the minority, which ought to be their common care.

Madison, we recall, said that the majority, acting for the whole, “may do anything that could be *rightfully* done by the unanimous concurrence of the members

” He thus adds rightfulness to unanimity, as a criterion of majority rule, and even gives it a particular emphasis. Clearly, unanimity acts as a check on majority rule, by inviting each member of the majority to ask himself, whether he is doing anything to another, that he would not have another do to him. In a free society men rule and are ruled in turn. In representative government, they may “rule” either by holding office, or by forming part of the victorious electoral majority. No one, in the majority, may act to deprive others of those civil or political rights, in virtue of which members of the minority may hope to rule in their turn. But unanimity by itself, although a necessary criterion, is not sufficient. Men may be unanimous and wrong. Madison gives us but one example, but it is one whose importance cannot be exaggerated. The rights of conscience may not become a matter of governmental action, no matter how unanimous opinion may be with respect to them. Religious homogeneity is not a justification for laws expressing that agreement among the citizens. A community of Christians (or of a particular denomination of Christians) may ask themselves whether, in compelling non-Christians (or Christians of another denomination) to join their church, they are violating the golden rule of doing to others what they would not have

others do to them. But it is not likely that they will think in Kantian or categorical terms of what it would mean if everyone were at liberty to compel everyone else in matters of religious faith. It is much more likely that, thinking only of their own faith as an unqualified blessing, they would see nothing wrong in itself, or contrary to the golden rule, in using the compulsion for the sake of an end of whose goodness they have no doubt. (Shakespeare was confident that few members of an Elizabethan audience would doubt that the forced conversion of Shylock at the end of *The Merchant of Venice* was as philanthropic as it was just.)

The very idea of a social compact, founded upon the common rights of man in the state of nature excludes from legislation whatever is not intrinsic to those rights that men share, and for which they need common protection, in the state of nature. The Statute of Virginia for Religious Liberty of 1786—the doctrinal basis of the religious clauses of the First Amendment—declares that our civil rights have no more dependence upon our religious opinions, than upon our opinions in physics or geometry. A sequel to this statute might have declared that our civil rights have no more dependence upon the color of our skin, or of our national origin, than upon our religious opinions. In the course of time, as we know, such amendments to the Constitution, and statutes to enforce such amendments, have in fact become the law of the United States. For this reason, we tend to view as illegitimate political parties whose aim—like the Ku Klux Klan, the Nazis, or the Communists—it is to deprive others of their equal rights of citizenship. Are not those, we ask, who do not accept the premises of free society, and of majority rule, themselves justly excluded from participating in the political processes of a free society?

The answer to the foregoing question must be a prudential one. Denying civil or political rights to those who are intolerant of the equal rights of others, however just in itself, may be counterproductive. It may in some circumstances actually serve the interests of those we suppress. Contemplating this question however—like contemplating man in the state of nature—instructs us in the fundamental rights and duties of the citizens of a free government. It teaches us that education of the citizens in the principles of the regime is the most fundamental task of any free government. For a free society cannot be neutral towards the convictions of its citizens with respect to their mutual rights and duties. It cannot be neutral towards the morality of citizenship, without being neutral towards itself. And this is absurd. Without that frequent recurrence to (that is to say, frequent re-education in) fundamental principles enjoined by the great documents of the American Revolution “no free government can be preserved to any people.” These principles as the ground of our patriotism must be defended, whenever the nation itself is defended, if necessary, by the sword. But they cannot be defended politically or by force, if they are not defended first and last, in the souls of the citizens. The greatest threat is in the souls of those who believe that reason as a guide to the ends or purposes of man’s moral and political existence is either blind or impotent, and who think that reason is relevant to human life, only as the slave, and never as the master, of our passions.

APPENDIX

Walter Berns has written (*This World*, Fall 1983, pp. 97, 98) that

the champions of separation [of church and state] in the United States—Madison, Washington, and Jefferson, for example—were not Christians, except perhaps in the most nominal of senses . . . I would go further: the very idea of natural rights is incompatible with Christian doctrine and, by its formulators, was understood to be incompatible. In fact, Thomas Hobbes and John Locke were enemies of all revealed religions.

I have commented elsewhere (*This World*, Spring/Summer 1984, pp. 3–7, but see also *National Review*, November 29, 1985, pp. 34–36) on this thesis of Berns'—now very popular—that Christianity and all revealed religion is “incompatible” with “the very idea of natural rights.” According to Berns himself the idea of natural rights, as expressed above all in the Declaration of Independence (but not less so in the Virginia Statute of Religious Liberty) is the very foundation of our constitutional and political order. To say that these foundations are “incompatible” with revealed religion, means that the success of the one must end in the withering away, if not the ultimate extinction, of the other.

I believe Berns is mistaken, and that the doctrine of natural rights is not only compatible with Christianity (and a fortiori with revealed religion as such), but is understood to be a requirement of it. The ground of individualism that we find in Locke's state of nature is anticipated by Christianity, in the idea of an individual, personal relationship, between each human soul and God, arising from Creation itself. This relationship is understood to be outside the natural order, and yet one that is reflected in the government of the natural order. It is, as such, independent of the political community. The Virginia Statute of 1786 begins with the assertion that “Almighty God hath created the mind free . . .” and goes on to cite the example set by “the holy author of our religion” who “being Lord of both body and mind, yet chose to propagate it by coercions on either, as was in His Almighty power to do . . .” The success of Christianity—not its demise, as Berns suggests—depends upon its influence upon the mind, altogether free of “temporal punishments or burthens or civil incapacitations . . .” Wealth or power in this world, or fear of persecution, may beget “hypocrisy and meanness,” but not true faith. Inducements to the profession of faith, apart from the evidences presented to faith itself, are responsible for establishing and maintaining “false religions over the greatest part of the world and through all time.” The doctrine of the Virginia Statute, the doctrine of natural rights, understands itself to contribute to true religion, and not to the elimination of religion. By contributing to the purity of religion, it is meant to contribute to the purity of society, and thereby to the moral foundation of civil government.

Prior to the rise of Christianity in the Roman world, every ancient city had its own divine law. The attribution of the laws of the Mosaic polity to Moses' God was typical of the ancient world. Every city either had a god as its lawgiver, or

received them from a legislator who had in turn received them from a god. The God of Israel Himself appears for some time as if He were “one among many” gods. First He must persuade the children of Israel that He alone is their god: then he moves on to that most shocking of paradoxes: their God alone is God.

In the ancient world, when cities were defeated in war, they often ceased to exist. If the inhabitants were not all killed, then the survivors—usually the women and children only—were carried off into slavery. Their altars were destroyed, and their gods ceased to exist—even for them. They became “clients” of the religion of their masters—the way in which black slaves in America forgot their native religions, and became in time Christians. The only conspicuous exception was the Jews, who strangely (to the rest of the world) clung to their God, perhaps even more adamantly in defeat.

As Rome conquered the cities of the ancient Mediterranean world, it found it more profitable (only incidentally more humane) to leave them to their own internal self-government. The Romans no longer exterminated their defeated enemies—as they did Carthage—or even enslaved them. Rome imposed tribute, which it found it could collect more efficaciously if it left their civic life as nearly intact as possible. After the Republic was succeeded by the Empire, and after the destruction of the Senate and the patriciate of Rome by Caesar and his successors, Rome itself ceased in any proper sense to be a political community. All power was concentrated within the Imperial palace, and the Praetorian guard. Eventually, the distinction between Rome and the provinces, and the distinction between citizens and noncitizens, became so attenuated, that Roman citizenship was extended to everyone. The Roman empire—in its own self-understanding—became universal—that is, catholic—and to be a citizen of Rome was to be a citizen of the world. Of course, to be a citizen of the world meant equally not to be a citizen at all. Citizenship as such was divorced from ruling and being ruled. It was divorced in fact from all political identity, properly so-called. As citizens of the United States, we are *not* citizens of Great Britain, or Italy, or Israel, or China, or the U.S.S.R. Citizenship is a matter, not of sameness as such, but of sameness in the light of otherness. (We are, we recall, human beings insofar as we are *not* beasts, and *not* God.) If Rome was the world, then political life as heretofore understood—above all, as understood in Aristotle’s *Politics*—ceased to exist. The Roman empire became by anticipation, the secular antecedent of the city of God: in which also there are no political identities recognizable as such, and no ruling and being ruled.

Once Roman citizenship became universal citizenship, the separate gods of the separate cities, whose worship Rome had both permitted and protected, lost their reason for being. If everyone was a Roman, then Roman law was everyone’s law. The separate gods of the separate cities had been the lawgivers of their cities. If there was but one law there must be only one God. Some form of monotheism was thus destined to become the Roman religion. The only question was what form. We observe here only that Christianity was able to combine the monotheism of Judaism with the universality of Roman citizenship.

The idea of universal political empire sustained by universal monotheistic religion certainly gripped the West for nearly a millenium. From the moment of the establishment of Christianity within the Roman empire, the contest for supremacy began between the civil and the ecclesiastical powers. With varying degrees of success, and in different ways, political nature reasserted itself. That is to say, men were not content to be citizens of the world, without recognition of their greater attachments to their own ancestors, their own families, their own clans, their own soil, and their own ways of life. Men in their political existence seek an identity that they do not share with everyone else. Patriotism reasserted itself, and as it did so the Holy Roman Empire became ever more feeble and ever more contemptible. The spirit of universal empire gradually faded. But the spiritual dominion of the One God did not. The City of God—in any one of many manifestations—endured. Since loyalty to God takes precedence by definition to any lesser loyalty, loyalty to one's separate polity here and now became problematical. It therefore became a necessity of political theory, that the unity of human nature might be reflected in the diversity of civil polities, without calling into question the unity of the City of God. It also became a necessity of political theory, that men might conceive of themselves as perfectly loyal to the God who, being One, was common to them all, without sharing an equal loyalty to their separate polities. As we have observed, Christianity had established within the souls of men the idea of a direct, personal, trans-political relationship between the individual and his God. But this relationship did not determine what the laws were to be, or the precise character of the obligation owed to those laws. The idea of the state of nature—the idea of a non-political state governed by moral law—corresponded to the relationship which every Christian had with every other Christian as he considered himself prior to and apart from his membership in a particular civil society. Just as every Christian was under the moral law, without being a member of civil society, so every human being was under the moral law of the state of nature, prior to entering a particular civil society by way of the social contract. Hence Madison's assertion that, in entering civil society, in making the social contract, a man does not—indeed cannot—surrender his rights of conscience. He is, both as man and Christian (or Jew), limited by the moral law in what he may, and may not, agree to, in making the social contract.

Christianity we might say, when it was established in the Roman empire, continued the political role of the gods in the ancient cities. In so doing, it performed a function, and filled a role, consistent with its genesis, as the successor to the gods of the ancient city. Yet however intelligible in the light of these originating circumstances—and however necessary it may have continued to be in ages of "barbarism and superstition"—this function and role was essentially at odds with its intrinsic nature. Only by the separation of church and state, under the aegis of the doctrine of natural rights, did it find a role fully consistent with its avowed mission of spiritual salvation. In Aristotle's *Politics* man is seen as, by nature, a member of the political community. No consent is necessary to establish the au-

thority of the city, or of its laws, since those laws are given by gods. Aristotle himself understands the authority of the city in the light of man's perfection, which is the perfection of a being by nature rational and political. But the presence of priests in his polities, is evidence that for the nonphilosopher, that is, for the citizens, divine sanction will support the authority of the laws. Divine sanction will support the authority of the laws, although the intrinsic ground of that authority is its reasonableness. There must then be either immediate divine sanction for the laws, or a natural sanction translated from that form visible only to philosophers, to one that is intelligible to nonphilosophers. Nowhere in the *Politics* does Aristotle confront the question of how the citizens will be persuaded to obey the laws, if there are no gods to whom those laws will be ascribed. Nowhere does he confront the question of how the authority of an unmediated universal nature will replace the authority of the gods. The state of nature and the social contract supply that mediation. Aristotle recognizes that particular polities will require particular institutions—that they will be the work of legislators acting in particular circumstances. But if these legislators can no longer crown their work by appealing to the authority of particular gods as the foundation of their laws, they must appeal directly to nature. They must have some way of translating the authority of a universal nature into the ground of particular laws. This, to repeat, is exactly what the doctrine of the state of nature, as we have described it above, accomplished. Moreover, it did so by defining nature itself in the light of the differences between man, beast, and God. That is to say, it did so by a natural theology consistent with monotheistic revealed theology. It is then a necessary emendation in Aristotle's own teaching required not by any transformation in Aristotle's principles, but by the transformation of the human condition—and of political life—in which those principles are applied. The idea of the state of nature modifies and yet preserves the idea of man as by nature a political animal. Moreover the idea of the state of nature, by treating civil society as a voluntary association, lays a firmer foundation for the idea of the rule of law than in Aristotle's *Politics*. It is guided, as we have shown, by Aristotle's idea of law as "reason unaffected by desire." It enshrines the doctrine of popular sovereignty—which in itself is un-Aristotelian. Contrary to what is often said, however, it enshrines not the people's will, but only their rational will. The people, in unanimously agreeing to form a civil society, may enjoin in the social contract as the ground and purpose of law only those things that are consistent with the law of nature in the state of nature. They may enjoin only—as Madison said—what may be willed unanimously *and* rightfully. Hence the rule of law, resulting from the social contract, contains guarantees against despotism, which are not guaranteed by the rule of law as described by Aristotle. For Aristotle's polity—with less than 10,000 citizens—had natural checks against tyranny or despotism, that would have been absent from any political society formed in the wake of the post-republican Roman Empire. The anarchy and despotism accompanying both theological and ideological politics in the post-classical era has shown the neces-

sity of firmer foundations for the rule of law than Aristotle anticipated. The theory of the state of nature—whose law is reason—as the ground of political obligation, emancipates church and state to pursue their proper goals in a manner both complementary and harmonious. Those goals are as distinct, and yet inseparable, as the concavity and the convexity of a curved line. For they are both grounded in that ultimate unity of human life which is itself grounded in the equality of man and the unity of God.