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### Recommended Citation

John S. Connor, C.M. (1985) "Ideological Independence in the American Political Experiment," *The Catholic Lawyer*: Vol. 30 : No. 1 , Article 3.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol30/iss1/3>

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# IDEOLOGICAL INDEPENDENCE IN THE AMERICAN POLITICAL EXPERIMENT

JOHN S. CONNOR, C.M.\*

This nation was founded on assuring its citizenry certain freedoms. These freedoms were set forth in the Declaration of Independence and in the Constitution. They sought to assure the populace protection of certain fundamental rights. It is the premise of this Article that these protections, while important from a worldly, mortal point of view, failed to take into account man's primary purpose here on earth—his spirituality. While important rights were recognized and guaranteed, man's soul was ignored. "For what does it profit a man, if he gain the whole world, but suffer the loss of his own soul?"<sup>1</sup> An apt sub-title for this article would be: the fallacy of misplaced concreteness.

The American Declaration of Independence (the Declaration) contains a statement concerning human nature as it affects basic political relationships. Recognizing people's inherent natural rights received from "their Creator," the Declaration stresses three—"Life, Liberty and the Pursuit of Happiness."<sup>2</sup> Such innate endowments are considered most significant when establishing a political system. "That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed . . ."<sup>3</sup> The rights thus enumerated evidently characterize humanity's crucial core, according to the Declaration's authors.<sup>4</sup>

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<sup>1</sup> *Matthew* 16:26.

<sup>2</sup> See The Declaration of Independence para. 2 (U.S. 1776).

<sup>3</sup> *Id.*

<sup>4</sup> See M.J. ADLER & W. GORMAN, *THE AMERICAN TESTAMENT* 37 (1975). Jefferson saw man as

John C. Murray, the late eminent political theologian, sees the entire Declaration as comprising "the essential content of the American consensus . . . ."<sup>5</sup> According to Murray, "the whole consensus has its ultimate root in the idea of the sacredness of man *res sacra homo*. Man has a sacredness of personal dignity . . . ."<sup>6</sup> What Murray says on the latter count undoubtedly is true, elementally anyway. Human nature does possess sacred or divine-like capacities. When those exalting potentials become encapsulated in the typical concepts which the Declaration utilizes, though, they theoretically distort humanity's vital dynamism. The resulting expression exhibits the fallacy of misplaced concreteness and consequently indicates a fundamental outlook that fosters certain serious political problems.

### BASIC HUMAN DYNAMICS

Modern psychology affords instructive insights regarding the central human dynamic. Psychoanalysis discerns a primordial covert dynamism galvanizing the individual subject. Each person's innate developmental inclinations originate there. Thence spring the forces fomenting growth, so promoting self-realization or fulfillment. Jung classified this realm as the "unconscious."<sup>7</sup> Freud observed the same impelling source, terming it the "id."<sup>8</sup> At the opposite dynamic extremity, both analysts distinguish another division of the human personality. Such sector entails overt operating mechanisms enabling the agent to contact, and interact with his or her environment. It includes varied practical procedures, reflecting an ul-

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possessing freedom of choice and as having an obligation to pursue this freedom "to fulfill himself as a man." *Id.* at 37-38.

To implement the discharge of these obligations, a man must have the right to life, liberty, and the pursuit of happiness: the right to life being his right to security against forces or factors inimical to its preservation; the right to liberty being his right to conditions or circumstances favoring or facilitating the carrying out in action of the choices he makes; and the right to the pursuit of happiness being his right to whatever help organized society can give him in his effort to make a good human life for himself.

*Id.* at 38; see also F. DONOVAN, MR. JEFFERSON'S DECLARATION 138-42 (1968) (life, liberty and the pursuit of happiness viewed by Jefferson as inherent and fundamental rights of man).

<sup>5</sup> J.C. MURRAY, WE HOLD THESE TRUTHS 28 (1960).

<sup>6</sup> *Id.* at 81.

<sup>7</sup> THE BASIC WRITINGS OF C.G. JUNG 56, 107-08, 154, 282-85, 503-04 (V. de Lazlo ed. 1959) [hereinafter cited as BASIC WRITINGS OF JUNG]; see also MAN AND HIS SYMBOLS 23 (C. Jung & M. Von Franz eds. 1964). Concerning the existence of the unconscious Jung stated: "Whoever denies the existence of the unconscious is in fact assuming that our present knowledge of the psyche is total. And this belief is clearly just as false as the assumption that we know all there is to be known about the natural universe." *Id.*

<sup>8</sup> 19 PSYCHOLOGICAL WORKS OF SIGMUND FREUD 19-27 (J. Strachez ed. 1961) [hereinafter cited as PSYCHOLOGICAL WORKS OF FREUD].

imate functional capacity for expressly giving and receiving. Being most specific or detailed, hence heavily sensibly weighted, they ordinarily make very vivid impressions upon their possessors. Jung and Freud each named that consumingly conscious and mobile vital area the "ego."<sup>9</sup>

These same psychological specialists detect an additional, somewhat mediate, crucial personal zone. Standards controlling usage of the different organs and faculties spawning and supporting the essential exigencies prevail here. Those comparatively central components, providing a real living or balancing link between the foregoing contrasting tendencies, exert a consolidating influence which correspondingly structures or forms the subject, individually and socially. Jung saw it as the "semi-conscious" sphere, in which the spiritual-corporeal, soul and body, principally adhere. Freud designated a similar semi-conscious, but strictly corporeal, formative category as the "super-ego."<sup>10</sup>

Thus the decisively discernible subjective states, taken together, comprise the total human self or personality, in its elementary dynamic outlines. Karl Rahner, from the theological viewpoint, confirms the existence of such critical vital capacities. He finds the "seminal person" to be a continuing dimension of the one person, fulfilled in the "achieved person," via the "intermediary reality of the person."<sup>11</sup> Each basic characteristic is interpreted developmentally or historically, as complementary contributory constants, not simply total lifetime periods. They are measured before the Christian revelation's supernaturally-lighted cosmic "screen," and unmistakably show the "Trinitarian trace," or image. Correctly concerted and employed, their interlocked guiding (cognitive) and guarding (affective) impact represents the divine dynamism's creative impress—as final, formal, and functional causes.<sup>12</sup>

All three essentially coherent and cohesive, created personalized sectors accordingly carry equal vital value. They therefore deserve a proportionately balanced (due priorities), progressively conscious, or humanly-becoming recognition and respect. Envisioned as more proximate, hence better manageable and usable, succinct conditions, these critical substantive relationships are rightly seen as consecutively concerned with creations—central dynamic components—ends, means, and methods. Whether we know it or not, it is under these stimulating and synchronizing influences that we constantly, if often inconsistently, seek satisfaction amid our manifestly multiple and complex engagements. This fundamental fact might be easier perceived when one recalls the persistently

<sup>9</sup> BASIC WRITINGS OF JUNG, *supra* note 7, at 54-60, 246-47; PSYCHOLOGICAL WORKS OF FREUD, *supra* note 8, at 24-27.

<sup>10</sup> PSYCHOLOGICAL WORKS OF FREUD, *supra* note 8, at 11, 28-39.

<sup>11</sup> See 2 K. RAHNER, THEOLOGICAL INVESTIGATIONS 272-74 (1963).

<sup>12</sup> See 1 T. AQUINAS, SUMMA THEOLOGICA, Q45, art.7 (Trinity embodied in every creature).

perplexing factors that basically affect our efforts along those searching lines. Having a predominantly spiritual-substantial, theoretical-philosophical significance, they require penetrating insight, and a readiness to probe beneath their largely corporeal-supplemental, practical-historical counterparts.

In his divinely-human role, Christ implicitly affirmed the aforesaid natural, human dynamic divisions. He summarized the meaning of the entire messianic mission by describing Himself as “the way, the truth, and the life.”<sup>13</sup> Affording humanity eternal life reflects the end or purpose of His mediating presence.<sup>14</sup> Accepting the cross, entailing self-denial and other-avowal, or seeking and serving “the kingdom of God and His holiness”<sup>15</sup> through one’s social situation, represents the methods of promoting such life. Linking these two essential exigencies as the crucial consolidating, and controlling constituent, we have the means-truth that mainly makes the saving process effective for humans. This is the case consonant with their cosmic mediating status, as the middle creaturely class, between the angelical and physical-biological types.<sup>16</sup>

Like its central connecting contribution to the fundamental dynamism of human nature, truth also has a similar conjunctive element in itself. The import thereof was emphasized by Christ initially, and inchoatively, when announcing His teaching theme—“Repent, for the kingdom of Heaven is at hand.”<sup>17</sup> Correcting the deadly formal or structural disorder which long had impaired proper human development, Christ combined the theoretical principle and practical trait chiefly supporting everything else He did. The simple statement “The flesh is useless, the spirit gives life; the words I give you are spirit and life”<sup>18</sup> epitomizes the drastic revamping and revitalization that human-meaning underwent. Such is the basic structural balance required of human beings. Indeed, only when truthfully (spiritually) ordered, personally and communally, can these essentially blended, existentially compromised (corporeally subverted) agents see the other truths following therefrom, as necessary for real and responsible freedom. Only if activated dynamically can they realize their sacred dignity.

#### THE AMERICAN DECLARATION’S DISTORTED DYNAMICS

Measured against the foregoing natural psychological and supernatu-

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<sup>13</sup> *John* 14:6.

<sup>14</sup> See *John* 10:10. Christ said: “I have come that they may have life, and have it more abundantly.” *Id.*

<sup>15</sup> *Matthew* 6:13.

<sup>16</sup> 1 T. AQUINAS, *supra* note 12, at Q77, art. 2.

<sup>17</sup> *Matthew* 4:17.

<sup>18</sup> *John* 6:4.

ral theological standards, the American Declaration displays a serious defect in its conclusory emphasis on fundamental human rights. While the stated right to life correctly respects human nature's ultimate purpose or end, and the asserted right to "pursuit of happiness" respects implicitly human nature's overall procedural demands or methods, it is submitted that the alleged right to liberty, presumably providing the dynamic link between the other two, is radically deficient. It concentrates upon humans' affective or volitional faculty, ignoring the vitally necessary, prior guiding, cognitive counterpart. The latter's crucial truthful contribution thus becomes superseded by the former's desiring trait. Under this psychological approach, power accordingly prevails over light, with subjectively slanted preferences proportionately, if often subconsciously, dominating objectively founded references. That really represents the meaning of ideological independence, as mainly a self-contrived and concerned pseudo-scientific/societal attitude.<sup>19</sup> Such a compromised personal condition manifests the more basic fallacy of misplaced concreteness, actually exalting emotion over thought, matter over mind, or body over spirit. The said inverted psychical state exists, even though disguised along artfully and articulately rationalized, pseudo-sophisticated lines.<sup>20</sup>

Those somewhat specific, supposedly enlightened, individualistically inclined, arbitrary human adjustments are aggravated further, from a critical Christian viewpoint, through the more general political context in which they appear. The Declaration states ". . . to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed . . ."<sup>21</sup> The largely individualistic, pronouncedly subjectivistic, personal interpretation of the Declaration thus is extended to society's organized public sector. Civil government consequently not only bows before the citizenry as a whole, but concentrates chiefly upon satisfying their claimed rights. As a result prior duties get no notice and hence assume merely ancillary status as relatively unavoidable necessities. This additional inverted arrangement reflects the aforementioned radical enshrining of liberty, without the required restraining truth ensuring responsibility. Publicly and privately, then, attention primarily if implicitly focuses on aggressive self-assertion.<sup>22</sup>

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<sup>19</sup> See W. BLUHM, *IDEOLOGIES AND ATTITUDES: MODERN POLITICAL CULTURE* 42 (1974).

<sup>20</sup> *Id.*

<sup>21</sup> See The Declaration of Independence para. 2 (U.S. 1776).

<sup>22</sup> See W. BLUHM, *supra* note 19, at 38-46. The political ideology at the time of the revolution was a radically different view of the role of the government than had existed in past eras. The prevailing view from the days of Constantine and the Roman Empire through the Middle Ages in the Western World was epitomized by a unity of church and state. Man's "ecclesiastical and civil order were seen as simply two facets of the life of a single community." *Id.* at 40. John Locke was a proponent of the modern political ideology upon which our founding fathers based their view that church and state should be separate and distinct.

Similarly, since the stated "consent of the governed" stands unqualified, the evident implicit bent toward the individual's exaltation becomes correspondingly reinforced by such explicit respect for absolute collective autonomy. Truth accordingly has no more relevance in guiding or controlling power at the ultimately unified, theoretical political level than at the comparatively diversified, proximate practical one. A majority's view regarding its rights, security, and the government's "just powers" to promote the same, would automatically determine the latter's validity. Popularity and plausibility therefore are equivalent.<sup>23</sup>

Apologists may argue, as John C. Murray does, that the bare statement: "We hold these Truths,"<sup>24</sup> of the American Declaration, intrinsically ensures truth a proper preeminence throughout the succeeding affirmations.<sup>25</sup> Simply asserting concern for the truth, however, is far removed from the full reality. The tragic content of human history, besides each person's own living experience (when forthrightly faced), clearly confirms this fundamental fact. If ensuing expressions do not remain consistent with the initial claim, actually bearing contrary witness instead, or a seriously compromised kind anyway, the promising introduction will not cover the failure. As already observed, the Declaration's personal principles, which Murray says supply reasonable guiding light to the human will's powerful desire, display serious substantive defects. Although evincing some objective accuracy or truthfulness, closer concentrated considerations show strongly subjective inclinations, and thus a covertly materialistic outlook on human nature. Such an adverse interpretation, formulated along Christian critical lines, gains further credence when the said political document's additional explanatory pronouncements are ana-

*Id.* at 44-45. The Declaration of Independence, it is submitted, clearly incorporates this new political ideology. See *id.* at 38-46; M. ADLER & W. GORMAN, *supra* note 4, at 37-41; F. DONOVAN, *supra* note 4, at 133-50. As Locke himself wrote:

I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other. . . .

The commonwealth seems to me to be a society of men constituted only for the procuring, preserving, and advancing of their own civil interests.

Civil interests I call life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like.

J. LOCKE, A LETTER CONCERNING TOLERATION 17 (2d ed. New York 1955); see also C. ROSSITER, SEEDTIME OF THE REPUBLIC 375-78 (1953) ("Men like Hamilton and Jefferson might have wished to ignore or at least neutralize the hand of God . . .").

<sup>23</sup> See W. BLUHM, *supra* note 19, at 72 (citing Jefferson's approval); see also J.C. MURRAY, *supra* note 5, at 34-35 ("People who are called upon to obey have the right first to be heard. . . . Through . . . majority opinion this popular judgment becomes binding on government.").

<sup>24</sup> The Declaration of Independence para. 2 (U.S. 1776).

<sup>25</sup> J.C. MURRAY, *supra* note 5, at 32.

lyzed adequately.

Prefacing the Declaration's affirmation of the aforesaid Rights is a statement regarding their source. "When in the Course of human Events, it becomes necessary for one People . . . to assume the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them . . ." <sup>26</sup> That simplistic insight into the basic human condition, more or less equivalently correlating the latter, earthly Power, Nature, and God, really bespeaks an allegedly advanced, scientific attitude (Enlightenment). So linking those cosmic forces manifests a mainly mechanical, physical, vital conception concerning the world and its contents. God, known solely, if at all, through a role as abstract creator behind the material mechanism, has merely a distant, apparently disinterested connection therewith. The system largely remains self-operative, controlled by divinely implanted dynamic influences. <sup>27</sup>

Humanity, being one type among these earthly Powers albeit having reason and choice, exercises a certain dominion over itself and other types. Though under some elementary constraints inherited from Nature, humans possess extensive capacities for self-development. They are actualized through rational analysis and free expression, severally and jointly. The group, diversely constituted but principally political or public, facilitates the members' advancement chiefly by laws consonant with general agreement regarding humanity's status as an earthly Power. Such laws entail officially accepted discoveries presumably promoting the citizens' best interests and permitting the most diversity possible while still maintaining a basic unity. Pluralism consequently prevails, meaning that the truth is what functionally fits the fundamental framework rationally conceived. The latter supposedly represents Nature's intrinsic impulses to attain the ends of the principally physical-psychical life empowering human beings. <sup>28</sup>

This rationalized human conception, and the so-called natural laws, positing rights inherently marking it, reflects a decidedly secularized version as assayed against an earlier religious related tradition. Independent minded, autonomously activated, "Enlightened" philosophers reformulated the teaching during the 18th and 19th centuries. John Locke, particularly in society's political sector, exhibits the resultant subjective or ideological revisionary impact very prominently. Ignoring the ancient

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<sup>26</sup> The Declaration of Independence para. 1 (U.S. 1776).

<sup>27</sup> See C. FRIEDRICH & R. McCLOSKEY, *FROM THE DECLARATION OF INDEPENDENCE TO THE CONSTITUTION XXXVIII* (1954); C. ROSSITER, *supra* note 22, at 363-66.

<sup>28</sup> See W. BLUHM, *supra* note 19, at 52-54. (both the system of checks and balances on the Constitution were means of limiting federal power and keeping religion out of politics); see also C. ROSSITER, *supra* note 22, at 130-47 (science, independence, liberty and virtue fostered by Colonial America as going hand in hand with happiness).

Greek and Roman interpretations, Locke and his like concentrated strictly upon later acclaimed sensible-empirical sources. However, they asserted even though conveniently retaining, albeit radically revising, crucial Christian notions which aided their energetic emancipating efforts.<sup>29</sup>

Thus, an original pristine "state of nature" for humans was postulated as providing elementary perfecting patterns guiding the development of humanity. Similarly, such truly objective or spiritual human qualities that these reformers attributed to the said "natural" condition—reason, choice, sociability, perfectability—actually constituted a traditional inheritance. As previously understood, however, those personal assets comprised essential substantive components characterizing a distinct human nature; which when viewed ontologically, objectively, or metaphysically, as opposed to physiologically or subjectively, project sensibly subverted conceptions. These had been sharpened and expanded considerably through original Christianity's supernaturally enlightening influence. Locke and his extremely independent, modernistic or pseudo-scientific revisionists secularized or naturalized the entire range of human values, by arbitrarily (autonomously) separating the supernatural and natural vital orders' import. In doing this, he really, as ideologically, extended the earlier, allegedly religious reformers' artificial purifying effects.<sup>30</sup>

*Ideological Independence in the American Constitution*

From the foregoing observations we see that the attitude toward natural law prevailing among American leaders at the time the Declaration was written, largely evinced a modernistic secularistic interpretation reflecting supposed scientific enlightenment. Although ostensibly admitting a divine source, the connections and ensuing relations affecting humans were believed to be determined rationally, naturally, and independently as regards religio-moral implications. Rational reflection obviously is essential when discerning natural law, however proper emphasis must be placed on discovering prior given obligations or duties basically guiding and guarding the human. If the mere analytic approach and similar self-centered ways emphasizing subsequent relevant rights instead are adopted in America, the resulting determinations are seriously deformed. Desire for liberty tends more and more toward controlling interest in truth. Affective pragmatism artfully rationalized accordingly becomes the hallmark of law, as a superficial positivism, whether traditional or liberal.<sup>31</sup>

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<sup>29</sup> See W. BLUHM, *supra* note 19, at 38-46; C. ROSSITER, *supra* note 22, at 362-70.

<sup>30</sup> See W. BLUHM, *supra* note 19, at 38-46; C. FRIEDRICH & R. McCLOSKEY, *supra* note 27, at XXXIX; C. ROSSITER, *supra* note 22, at 363-70.

<sup>31</sup> See C. ROSSITER, *supra* note 22, at 366-67, 369. While Jefferson and Adams conceded the existence of God, both asserted that God had no control over the acts of man. *Id.* at 366-67.

The American Constitution, supposedly undergirding the Nation's "rule of law," further confirms the ideologically independent outlook manifested by the Declaration. While the Constitution presumably represents the Declaration's fuller elucidation, no specific link between them clearly appears. Constitutional amendments comprising the "Bill of Rights" do so rather vicariously. Neither there, nor anywhere else throughout the second document however, do we find any reference to the said rights' source—"their Creator," or "the laws of Nature and Nature's God," as the first statement affirms. It may be asserted that the preamble to the Constitution implicitly includes such recognition. It states:

We the People . . . in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution . . .<sup>32</sup>

These announced purposes certainly reflect natural principles of political life. They also require extensive complicated development, if the elementary ends envisioned actually would be attained. Omitting overt religious acknowledgements here, at least approximating the Declaration's kind, strongly suggests the secularized, rationalized practical attitude. Typifying the autonomously enlightened approach, the Framers evidently considered each person's own experiences and insights adequate for the task faced, provided they acted concertedly or democratically. Rousseau's naturalistic religious view thus is implied—"[t]he voice of the people is the voice of God."<sup>33</sup> As representing their continental constituents, the Framers expressed this voice initially. Although displaying the two contrasting pragmatic predilections mentioned above, traditionalistic and liberalistic, adherents of both sides agreed on the need to limit sharply ensuing governmental powers. Imbued with pronouncedly distrustful notions regarding rulers, they forged a fairly detailed definitive document that closely restricts and regulates public authority. That contribution toward the protection and promotion of individual rights, through jointly devised and applied processes, produced the Constitution.<sup>34</sup>

The American Constitution's ideologically independent import is succinctly expressed by Jefferson:

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These rationalists contended that the laws of nature controlled the actions of men. *Id.* at 367; see also R. BERGER, *GOVERNMENT BY JUDICIARY: THE TRANSFORMATION OF THE FOURTEENTH AMENDMENT* 252 (1977) (Founding Fathers were deeply committed to positivism).

<sup>32</sup> U.S. CONST. preamble.

<sup>33</sup> W. BLUHM, *supra* note 19, at 72.

<sup>34</sup> See J. FRIEDRICH & R. McCLOSKEY, *supra* note 27, at X-XII; C. ROSSITER, *supra* note 22, at 374.

It is jealousy and not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power . . . . In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.<sup>35</sup>

Interpreted objectively, or measured against standards recognizing human beings' dependent creaturely status, we have the Enlightenment's self-asserted emancipation affirmed here. Radically autonomous, chiefly self-concerned individuals, circumstantially compelled to combine under a common authority for the mutual tangible realization of their respective rights, begrudgingly do so only as far as such subjection cannot be avoided. Predominantly private competing powers accept public counterparts, if the latter are limited strictly by the former's controlling directives. A typical rationally contrived, pragmatically projected societal relationship consequently exists. Constitutional principles, devised by designated men acting on behalf of public constituencies, and aiming to establish a central governing agency, somehow attain a reliability which overcomes an innate human weakness when exercising public power. If there can be no "confidence in man in questions of power," what can really surmount this want while constitutional framers act? Only intensely subjective faith in the extravagantly self-confident composers could possibly do so. We find the fallacy of misplaced concreteness manifested in the belief that political "slight of mind" represents rationalization par excellence, or pseudo-sophisticated Enlightenment, or that it reflects the "truth" stemming from extreme emphasis on liberty as an unqualified right—a "truth" mainly derived subjectively-corporeally rather than objectively-spiritually.

The fundamental governmental framework accordingly outlined articulates a modern political development concerned largely with democracy. Though the practice reaches far back into human history, its later stages are properly pertinent for our purposes. Since the present analysis follows a critical Christian approach, medieval constitutional traits down to contemporary ones principally apply. Obviously, the study's necessary limitations likewise permit merely a summarized overview. As indicated earlier, Christian conceptions regarding human nature decisively fostered improved attitudes toward natural law, and its impact on those personal beings. While Revelation does not touch natural law directly, it does so indirectly, clarifying and completing the latter's import. Such benefits result from Christ's original teachings and their continuing extensions or elucidations through His Church's authoritative teaching.

Lacking a living reference to revealed truth, humans' innately im-

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<sup>35</sup> R. BERGER, *supra* note 31, at 252 (quoting 4 J. ELLIOT, *DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION* 543 (1888)).

paired rational faculties cannot maintain a correct balance between the subjective and objective aspects thereof. An inherited urge toward self-preservation and satisfaction usually outweighs other obligations involving self-denial. Concentrating on duties (and beyond) chiefly distinguishes communally or spiritually committed persons from independently or corporeally inclined individuals. Christ implied this when warning, "the man who tries to save his life shall lose it, it is the man who loses his life . . . [for the truth] that will secure it".<sup>36</sup> Conversely, Locke, with his self-centered, secularly inspired, pseudo-idealists (really clever, covert pragmatists), makes self-preservation and satisfaction the prime human rule.

Christ established the Church to translate the supernaturally enlightening personal norms that He initially promulgated into more comprehensive societal or organized communal terms. Under His persistent living influence, it steadily developed truthful moral standards (natural and supernatural) for public as well as private guidance when exercising liberty. After the latter's due regulatory role was diminished by independently impelled, self-righteous, would-be reformers, individualistic inclinations (always precariously restrained) also went beyond their proper proportionate bounds, in both public and private life. From that point, attention has focused increasingly on an ever fascinating freedom, divorced from nearly all but subjectively, mainly sensibly, hence corporeally, contrived controls. Publicly cloaked beneath popular "professional" plausibility, pseudo-sophisticated, supposedly objective, secularized spiritual rationalizations have gained widespread acceptance. Exalting rights and excusing duties principally characterizes that modern libertarian attitude. The American constitutional Framers, largely trapped through an ideological impulsion toward naturalistic "Enlightenment," at least implicitly evidenced such an exaggerated conception of personal autonomy.<sup>37</sup>

#### *Ideological Independence in American Law*

As indicated previously, a pragmatic positivism prominently marked the early American political approach, despite some seemingly idealistic connections. Giving merely marginal, more mechanical than meaningful, consideration to natural law in the Declaration of Independence, the Signers manifested a simple, fundamental moral outlook. This obviously

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<sup>36</sup> *Matthew* 16:25.

<sup>37</sup> See W. BLUHM, *supra* note 19, at 34-36. Traditionally the Church has exerted great power over society. *Id.* at 35. During the Middle Ages however, the development of a constitutionalist tradition limited the exercise of priestly authority. *Id.* at 35-36; see also C. FRIEDRICH, *CONSTITUTIONAL GOVERNMENT AND DEMOCRACY* 10 (2d ed. 1946)(disappearance of universal church as counterbalance to national monarchies was important factor in rise of constitutionalism).

suited the immediate purpose of the document: justifying the colonies' revolt against England before the world. However, an extremely pragmatic practical potential attended the said elemental theoretical position. It became activated when the Constitution's Framers adopted a still simpler variation on the same ultimately ingratiating theme, for their immensely expanded political involvements. Concerned with formulating a national governmental structure, the so burdened second group did not explicitly bother about ideal guiding references. Rather they did what the Declaration's moral fundamentalism demanded. They unconsciously followed the basic law of logic that the greater an idea's extensiveness, the less its corresponding comprehensiveness.

Viewing the natural moral law most simply, if at all, hence most widely and easily applicable, the Framers accepted it as covering almost anything intended by them. Accordingly, liberty's aggressive proponents exerted exorbitant influence and pressed truth's cognitive insights along individually preferred practical lines. The resulting affectively authoritative assertions were roundly rationalized whether as "higher natural" law or lower positive law, depending on the personal position. From the foregoing analysis, it is apparent that only minimal deference was paid toward natural law, other than as founding rights among the constitutional Delegates. The vast majority or consensus evidently emphasized a decisively pragmatic positive approach. However, prominent and pertinent political differences did exist regarding the document's ensuing legal effects. These represented two principal contrasting interpretations of constitutional positivism. They had emerged briefly earlier as traditional and liberal.

The traditional or strongly conservative attitude especially stressed the rights of the minority and their protection. Apparently exemplified and largely led by John Adams, this group insisted on a consistent conformity with the Constitution's relatively literal legal requirements. Such a sharply restricted regulatory role seemingly reflected profoundly pessimistic notions concerning human nature. Restraining the majority was held to provide the best ways and means which would ensure public order. The traditionalism inherent there involved a somewhat extreme reverence for constitutional provisions as originally given.<sup>38</sup>

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<sup>38</sup> W. BLUHM, *supra* note 19, at 71-73. Fearing the exploitation of both the rich and poor in a democratic government, John Adams stated:

In every society where property exists, there will be a struggle between rich and poor. Mixed in one equal assembly, equal laws can never be expected. They will either be made by numbers, to plunder the few who are rich or by influence, to fleece the many who are poor.

*Id.* at 71 (quoting J. ADAMS, *A Defense of the American Constitution*, in *THE POLITICAL WRITINGS OF JOHN ADAMS* 158 (6 Peck Jr., ed. 1954)).

While likewise manifesting a positive approach toward the fundamental, constitutional law, the liberal group linked the latter and the majority's position. They consequently held that interpretations and applications should be less strictly limited to represent more exactly prevailing public preferences. Jefferson reportedly exerted a leading influence here, deriving inspiration from his rather optimistic naturalistic impressions of human nature. Resembling Rousseau, he said,

We may consider each generation as a distinct nation, with a right, by the will of its majority, to bind themselves, but none to bind the succeeding generations . . . .

The idea that institutions established for the use of the nation cannot be touched or modified . . . may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself.<sup>39</sup>

The positivism of Jefferson permits this substantive flexibility, as long as it remains basically consistent with the Constitution.

Those two contrasting constitutional views actually depict the comparable elemental societal forces, personal and communal, jointly comprising the common good. Promoting a proper balance between them poses the crucial governmental problem. Such systematizing efforts really reflect, on the societal or organic human communal level, the critical challenge constantly confronting each individual member at the vital personal level. It ultimately entails correctly consolidating the relatively competing dynamic exigencies channelled through the two essential constitutional components for human nature—corporeal and spiritual.<sup>40</sup> Traditional natural law recognizes and respects rudimentary structural order that is especially characteristic of human beings. The said recognition and attendant exposition includes the latter's extension from the simpler personal-individual plane to the complex communal-societal one. However, when lacking additional supernatural enlightenment supplied by the true Christian revelation, as authoritatively explicated by the officially commissioned Church, these fundamentally decisive formal connections are not clearly ascertained, much less concertedly or aptly applied.<sup>41</sup> Maintaining this central substantive synthesis is difficult enough in humans' personal-individual sector. The task becomes immensely increased under organized communal or societal conditions and, without a basic balance,

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<sup>39</sup> *Id.* at 72 (quoting THOMAS JEFFERSON ON DEMOCRACY 15-16 (S. PADOVER, ed. 1939)) (letter to J.W. Epps, 1814 and letter to Governor Plummer, 1816).

<sup>40</sup> See J. MARITAIN, *THE PERSON AND THE COMMON GOOD*, ch. III-IV, 33 (1947) ("Our whole being is an individual by reason of that in us which derives from matter and . . . that in us which derives from spirit").

<sup>41</sup> *Matthew* 5:17 ("I have not come to set [the natural laws] aside, but to bring them to perfection"); *John* 14:12 ("the man who has learned to believe in me will be able to do what I do; nay, he will be able to do greater things yet").

the fallacy of misplaced concreteness inevitably ensues.

As official interpreters of the law, the judiciary provides fuller insights concerning its meaning or intent. The Supreme Court's decisions interpreting the impact of the American Constitution on public and private relationships accordingly reflects the theoretical and practical import of primordial national law. We find the foregoing two contrasting constitutional approaches—traditionalistic, personal-individual, and liberalistic, communal-societal—alternately emphasized by the Court. Berger notes some early cases showing loose, abstract references to natural law, like *Calder v. Bull* and *Fletcher v. Peck*.<sup>42</sup> Berger also cites evidence indicating how the above cases represented exceptional judicial stands.<sup>43</sup> The more regular, albeit not more exact, uses apparently occurred during the Court's developing preference for protecting individual rights in property. Berger reports them as beginning around 1897, when the case of *Allgeyer v. Louisiana*<sup>44</sup> was decided. The decision exhibited the traditionalistic view regarding the positivistic legal significance of the Constitution.<sup>45</sup> Mentioning "John Adams' deep-seated conviction that 'property is as sacred as the laws of God,'" <sup>46</sup> Berger adds, "[h]istory reveals that property actually was more highly prized by the Founders than 'civil liberties.'" <sup>47</sup>

This oblique excursus from "natural law," implicit in the Founders' constitutional provisions, became a fixation with the Court throughout the next several decades. Subsequently, however, the latter took an opposite tack, manifesting a liberal attitude. The case of *Gitlow v. New York*<sup>48</sup> decided in 1925, started a more socially oriented trend. Civil liberties, like "freedom of speech and of the press" began receiving principal protection.<sup>49</sup> Additionally, the Court facilitated legislation exerting broader control over economic relations.<sup>50</sup> In the 1950's, the Court again emphasized

<sup>42</sup> See R. BERGER, *supra* note 31, at 251, 253 (citing *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798); *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810)); see also C. HAINES, *THE REVIVAL OF NATURAL LAW CONCEPTS* 90-91 (1930) (general principle of natural law justifies imposition of law even on deity) (citing *Fletcher*, 10 U.S. (6 Cranch) at 143).

<sup>43</sup> See R. BERGER, *supra* note 31, at 251-54; see also C. HAINES, *supra* note 42, at 56-59, 64-72 (American courts accepted natural law principles in public law of United States although rejected in Europe).

<sup>44</sup> 165 U.S. 578 (1897).

<sup>45</sup> *Allgeyer*, 165 U.S. at 588-91 (fourteenth amendment's "liberty" right to pursue any calling or trade is inalienable right and privilege of United States citizens).

<sup>46</sup> R. BERGER, *supra* note 31, at 267.

<sup>47</sup> *Id.* at 266.

<sup>48</sup> 268 U.S. 652 (1925).

<sup>49</sup> R. BERGER, *supra* note 31, at 270.

<sup>50</sup> See *NLRB v. Jones and Laughlin Steel Corp.*, 301 U.S. 1, 43-45 (1937) (upholding right of employees to freely form unions); see also A. COX, *THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT* 34 & n.n.1-35 (1976).

individual rights.<sup>51</sup> This latest traditionalistic tendency has steadily increased, strengthened especially through emphasis on privacy as a new individual right.<sup>52</sup> Although these judicial variations are somewhat justifiable, considering human nature's normal pattern of compromising from moderate to extreme inclinations, the result is compromised or temporalizing rationalizations. Therefore, the question is "has the Court swung around the circle back to the method which led to equating Due Process with the economics of laissez-faire[?]"<sup>53</sup>

The answer that the present study suggests is, yes. Furthermore, we may confidently expect another swing toward excessive societal assertiveness at a later date. Those radical reactions follow from the pseudo-scientific, naturalistically enlightened, secular subjectivism or individualism mainly marring juristic thought today, in the same way as it did among the Constitution's Framers. This unfortunate, formal fact has been confirmed in certain informal judicial explanatory statements. Justice Holmes' famous dictum represents a near-perfect example: "[t]he life of the law has not been logic: it has been experience."<sup>54</sup> Holmes' statement neatly summarizes "main-line" American juridical thinking. Lacking the logic of objective truth, other than proximate, pragmatic precedents, judges interpret immediate experiences and problems facing them according to their independent estimate concerning what the people want. Justice Harlan stated that "the very breadth and generality of the [Fourteenth] Amendment's provision[s] suggests that its authors . . . [supposed] that the increasing experience and evolving conscience of the American people would add new [meanings]."<sup>55</sup> Both Justices Brandeis and Cardozo relied on "the traditions and conscience of our people."<sup>56</sup> Justice Frankfurter saw the Due Process Clause as "[e]ssentially inviting a psychological judgment that reflects deep, even if inarticulate, feelings of our society."<sup>57</sup>

Professor Cahill provides a succinct overall summary when he says:

Modern legal theory looks to the consequences of its activities rather than to the source of its authority or to any general principle to which it must refer its decisions. . . .

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<sup>51</sup> See *Brown v. Board of Educ.*, 347 U.S. 483 (1954); see also A. Cox, *supra* note 50, at 57-58. Cox described the *Brown* case as a "revolution in constitutional law" that led the Court to take further action to protect the rights of individuals. *Id.*

<sup>52</sup> See, e.g., *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965) (penumbra of first amendment protects privacy from governmental intrusion).

<sup>53</sup> See Cox *supra* note 50, at 54.

<sup>54</sup> O.W. HOLMES, JR., *THE COMMON LAW* 1 (1881).

<sup>55</sup> *Duncan v. Louisiana*, 391 U.S. 145, 175 (1968).

<sup>56</sup> R. BERGER, *supra* note 31, at 275.

<sup>57</sup> *Haley v. Ohio*, 332 U.S. 596, 603 (1948).

It is in these terms law becomes an instrument of social ends.<sup>58</sup>

Thus does the dialectic between the Constitution's Framers' traditional conservatism and liberalism, emphases upon a secularized, naturalistically enlightened, abstract liberty, guided simply by subjectively pragmatic interpretation of its relation to abstract rights, persistently plague us. Without a realistically rational "trialectic"<sup>59</sup>—tempering contrasting personal and communal concerns by ultimately assaying them against an objectively guiding natural law, the legal "pendulum" will surely swing wider and wilder. Such a regressive political situation will reflect the fact that an underlying fallacy of misplaced concreteness—subverting spiritual to corporeal values—has correspondingly increased.

This ideological independence, bereft of all but elemental philosophical-natural, much more theological-supernatural, truth, bedecked with myriad supplemental material or technical trimmings, necessarily, logically, and experimentally, produces a paramount political and general societal pluralism. It is the old law, logical and ontological, the less the comprehensiveness, the greater the extensiveness, or the "melting pot" approach, done ever more expertly or "scientifically." Unless we are to be led astray through an exorbitant enthusiasm for the alleged attendant benefits claimed by both conservative and liberal proponents, we must recall Christ's naturally and supernaturally truthful moral warning:

Enter through the narrow gate. The gate that leads to destruction is wide, the road is clear, and many choose to follow it. But how narrow is the gate that leads to life, how rough the road, and how few there are who find it.<sup>60</sup>

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<sup>58</sup> F. CAHILL, JR., *JUDICIAL LEGISLATION: A STUDY IN AMERICAN LEGAL THEORY* 151-52 (1952).

<sup>59</sup> See *supra* text accompanying notes 11-19.

<sup>60</sup> *Matthew* 7:13-14.