

# RELIGION AND THE AMERICAN FOUNDING

*Ellis Sandoz\**

## I. INTRODUCTION: COMMON GROUND AND GENERAL PRINCIPLES— *HOMONOIA* (ARISTOTLE)

### *A. Federalist No. 2 (Jay)*

Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, . . . who . . . have nobly established their general liberty and independence.

. . . [I]t appears as if it was the design of Providence that an inheritance so proper and convenient for a band of brethren . . . should never be split into a number of unsocial, jealous, and alien sovereignties.<sup>1</sup>

In justifying union under the Constitution, Publius (Madison) later appeals “to the great principle of self-preservation; to the transcendent law of nature and of nature’s God, which declares that the safety and happiness of society are the objects at which all political institutions aim and to which all such institutions must be sacrificed.”<sup>2</sup> Publius thus invokes Aristotle, Cicero, and *salus populi, suprema lex esto*, as often was also done by John Selden, Sir Edward Coke, and the Whigs in the 17th century constitutional debate.<sup>3</sup> This was understood to be the ultimate ground of all free government and basis for exercise of legitimate authority (not tyranny) over free men—the *liber homo* of the Magna Carta and English common law.<sup>4</sup> James Madison and the other founders knew and accepted this as a fundamental to their own endeavors.

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<sup>1</sup> THE FEDERALIST NO. 2, at 38 (John Jay) (Clinton Rossiter ed., 1961).

<sup>2</sup> *Id.* NO. 43, at 279 (James Madison).

<sup>3</sup> See CICERO, DE RE PUBLICA, DE LEGIBUS 3.3.8, at 466–67 (Clinton Walker Keyes, trans., Harvard Univ. Press 1961); ELLIS SANDOZ, A GOVERNMENT OF LAWS: POLITICAL THEORY, RELIGION, AND THE AMERICAN FOUNDING 116–18, 174, 197, 227 (Univ. of Mo. Press 2001) (1990).

<sup>4</sup> See J.C. HOLT, MAGNA CARTA 9–11, 276–78, 291–95, 455–61, 473 (2d ed. 1992) (discussing the concept of “free man” in the Magna Carta); cf. SAMUEL RUTHERFORD, LEX, REX, OR THE LAW AND THE PRINCE 119 (Sprinkle Publ’ns. 1982) (1644) (“The law of the twelve tables is, *salus populi, suprema lex*. The safety of the people is the supreme and cardinal law to which all laws are to stoop.”).

*B. John Adams to Thomas Jefferson on the Principled Basis of American Cohesion During the Revolution*

The *general Principles*, on which the Fathers Atchieved [sic] Independence, were the only Principles in which that beautiful Assembly of young Gentlemen could Unite, and these Principles only could be intended by them in their Address, or by me in my Answer. And what were these *general Principles*? I answer, the general Principles of Christianity, in which all those Sects were United: And the *general Principles* of English and American Liberty, in which all those young Men United, and which had United all Parties in America, in Majorities sufficient to assert and maintain her Independence.

Now I will avow, that I then believed, and now believe, that those general Principles of Christianity, are as eternal and immutable, as the Existence and Attributes of God; and that those Principles of Liberty, are as unalterable as human Nature and our terrestrial, mundane System.<sup>5</sup>

## II. ELEMENTS OF THE PRESENT DISCUSSION

### *A. English Conceits and Prejudices Illustrated from Virginia's History*

The true Christian is an Englishman and he is free! There is an element of arrogant self-assurance in this conviction, obviously, but you may have noticed that politics is not a purely rational enterprise. As Rev. William Crashaw's sermon to the Jamestown colonists in 1606 stated: "He that was *the God of Israel* is still *the God of England*."<sup>6</sup> The attitude was commonplace, and in various forms it has persisted to define a central aspect of American "exceptionalism."

Soteriology of Empire: Dominion over the land was based in the God-centered world of the time as a work done in friendship with the Creator.<sup>7</sup> The form of the polity was intended to reflect that cardinal fact. This was a religious age "in which ideas about God, the church, and religious devotion touched upon nearly all aspects of life, both public and private."<sup>8</sup> Behavior rather than belief ruled the relationship to God in a Mosaic polity in which, in accordance with the Hebraizing Christianity current in England, not primarily personal salvation but salvation

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<sup>5</sup> Letter from John Adams to Thomas Jefferson (June 28, 1813), in THE ADAMS-JEFFERSON LETTERS at 339-40 (Lester J. Cappon ed. 1971). For discussion, see ELLIS SANDOZ, *Religious Liberty and Religion in the American Founding*, in THE POLITICS OF TRUTH AND OTHER UNTIMELY ESSAYS 65, 67-69 (1999).

<sup>6</sup> EDWARD L. BOND, DAMNED SOULS IN A TOBACCO COLONY: RELIGION IN SEVENTEENTH-CENTURY VIRGINIA 15 (2000) [hereinafter BOND, DAMNED SOULS]; see also Edward L. Bond, *Religion in Colonial Virginia* [hereinafter Bond, *Colonial Virginia*], in SPREADING THE GOSPEL IN COLONIAL VIRGINIA 1, 3-4, 8 (Edward L. Bond ed., 2005).

<sup>7</sup> See BOND, DAMNED SOULS, *supra* note 6, at 16, 51; *Genesis* 1:28; *Psalms* 8.

<sup>8</sup> BOND, DAMNED SOULS, *supra* note 6, at 50.

through the dominion of a chosen nation on the Old Testament model prevailed. The English became the new elect or chosen people. The specific terms are given in the Virginia law code *Lawes Divine, Morall and Martiall* (1610) that expressed English identity based on labor, worship, and Christian morality and followed the Ten Commandments.<sup>9</sup> “[B]ehavior took on a nearly sacramental character”<sup>10</sup> to the neglect of the experiential faith essential to salvation, a defect Captain John Smith himself deplored at the time: “Our good deeds or bad, by faith in Christ’s merits, is all wee [sic] have to carry our soules to heaven or hell.”<sup>11</sup>

Thus, early on, the decisive existential tension toward transcendence clearly emerges that distinguishes between terrestrial and celestial empire, between the realms of Caesar and of God.<sup>12</sup> It structures all Western politics after St. Augustine and is characteristic of Virginia’s early years. The problematic is not tidy or simple, and its terms change with the times. But the principle remains: human existence participates in all levels of reality but at all times must be lived in the metaxy or “In-Between” or middle-zone of time and eternity, mortality and immortality, and of divine-human interaction. It abidingly limits earthly empires and human pretensions as a chastening ineluctable dimension of reality itself. This is a cardinal insight of both philosophy and Christianity—one systematically subverted in the libidinous pretenses of all great tyrants (call them what you will) both religious and ideological, past and present, from the gnostic deformations of Boniface VIII to those of Karl Marx.<sup>13</sup> Along the way America was born asserting liberty and justice in the face of perceived tyranny and raising the noble banner of a government of laws and not of men. In doing so it drew especially on the prudential science of Aristotle, who argued that:

Therefore he who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law[, *nomos*,] is reason[, *nous*,] unaffected by desire.<sup>14</sup>

In Virginia, the Church of England was established by law; thus, the Bible, Book of Common Prayer, Apostles Creed, Ten

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<sup>9</sup> See *id.* at 64, 83–84; Bond, *Colonial Virginia*, *supra* note 6, at 4.

<sup>10</sup> BOND, DAMNED SOULS, *supra* note 6, at 90.

<sup>11</sup> *Id.* at 91 (citation omitted).

<sup>12</sup> *Luke 20:25* (“Then give to Caesar what is Caesar’s, and to God what is God’s.”).

<sup>13</sup> See BONIFACE VIII, UNAM SANCTAM (1302), *reprinted in* PHILIP THE FAIR AND BONIFACE VIII: STATE VS. PAPACY 52, 52–53 (Charles T. Wood ed., 1971); KARL MARX, MARX ON RELIGION *passim* (John Raines ed., 2002).

<sup>14</sup> ARISTOTLE, POLITICS 1287a:28–31 (Benjamin Jowett trans.), *reprinted in* 2 THE WORKS OF ARISTOTLE 445, 485 (W.D. Ross, ed., Encyclopædia Britannica, Inc. 1952).

Commandments, and Sermon on the Mount supplied those “general Principles of Christianity” John Adams later spoke of as grounding American consensus.<sup>15</sup> Order depended on religion, and the core of worship was liturgical practice taken from the Book of Common Prayer. Of the settlers’ routine, Captain John Smith wrote: “Our order was daily to have Prayer, with a Psalm.”<sup>16</sup> The Book of Common Prayer contained morning and evening services and a complete Psalter indicating which was to be prayed each day.<sup>17</sup> The Bible was read all the way through each year following the liturgical calendar.

Among the Puritans, Dissenters, Presbyterians, Huguenots, and Congregationalists (and Baptists and Methodists after the onset of the Great Awakening of the 1740s), sermons far more than liturgy counted in worship, especially in later Virginia. As can be seen from William Byrd II of Westover and James Blair (1685–1743), preaching loomed large. Byrd wrote that “Religion is the Duty which every Reasonable Creature owes to God, the Creator and Supream [sic] Governor of the World.”<sup>18</sup> This duty is best expressed through work, penance, and obedience, in a community where all were admittedly Christians. A merciful and good God had sent his Son into the world, they said, so as “to bring us to Heaven.”<sup>19</sup> Such faithful obedience is therapeutic for a human nature defaced by sin in fallen men who originally had been created in God’s image. Thus, men and women are exhorted to imitate Christ by living holy lives: “[E]very man [that] doth not imitate God but [acts] contrary to him, is so far unnatural because he acts contrary to his natural pattern & exemplar.”<sup>20</sup> The human pilgrimage on earth thereby involves essentially the restoration of that ruined original nature as far as may be possible with the help of divine Grace—as William Byrd taught, and James Blair, the president of William and Mary College, concurred in one of his 117 discourses on the Sermon on the Mount, writings that filled five published volumes.<sup>21</sup> Man’s pilgrimage to heaven was exemplified in John Bunyan’s *Pilgrim’s Progress* but had medieval roots.<sup>22</sup>

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<sup>15</sup> See THE ADAMS-JEFFERSON LETTERS, *supra* note 5, at 339 (emphasis omitted).

<sup>16</sup> BOND, DAMNED SOULS, *supra* note 6, at 70 (quoting JOHN SMITH, THE GENERALL HISTORIE OF VIRGINIA, NEW ENGLAND & THE SUMMER ISLES (1624), *reprinted in* 2 THE COMPLETE WORKS OF CAPTAIN JOHN SMITH (1580–1631), at 171 (Philip L. Barbour ed., Univ. of North Carolina Press 1986)).

<sup>17</sup> See *id.* n.54.

<sup>18</sup> *Id.* at 250–51 (citation omitted).

<sup>19</sup> *Id.* at 251 (citation omitted).

<sup>20</sup> *Id.* (citation omitted, third alteration in original).

<sup>21</sup> See *id.* at 243–44, 250–51, 258.

<sup>22</sup> See generally JOHN BUNYAN, THE PILGRIM’S PROGRESS (1678).

“[S]alutary neglect,” as Edmund Burke termed it in the 1770s,<sup>23</sup> was emphatically a way of life in Virginia from Jamestown onward, with especially the church chronically lacking clergy, supervision, money, and direction.<sup>24</sup> Ordained ministers were scarce, making baptism difficult and celebration of the Lord’s Supper infrequent. There was no American bishop until after the Revolution.<sup>25</sup> Local customs, both political and ecclesial, tended to trump legislation and local practice to become law itself by common usage and prescription.

An indigenous common law evolved in Virginia as it did elsewhere in America. In the absence of an episcopacy, the parish vestries independently engaged the ministers and otherwise governed the church. Composed of leading citizens (George Washington served as a vestryman)<sup>26</sup> and providing lay control by local elites, a new representative ecclesiastical order grew up. Vestries also tended to govern the counties within which they were located, to form (together with the county courts) the core institutions of the Virginia polity standing between the church authorities in London and the governor, council, and burgesses in Williamsburg as the key representative institution of governance.<sup>27</sup> “Local custom and local law both granted vestrymen authority to hire and fire clergy, and they had no intention of forfeiting rights they now [(1681)] counted among their property. A power used was a power assumed . . . .”<sup>28</sup>

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The Anglican notion of the journey, however, possessed its own distinct qualities, emphasizing neither the terrors of the wilderness stage typical of Puritan writers nor the mystical union with God common among Roman Catholic authors. Likewise, they wrote little of the rapturous joy of sinners admitted to redemption. . . . Theirs was a low-key piety, deeply felt and involving the ‘whole individual,’ but given to order rather than to passion or ecstasy.

BOND, DAMNED SOULS, *supra* note 6, at 245.

<sup>23</sup> Edmund Burke, Speech on Moving His Resolutions for Conciliation with the Colonies (March 22, 1775), in 2 THE WORKS OF THE RIGHT HONORABLE EDMUND BURKE 99, 117 (Little, Brown & Co. 3d ed. 1869); see SANDOZ, *supra* note 3, at 164–65.

<sup>24</sup> See BOND, DAMNED SOULS, *supra* note 6, at 174–82.

<sup>25</sup> See *id.* at 214–15. James Madison, president of the College of William and Mary and cousin of President James Madison, was appointed the first bishop of Virginia in 1790. Along with two others consecrated in London at the same time for Pennsylvania and New York, these were the first Anglican or Episcopal bishops appointed for America. 6 DICTIONARY OF AMERICAN BIOGRAPHY 182–83 (Dumas Malone ed., 1961).

<sup>26</sup> See BENSON J. LOSSING, THE HOME OF WASHINGTON; OR MOUNT VERNON AND ITS ASSOCIATIONS, HISTORICAL, BIOGRAPHICAL, AND PICTORIAL 86, 90 (1870).

<sup>27</sup> See BOND, DAMNED SOULS, *supra* note 6, at 203–09, 212–14, 219.

<sup>28</sup> *Id.* at 218.

### B. Anthropology

Puritan New England and the other colonial experiences were highly variegated and may be contrasted, of course, but I must generalize and, for reasons already noticed, kinship is palpable. John Winthrop in 1630 onboard *Arrabella* concluded his discourse entitled “A Modell of Christian Charity” with the now celebrated exhortation to the English Puritan settlers to keep their unity of the spirit and bond of peace of the community, diligently to live righteously, and to seek holiness, so that:

[T]he Lord will be our God and delight to dwell among us, as his owne people . . . [then] wee shall finde that the God of Israell is among us, . . . for wee must Consider that wee shall be as a Citty upon a Hill, the [Eyes] of all people are uppon us . . . .

Therefore lett us choose life . . . .<sup>29</sup>

The Virginia plantation, in many respects, was another story. There the stress was on the commercial imperialism of England’s Stuart kings, and the colony became valued for its profitable tobacco crops. As Sir Edward Seymour, one of Charles II’s Lords of the Treasury, impatiently put it when the Virginians’ religious plight came up and founding a college to alleviate it was proposed: “*Souls! Damn your Souls. Make Tobacco!*”<sup>30</sup>

But, faith concerns persisted and were addressed. Decisive for religion in its biblical forms was the understanding of human nature and the meaning and scope of human existence within comprehensive reality. Admittedly God-centered, what did such a view of reality entail? Many things, to be sure, not least of all the familiar Creator-creature relationship affirmed in general language in the Declaration of Independence in 1776 and indelibly vesting each human being with inalienable attributes among which were said to be rights to “Life, Liberty, and the Pursuit of Happiness.”<sup>31</sup> Standing behind that summarizing statement cast in neutral language is an anthropology and ontology derived from philosophy and revelation. “Self-evident truths,”<sup>32</sup> these principles were susceptible to interpretation and ambiguous, as a consensual statement had to be. But, they were never supplanted by the secularist revolution of Enlightenment rationalism ongoing in law and thought among some of the elites, as Washington took pains to remind

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<sup>29</sup> John Winthrop, *A Modell of Christian Charity* (1630), in *POLITICAL THOUGHT IN AMERICA: AN ANTHOLOGY* 7, 12 (Michael B. Levy ed., Waveland Press, Inc. 2d ed. 1988).

<sup>30</sup> See BOND, DAMNED SOULS, *supra* note 6, at vii, 194 (citation omitted).

<sup>31</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>32</sup> See *id.*

everyone in his Farewell Address.<sup>33</sup> Hence, the Declaration was understood by a faithful community in broadly Christian rather than secular or narrowly sectarian terms, as John Adams commented.<sup>34</sup>

The decisive differentiation between classical Greek philosophical anthropology and the Christian theory of man, in effect, turns on the elaboration of Aristotle's conception of "immortalizing."<sup>35</sup> He found this to be the fruit of the contemplative life that he thought best for man *qua* man as the summit of happiness in the mature man or *spoudaios*.<sup>36</sup> Blessedness (*makarios*) is the more than merely mortal divine fruit of the virtuous life oriented toward Happiness (*eudaimonia*) as the highest good attainable by action.<sup>37</sup> However, immortalizing becomes holiness in the biblical orbit of Christian revelation.<sup>38</sup> It plainly lies beyond nature and the cosmos in the Beatitude of eternal salvation through faith in Christ and Union with God.<sup>39</sup> The Greeks' *agnostos theos* is revealed in Christ, Paul announces.<sup>40</sup> The *summum bonum* or highest Good (*Agathon*) discerned in the culmination of Plato's ascent is experientially absorbed into God venerated as Creator and Savior, as companion and helper in the rise of divine fellowship.<sup>41</sup> Erotic ascent to the Idea and the *philia* of Aristotle forming community, as well as the rise to participation in the immortalizing Good or divine, differentiates as the *agape* of the

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<sup>33</sup> George Washington, Farewell Address (Sept. 19, 1796), in MATTHEW SPALDING & PATRICK J. GARRITY, *A SACRED UNION OF CITIZENS: GEORGE WASHINGTON'S FAREWELL ADDRESS AND THE AMERICAN CHARACTER* 175, 176, 183–84, 188 (1996).

<sup>34</sup> See THE ADAMS-JEFFERSON LETTERS, *supra* note 5.

<sup>35</sup> ARISTOTLE, NICOMACHEAN ETHICS 1177b:35 (W.D. Ross trans.), *reprinted in* 2 WORKS OF ARISTOTLE, *supra* note 14, at 339, 432 (*athanatizein*—to become immortal, or immortalizing).

<sup>36</sup> *Id.* at 1176a:15–20, at 430.

<sup>37</sup> *Id.* at 1178b:27–32, at 433 (*makarios*, as the supreme fruit of the contemplative life, *bios theoretikos*, according to Aristotle).

<sup>38</sup> See, e.g., RUDOLF OTTO, *THE IDEA OF THE HOLY: AN INQUIRY INTO THE NON-RATIONAL FACTOR IN THE IDEA OF THE DIVINE AND ITS RELATION TO THE RATIONAL* 166–74 (John W. Harvey trans., Oxford Univ. Press 2d ed. 1976) (1917) (discussing holiness in the Christian horizon).

<sup>39</sup> As sanctification through faith in *Acts* 26:18; 1 *Corinthians* 6:11. The Christian classic is St. Augustine's *Confessions*. See ST. AUGUSTINE, *CONFESSIONS* bks. VII, X, at 111–32, 179–220 (Henry Chadwick trans., Oxford Univ. Press 1991). For a fine recent study of this class of experience, see ROBERT MCMAHON, *UNDERSTANDING THE MEDIEVAL MEDITATIVE ASCENT: AUGUSTINE, ANSELM, BEOTHIES, & DANTE* (2006). Cf. WILLIAM JAMES, *VARIETIES OF RELIGIOUS EXPERIENCE: A STUDY IN HUMAN NATURE* 464–500 (Fountain Books 1977) (1902).

<sup>40</sup> *Acts* 17:23.

<sup>41</sup> PLATO, SYMPOSIUM 209c–211d, at 47–48 (William S. Cobb trans., State Univ. of N.Y. Press 1993); PLATO, REPUBLIC 514a–521b, at 240–49 (Robin Waterfield trans., Oxford Univ. Press 1993). Cf. MCMAHON, *supra* note 39, at 1–63; ELLIS SANDOZ, *POLITICAL APOCALYPSE: A STUDY OF DOSTOEVSKY'S GRAND INQUISITOR* 71 (ISI Books 2d rev. ed. 2000) (1978).

divine partner in being who loves us so that we may love Him.<sup>42</sup> This same divine love as Grace draws sinful man through conversion to rise from ruin (*amor sui* and *superbia vitae*) and move toward reconciliation<sup>43</sup> (through *amor Dei*, in Augustine's terms<sup>44</sup>). The person created in the divine image is once more restored through love to participate in the divine communion in faith and hope.

There is nothing in Greek philosophy which attains the illumination of reality so gloriously as First John 4: "God is love . . . We love Him because He first loved us."<sup>45</sup> Finally, it may be said that this ontological understanding of ultimate reality forms the heart of Thomas Aquinas's elaborate philosophy of man in terms of *amicitia* and *fides caritate formata* which is the crowning achievement of medieval Scholastic philosophy.<sup>46</sup> And more to the point of our concerns, its substance as existential faith was preached in English accents during the powerful revival movement in 18th century America which we call the Great Awakening, by such luminaries as John Wesley, George Whitefield, Gilbert and William Tennent, and Jonathan Edwards.<sup>47</sup> John Wesley corrected the philosophers' anthropology by finding not reason—and most particularly not the "reason" of those atheist-pests, the Enlightened philosophes—to be the *differentia specifica* of man.<sup>48</sup> Rather, the real distinguishing difference of man is his uniquely human capacity for communion with the divine: only the human being is capable of God.<sup>49</sup>

### C. Constitutional Implications

Such a lofty conception of human existence and of the human person obviously bursts the bounds of political systems and must find representation beyond politics in the church—essentially an Augustinian insight and solution which superseded the classic philosopher's search for the paradigmatic polity and, in various degrees of success, forestalled the expansive perfectionism of millenarians, chiliasts, and the various modern gnostic zealots into the present. While partaking of the optimism

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<sup>42</sup> 1 *John* 4:19.

<sup>43</sup> For the move from ruin to reconciliation as the progress of the converted man as recounted in John Wesley, see ELLIS SANDOZ, *REPUBLICANISM, RELIGION, AND THE SOUL OF AMERICA* 20–22 (2006).

<sup>44</sup> ST. AUGUSTINE, *THE CITY OF GOD AGAINST THE PAGANS* bk. XIV, ch. 28, at 410–11 (Gerald G. Walsh & Grace Monahan trans., Catholic Univ. of Am. Press 3d prtg. 1981).

<sup>45</sup> 1 *John* 4:16, 19 (NKJV).

<sup>46</sup> See ST. THOMAS AQUINAS, 31 *SUMMA THEOLOGIAE* pt. II-II, art. 3, reply 1, at 125 (Blackfriars ed., T.C. O'Brien trans., Eyre & Spottiswoode 1974); ERIC VOEGELIN, *THE NEW SCIENCE OF POLITICS* (1952), in 5 *THE COLLECTED WORKS OF ERIC VOEGELIN: MODERNITY WITHOUT RESTRAINT* 75, 150–51 (Manfred Henningsen vol. ed., Univ. of Mo. Press 2000).

<sup>47</sup> See SANDOZ, *supra* note 43, at 16.

<sup>48</sup> *Id.* at 22.

<sup>49</sup> *Id.* at 20–21, 28.



of especially the British enlightenment through John Locke and common-sense philosophy, the core of the moderation expected of human enterprise was preserved in the American founding: there were no utopians<sup>50</sup> at the Federal Convention of 1787 we are told! Men were not angels<sup>51</sup> and short of the General Resurrection were unlikely ever to become such in this world. Meanwhile the Creation and its goodness is to be enjoyed, life is to be lived, and a dangerous world kept at bay. The spiritual culture and philosophical sophistication I have limned inoculated America against most of the worst pitfalls of ideological politics—at least so far! (Fingers crossed.) But the anthropology and prevailing ethos of the late 18th century bore direct fruit in the formation of the Union. We still have “a republic[,] if [we] can keep it.”<sup>52</sup>

### III. CONCLUSION: A TRUE MAP OF MAN<sup>53</sup>

While the American Founders relied on Aristotle and Cicero and cited Montesquieu, they understood with St. Paul that “all have sinned and fall short of the glory of God.”<sup>54</sup> They, therefore, accepted the corollary drawn by Richard Hooker that laws can rightly be made only by assuming men are so depraved as to be hardly better than wild beasts<sup>55</sup>—even though they are created “little lower than the angels” and beloved of God their Creator.<sup>56</sup>

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<sup>50</sup> See SIR THOMAS MOORE, *UTOPIA* (Peter K. Marshall trans., Washington Square Press 11th prt. 1976) (1518). For utopianism as a gnostic perversion of experience, see VOEGELIN, *supra* note 46, at 186.

<sup>51</sup> See THE FEDERALIST, *supra* note 1, No. 51 (James Madison).

<sup>52</sup> James McHenry, *Papers of Dr. James McHenry on the Federal Convention, 1787*, in 11 THE AMERICAN HISTORICAL REVIEW 594, 618 (J. Franklin Jameson ed., 1906).

<sup>53</sup> See SANDOZ, *supra* note 43, at 47–52.

<sup>54</sup> *Romans* 3:23 (NKJV); cf. 1 *Timothy* 1:15.

<sup>55</sup> See generally THE FEDERALIST, *supra* note 1, No. 6 (Alexander Hamilton). Thus Richard Hooker wrote:

Laws politic, ordained for external order and regiment amongst men, are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience unto the sacred laws of his nature; in a word, unless presuming man to be in regard of his depraved mind little better than a wild beast, they do accordingly provide notwithstanding so to frame his outward actions, that they be no hindrance unto the common good for which societies are instituted: unless they do this, they are not perfect.

RICHARD HOOKER, *OF THE LAWS OF ECCLESIASTICAL POLITY* bk. 1, ch. 10.1, at 87–88 (Arthur Stephen McGrade ed., Cambridge Univ. Press 1989) (1593). Similarly, Machiavelli wrote: “All writers on politics have pointed out . . . that in constituting and legislating for a commonwealth it must needs be taken for granted that all men are wicked and that they will always give vent to malignity that is in their minds when opportunity offers.” NICCOLO MACHIAVELLI, *THE DISCOURSES* I.3, at 111–12 (Bernard Crick ed., Penguin Books 1970) (1593). Indeed the tension between the reason of the law and the passion of the human being is fundamental to the philosophical anthropology underlying the whole conception of

To generalize and simplify, but not to argue perfect homogeneity: From the Anglo-Norman Anonymous and John Wyclif to John Wesley, John Adams, and Abraham Lincoln's invocation of "government of the people, by the people, [and] for the people,"<sup>57</sup> lines of religious development undergirded and fostered a shared sense of the sanctity of the individual human being living in immediacy to God and associated the Christian calling to imitate God in their lives with political duty, capacity for self government, *salus populi*, and the ethic of aspiration through love of God. From this fertile ground emerged the institutions of civil society and republicanism perfected in the American founding.

Among other things the Framers—faced with the weighty challenge of how to make free government work—banked the fires of zealotry and political millenarianism in favor of latitudinarian faith and a quasi-Augustinian understanding of the two cities.<sup>58</sup> They humbly bowed before the inscrutable mystery of history and the human condition with its suffering and imperfection and accepted watchful waiting for fulfillment of a Providential destiny known only to God—whose "kingdom is not of this world."<sup>59</sup> But, in addition to understanding government as necessary coercive restraint on the sinful creature, they reflected a faith that political practice in perfecting the image of God in every man through just dominion was itself a blessed vocation and the calling of free men: it was stewardship in imitation of God's care for His freely created and sustained world, one enabled solely by the grace bestowed on individuals and a favored community. They embraced freedom of conscience as quintessential liberty for a citizenry of free men

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rule of law and of a government of laws and not of men, from Aristotle onward. Compare with the *locus classicus*:

[H]e who bids the law [(nomos)] rule may be deemed to bid God and Reason [(reason, nous)] alone [to] rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law is reason unaffected by desire.

ARISTOTLE, POLITICS 1287a:28–32 (Benjamin Jowett trans.), reprinted in 2 THE WORKS OF ARISTOTLE, *supra* note 14, at 445, 485. In sum, as stated elsewhere:

In fact, my axiom of politics (a minor contribution to the science) is this: *[H]uman beings are virtually ungovernable*. After all, human beings in addition to possessing reason and gifts of conscience are material, corporeal, passionate, self-serving, devious, obstreperous, ornery, unreliable, imperfect, fallible, and prone to sin if not outright depraved. And we have some bad qualities besides.

ELLIS SANDOZ, *The Politics of Truth*, in THE POLITICS OF TRUTH AND OTHER UNTIMELY ESSAYS, *supra* note 5, at 35, 39.

<sup>56</sup> *Psalms* 8:5 (NKJV).

<sup>57</sup> Abraham Lincoln, The Gettysburg Address (Nov. 19, 1863) (quoting U.S. CONST. pmb.), in BY THESE WORDS: GREAT DOCUMENTS OF AMERICAN LIBERTY, SELECTED AND PLACED IN THEIR CONTEMPORARY SETTINGS 269, 269 (Paul M. Angle ed., 1954).

<sup>58</sup> See generally ST. AUGUSTINE, *supra* note 44, bk. XV, ch. 1, at 413–15.

<sup>59</sup> *John* 18:36 (NKJV).

and women, as had John Milton long before, who exclaimed in *Areopagitica*: “Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”<sup>60</sup> And, for better or worse, they followed Milton (as well as Roger Williams and John Locke) in heeding his plea “to leave the church to itself” and “not suffer the two powers, the ecclesiastical and the civil, which are so totally distinct, to commit whoredom together.”<sup>61</sup> The correlate was religious toleration within limits, as necessary for the existence of a flourishing civil society whose free operations minimized tampering with religious institutions or dogmas. Yet, the historically affirmed vocation of a special people under God still could be pursued through active devotion to public good, liberty, and justice solidly grounded in Judeo-Christian transcendentalism. Citizens were at the same time self-consciously also pilgrims aware that this world is not their home. It is this ever-present living tension with the divine Ground above all else, perhaps, that has made the United States so nearly immune politically to the ideological maladies that have characterized much of the modern world, such as fascism and Marxism.

Like all of politics, the Founders’ solutions were compromises, offensive to utopians and all other flaming idealists. But this may be no detraction from their work, since despite all national vicissitudes, we still today strive to keep our republic—under the world’s oldest existing Constitution. Moreover, there has yet to appear an American dictator after 230 years of national existence; the United States, at grievous cost in lives and treasure, has steadily stood in wars of global reach as the champion of freedom in the face of raging despotisms of every description.

To conclude, let us not overlook the secret that a sound map of human nature lies at the heart of the Constitution of the United States and its institutional arrangements. Men are not angels and government,

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<sup>60</sup> JOHN MILTON, *AREOPAGITICA* (1644), reprinted in *AREOPAGITICA AND OTHER POLITICAL WRITINGS OF JOHN MILTON* 3, 44 (Liberty Fund, Inc. 1999).

<sup>61</sup> JOHN MILTON, *SECOND DEFENSE OF THE PEOPLE OF ENGLAND* (1654), reprinted in *AREOPAGITICA AND OTHER POLITICAL WRITINGS OF JOHN MILTON*, *supra* note 60, at 315, 406. Cf. JOHN LOCKE, ‘*Critical Notes upon Edward Stillingfleet’s Mischief and Unreasonableness of Separation*’—*Extracts*, in *JOHN LOCKE: WRITINGS ON RELIGION* 73, 73–83 (Victor Nuovo ed., Oxford Univ. Press 2002). Professor Edwin Gaustad wrote:

In the past half-century, American society has become noisily and notoriously pluralistic. This has made Roger Williams more relevant, for he had strong opinions about what government should do about religious pluralism: leave it alone. Turks, Jews, infidels, papists: leave them alone . . . Religion has the power to persuade, never the power to compel. Government does have the power to compel, but that government is wisest and best which offers to liberty of conscience its widest possible range.

EDWIN S. GAUSTAD, *LIBERTY OF CONSCIENCE: ROGER WILLIAMS IN AMERICA* 219 (1991).

admittedly, is the greatest of all reflections on human nature:<sup>62</sup> The *demos* ever tends to become the *ochlos*<sup>63</sup>—even if there could be a population of philosophers and saints—and constantly threatens majoritarian tyranny. Merely mortal magistrates, no less than self-serving factions, riven by superbia, avarice, and *libido dominandi*, artfully must be restrained by a vast net of adversarial devices if just government is to have any chance of prevailing over human passions while still nurturing the liberty of free men.

To attain these noble ends in what is called a government of laws and not of men, it was daringly thought, perhaps ambition could effectively counteract ambition<sup>64</sup> and, as one more *felix culpa*, therewith, supply the defect of better motives. This is most dramatically achieved through the routine operations of the central mechanisms of divided and separated powers and of checks and balances that display the genius of the Constitution and serve as the hallmark of America's republican experiment. All of this would have been quite inconceivable without a Christian anthropology, enriched by classical political theory and the common-law tradition, as uniquely embedded in the habits of the American people at the time of the Founding and nurtured thereafter. On this ground an extended commercial republic flourished and America became a light to the nations.

Nagging questions remain: Can a political order ultimately grounded in the tension toward transcendent divine Being, memorably proclaimed in the Declaration of Independence and solidly informed by biblical revelation and philosophy, indefinitely endure—resilient though it may be—in the face of nihilistic assault on this vital spiritual tension by every means, including by the very institutions of liberty themselves? Perhaps these are only growing pains that afflict us, rather than the disintegration of our civilization. The positivist, scientific, and Marxist climate of opinion is so pervasive and intellectually debilitating in the public arena and universities as often to make philosophical and religious discourse incomprehensible oddities whose meaning is lost to consciousness amid the din of deformation and deculturation. For instance, “the walls of separation between these two [(church and state)] must forever be upheld,” Richard Hooker wrote, contemptuously characterizing religious zealots of his distant time.<sup>65</sup> By way of Thomas Jefferson's famous 1801 letter and the United States Supreme Court more recently, that metaphor now lives on as the shibboleth of strange

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<sup>62</sup> See THE FEDERALIST, *supra* note 1, NO. 51, at 320–25 (James Madison). “If men were angels, no government would be necessary.” *Id.* at 322.

<sup>63</sup> *Cf. id.* NO. 49.

<sup>64</sup> See *id.* NO. 51.

<sup>65</sup> HOOKER, *supra* note 55, at bk. 8, ch. 1.2, at 131.

new fanatics of our own day, including those sometimes identified as atheist humanists.<sup>66</sup>

Thus, even as religious revival today enlivens American spirituality, we still endure the strong cross-currents of intellectual, moral, and social disarray of the republic—and not of the American republic alone. We test our faith that the truth shall prevail and look for hopeful signs on the horizon. We also remember that both revealed truth and philosophical reason ever have been nurtured by resolute individuals' resistance to social corruption and apostasy, in what may perchance once again become some saving remnant.

#### IV. POSTSCRIPT: FREEDOM OF CONSCIENCE AND RELIGIOUS TOLERATION

Finally, a comment on the vexed problem of toleration or freedom of conscience as Thomas Jefferson and James Madison insisted we call it.<sup>67</sup> Possessors of absolute Truth, especially if it is salvific, do not readily extend benevolence to the benighted who reject or disdain it. Killing in righteous wrath is far more likely, not to say enjoyable, in such a noble cause. Just ask Bloody Mary's allies, or Cromwell's army in Ireland, or survivors of St. Bartholomew or descendants of the 800,000 Huguenots who finally fled France after revocation of the Edict of Nantes in 1685, or read this morning's newspaper. All of this carnage, committed in the name of Truth, is piddling in comparison with the Holocaust, Gulag, and similar events of the ideological and enlightened age in which we live, of course. The point is to be stressed, with one scholar tabulating the victims of the contemporary dogmatomachy (excluding war dead) since 1900 at nearly 120 million murdered by their own governments' hands, over 95 million of them killed by Marxist regimes.<sup>68</sup>

Democracy is said to be the worst form of government—except for all the others. Something similar might be said of toleration, and zealots in our midst might take it to heart. Fanaticism yet lives, as we observe. The great French spiritualist, philosopher, and judge Jean Bodin (d. 1596)—who barely escaped death from the Catholic League—gave a great soul's solution to persecution and religious warfare by concluding that “true religion is nothing but the intention [*conversio*] of a purified mind toward the true God.”<sup>69</sup> Lamenting that “diabolical Hell-conceived

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<sup>66</sup> *Id.*; see *Everson v. Bd. of Educ.*, 330 U.S. 1, 15–16 (1947); cf. HENRI DE LUBAC, S.J., *THE DRAMA OF ATHEIST HUMANISM* (Edith M. Riley trans., Sheed & Ward, Inc. 1950).

<sup>67</sup> See generally SANDOZ, *supra* note 5, at 73–82.

<sup>68</sup> R.J. RUMMEL, *LETHAL POLITICS: SOVIET GENOCIDE AND MASS MURDER SINCE 1917*, at xi, 203–211, 223 (1990).

<sup>69</sup> Letter from Jean Bodin to Jean Bautru (1563) (alteration in original), *quoted in* ERIC VOEGELIN, 5 *HISTORY OF POLITICAL IDEAS: RELIGION AND THE RISE OF MODERNITY*, in 23 *THE COLLECTED WORKS OF ERIC VOEGELIN* 188 (Ellis Sandoz series ed., James L. Wiser vol. ed., Univ. of Mo. Press 1998).

principle of persecution” raging in the Virginia of his youth, James Madison himself seems to have shared just this sentiment.<sup>70</sup> It propelled him into politics as the foundation of his own prudential science and life as statesman. Its first legislative fruit was revision of the Virginia Declaration of Rights of 1776 to make it read: “That Religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence . . . .”<sup>71</sup> The masterly case for religious liberty given in the *Memorial and Remonstrance Against Religious Assessments* followed in 1785, and its adoption effectively blocked reestablishment of the Episcopal Church in Virginia.<sup>72</sup> This, in turn, “paved the way” for enactment six months later (while he was in Paris) of Jefferson’s long dormant *Statute for Religious Freedom*, “which premises that ‘Almighty God hath created the mind free.’”<sup>73</sup> A scholar wrote: “The troops were Baptists and Presbyterians and the tactics were Madison’s, but the words . . . were Jefferson’s.”<sup>74</sup> Then, in the First Congress under the Constitution came Madison’s leadership in fashioning the Federal Bill of Rights including the First Amendment which opens with the religion clauses.<sup>75</sup> When compared with the “[t]orrents of blood”<sup>76</sup> Madison knew to be a likely alternative, these pragmatic protections of freedom of conscience doubtless compose one of the supreme achievements of American statesmanship.

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<sup>70</sup> SANDOZ, *supra* note 5, at 79 (quoting Letter from James Madison to William Bradford (Jan. 24, 1774)).

<sup>71</sup> *Id.* at 81 (quoting THE VIRGINIA DECLARATION OF RIGHTS OF 1776 art. 16, reprinted in 1 THE BILL OF RIGHTS: A DOCUMENTARY HISTORY, at 236 (Bernard Schwartz ed., Chelsea House 1971)).

<sup>72</sup> *Id.* at 82–86.

<sup>73</sup> *Id.* at 84 (quoting The Virginia Statute for Religious Freedom (1786), reprinted in THE VIRGINIA STATUTE FOR RELIGIOUS FREEDOM: ITS EVOLUTION AND CONSEQUENCES IN AMERICAN HISTORY xvii (Merrill D. Peterson & Robert C. Vaughan eds., Cambridge Univ. Press 1988)).

<sup>74</sup> HENRY F. MAY, *The Enlightenment and After: The Jeffersonian Moment*, in THE DIVIDED HEART: ESSAYS ON PROTESTANTISM AND THE ENLIGHTENMENT IN AMERICA 161, 172 (1991).

<sup>75</sup> See SANDOZ, *supra* note 3, at 203–08, 215–17.

<sup>76</sup> SANDOZ, *supra* note 5, at 73 (quoting JAMES MADISON, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785), reprinted in 2 WRITINGS OF JAMES MADISON 189 (Gaillard Hunt ed., G.P. Putnam’s Sons 1901)).