

# Towards a Lasting America: A Reexamination of the Rights Narrative of America's Constitutional Framework

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To be an American is to be a bearer of rights. These rights are enshrined in the American creed of the Declaration of Independence, Constitution, and Bill of Rights and are said to come from God and nature. With the increasing secularization of America and the loss of traditional mediating institutions, the identity of Americans as “bearers of rights” is thought of as the last unifying identity. Moreover, in public discourse, new “de-facto” rights such as the right of individuals to be free from offense increasingly hold similar authority to those enshrined in the American creed. The fluctuation of America's natural rights doctrine raises the questions of whether or not rights-language and America's rights-doctrine is an adequate guide for human beings in political community and whether or not “the-human-person-as-bearer-of-rights” reflects a sufficient understanding of anthropology. This paper explores these two questions and concludes that America's natural rights doctrine as it stands is not a sufficient guide to political activity nor is it reflective of authentic human anthropology. After an examination into the history of natural rights and into the interpretations of modern thinkers, this paper concludes that America's natural rights doctrine must be realigned to the Scholastic tradition of natural rights and accompanied by a renewed attention to the New England and Puritan township that de Tocqueville keenly observed.

## I. INTRODUCTION

The French political historian and sociologist, Alexis de Tocqueville, observes that what makes America unique in comparison to the nations of Europe is that it is the only nation whose “starting-point” can be seen clearly in a specific moment in time (1). This moment was the year 1776 when the Declaration of Independence asserted, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed” (2). Indeed, the Declaration of Independence, Constitution, and Bill of Rights form an American creed: an outline of what America is and what it means to be an American. Mainly, this creed recognizes human beings as creatures possessing rights given to them by God (not simply granted by government) and asserts that the government's purpose is to protect citizens' exercise of these rights.

With the increased secularization of America and the rise to prominence of critical approaches to America's history, a new pattern exists of asserting implicit “de facto rights” in public discourse (3). One such example is the right of an individual to be free from offense, a de facto right newly actualized in public life by the creation of “safe spaces” at universities and workplaces to shield groups of individuals from outside opposition or criticism. If a right not enumerated in

America's creedal documents can take on almost equal weight in public life to those rights that are enumerated, the question arises as to whether using the language of rights by itself is comprehensive enough to guide the experience of a person in political community. Instead of a possibly endless progression of rights used to delineate a person's role in political life, perhaps America's political anthropology could be enriched by a broader tradition. Through a careful examination into the origin and history of natural rights, this article wishes to understand what view of anthropology America's founding documents and its doctrine of natural rights hold, and how this view could be enriched by Classical Antiquity and the Catholic Intellectual Tradition (3). To accomplish this task, the article is divided into four sections. In the first section, I describe the history of rights from the Socratics to the Enlightenment. In the second section, I offer three views from modern thinkers on which part of the historical rights tradition America's natural rights fall into. In the third section, I defend the view that the language of natural rights in American discourse is an insufficient guide to the experience of a person in political community. In the fourth section, I offer points of reflection from the Catholic Intellectual Tradition on a more adequate anthropology worthy of further discussion outside the scope of this article.

## II. RIGHTS FROM ANTIQUITY TO THE ENLIGHTENMENT

### A. The Socratics

The Socratic tradition overall does not speak of rights per se, choosing instead to use the language of duties (4). A citizen of a polity does not possess a right so much as he possesses a duty towards others and ultimately towards his community. Nonetheless, the Socratic Age can rightly be called the birthplace of rights because its emphasis on duty influences the foundation of rights properly understood in the Scholastic Era. The Socratic Age is distinguished in the order of history by its “discovery of nature or of the fundamental distinction between nature and convention” (4). Prior to Socrates, conventionalism—the school of thought that asserted that truth and moral conduct is determined by the agreement of the majority—dominated, taking as its creed a statement of Heraclitus that said, “In God’s view, all things are fair [noble] and good and just, but men have made the supposition that some things are just and others are unjust” (4). The heart of the conventionalist position is that justice (and by extension, rights) is not good by nature and that “the city and right are useful for the individual” but are not natural (4). Any conception of justice and of the polity are considered good when a collective of human beings decides that a certain conception is good. The German American political philosopher and historian of philosophy, Leo Strauss, summarizes the three main tenets of the conventionalists and their rejection of natural justice/rights this way:

1) Justice stands in an inescapable tension with everyone’s natural desire, which is directed solely toward his own good; 2) as far as justice has a foundation in nature—as far as it is, generally speaking, advantageous to the individual—its demands are limited to the members of the city, i.e., of a conventional unit; what is called “natural right” consists of certain rough rules of social expediency which are valid only for the members of the particular group and which, in addition, lack universal validity even in intra-group relations; 3) what is universally meant by “right” or “justice” leaves wholly undetermined the precise meaning of “helping” or “hurting” or “the common good”; it is only through specification that these terms become truly meaningful, and every specification is conventional (4).

The emergence of Socrates marks the turn from conventionalism towards the development of philosophy

based on nature. From this emerges a notion of truly natural, natural rights.

Strauss explains that “Socrates is said to have been the first who called philosophy down from heaven and forced it to make inquiries about life and manners and good and bad things. In other words, he is said to have been the founder of political philosophy” (4). As Strauss points out, what is perhaps surprising to the modern reader is that rather than refuting the conventionalist distinction between nature and law, Socrates and his successors retain it when asserting that “the law should follow the order established by nature” and that there ought be “co-operation between nature and law” (4). For Socrates and his descendants, the very problem is not the distinction itself, but the conventionalist assertion that law ignores nature. Thus, as Strauss cites, “The characteristic institutions of Plato’s best polity are ‘in accordance with nature,’ and they are ‘against the habits or custom’” (4). The worst polities are for Plato the ones that are “against nature” (4). What Socrates and his successors saw in conventionalism’s embrace of law against nature was “the equation of the good with the pleasant” and thus a tendency of law to encourage hedonism (4). Socratic natural right, therefore, is premised on the distinction between “the good” and “the pleasant” and the understanding “that the good is more fundamental than the pleasant” (4). Strauss explains that the Greeks understood that what fundamentally undergirded life was the reality that human beings have wants that desire satisfaction (4). These wants do not occur randomly but are naturally ordered. The work of the human being is to determine the proper constitution of these wants with the understanding that “a being is good, it is ‘in order,’ if it does its proper work well” (4). Thus, Strauss concludes, “it is the hierarchic order of man’s natural constitution which supplies the basis for natural right as the classics understood it” (4). In turn, this constitution is ordered towards the Good Life; “the life in which the requirements of man’s natural inclinations are fulfilled in the proper order to the highest possible degree, the life of a man who is awake to the highest possible degree, the life of a man in whose soul nothing lies waste” (4). It is this “general character of the good life” with which the natural law identifies (4).

The Good Life and the image of the good person that natural rights recognize is rooted in the Classical anthropology of human beings as fundamentally social creatures who cannot achieve the Good Life according to nature except by living in community. As Strauss describes, “Love, affection, friendship, pity, are as natural to him as concern with his own good and calculation of what is conducive to his own good. It is man’s natural sociality that is the basis of natural right

in the narrow or strict sense of right” (4). Thus, the city, a social community, is essential for man’s flourishing. Significantly, however, the Classical emphasis on the community and man’s sociality does not diminish the role of the individual. Because, as Strauss explains, “Political activity is then properly directed if it is directed toward human perfection or virtue. The city has therefore ultimately no other end than the individual. The morality of civil society or of the state is the same as the morality of the individual” (4). As a contemporary scholar has noted, the Classical relationship between man and the community (more precisely, “the soul and the city”) can be thought of as a “feedback loop” (5). The political activity of the community guides the individual in his attainment of virtue and the individual person’s attainment of virtue guides the political health of the community.

### B. The Scholastics

St. Augustine is a significant figure in bringing the Socratic notion of rights into the Scholastic context by claiming that only a city oriented towards Catholicism can achieve the virtue and common good that the Classical Greeks envisioned. Though Augustine does not speak of rights per se, nor is he properly a Scholastic figure, his work in *City of God* is (among other things) a work of political philosophy that lays the groundwork for more sophisticated development of the language of rights in the Scholastic period. In *City of God*, Augustine explains that the Ancients admirably set out to create a body politic defined by a view to virtue and justice with the common good (6). Augustine believes that though the Ancients worshipped false gods, these men were initially rewarded, temporally, for their selflessness in political life. Augustine says, “They took no account of their own material interests compared with the common good, that is the commonwealth and the public purse; they resisted the temptations of avarice; they acted for their country’s well-being” (6). Because of this, God “granted to them the earthly glory of an empire” (6). However, Augustine explains that such a glory would not last because the worship of the pagan gods does not lead to a lasting realization of these ideals but rather forms citizens in imitation of the apathetic gods who ignore the welfare of the city in favor of material pleasure. Augustine describes this phenomenon this way:

But the worshippers and lovers of those gods, whom they delighted to imitate in their criminal wickedness, are unconcerned about the utter corruption of their country. ‘So long as it lasts,’ they say, ‘so long as it enjoys material prosperity, and the glory of victorious war, or, better, the security

of peace, why should we worry? What concerns us is that we should get richer all the time, to have enough for extravagant spending every day, enough to keep our inferiors in their place (6).

Augustine concludes that the solution for both the spiritual and temporal health of the community is to turn to Christ whose nature as the Incarnation makes concrete the notion of the spiritual and temporal order that establishes “that there is only one unchanging Good; and that is the one, true, and blessed God” (6).

For Augustine, a person exists in the world, but has a final destination of Heaven. Thus, laws function to order a person’s relationship to the temporal and spiritual order. Augustine explains that “We see, then, that all man’s use of temporal things is related to the enjoyment of earthly peace in the earthly city, whereas in the Heavenly City it is related to the enjoyment of eternal peace” (6). To enjoy authentic earthly peace, Augustine stresses that each person must first find internal peace via the right ordering of his or her own soul. Doing this requires a person to “[subordinate] to the peace of the rational soul all that part of his nature which he shares with the beasts, so that he may engage in deliberate thought and act in accordance with this thought” and thus attain an “agreement of cognition and action which we called the peace of the rational soul” (6). Augustine continues to explain that ordering society for peace requires following the “two chief precepts” of earthly and heavenly law: the “love of God” and the “love of neighbour” (6). In following these precepts, man directs his love toward three objects: “God, himself, and his neighbour” (6). Guiding his love, in turn, is “the observance of two rules: first to do no harm to anyone, and, secondly, to help everyone whenever possible” (6). For Augustine, these three objects and these two duties are the foundation of a Christian polity, a polity whose temporal means are ultimately ordered toward the spiritual end of guiding each citizen toward heaven.

Following from St. Augustine, St. Thomas Aquinas expands Christian political philosophy by establishing rights as the mark of “the object of justice” or “the just thing” in a community ordered to the common good (7). For Aquinas, rights have a certain subjectivity as they relate to each individual, but their purpose is ordered to the common good and “communal happiness” of the city (7).

The etymology of the word “right” itself supports this view. As Cistercian monk and theologian, Pater Edmund Waldstein, explains, there are two etymological framings for the word “right,” with the latter etymology being most relevant for our understanding (7). The first finds its root in the Indo-European word “reg” meaning “straight” and also “to move in a straight line, to lead

straight, to put right,” and “to rule” (7). Its English etymological equivalent in Latin is “recta” which means “right” (7). There is, however, a second etymology that more fully aligns with the notions of justice and common good Aquinas is familiar with. That etymology is rooted in the Latin word “jus” or “justia,” whose translation is “justice” (7). Waldstein understands justice in the Thomistic sense as the giving to each person their due in accordance with “a wise understanding of the good” (7). While this justice is imperfectly applied on earth, it finds its perfection in God, himself, whose will is perfect justice and wisdom. In this way, God is the “law for himself,” whereas human beings subject their actions to that which is superior (in this context, God) (7). Therefore, on earth, justice cannot be enacted without firstly ordering all things wisely toward the good. This is principally done through law (7).

Waldstein defines law as that which determines what is good for the common good, and that which is given by a just ruler (7). It is, as Aquinas says, “a rule and measure of acts, whereby man is induced to act or is restrained from acting” (8). The goal, therefore, of law, is the happiness of the community, or political happiness, in the sense that it is the happiness of the whole polity. Waldstein makes clear, “the common good of a complete human community is not something instrumental to the private goods of the citizens of that community...but the common good of the community is happiness” (7). This happiness, in turn, reaches its height in the *summum bonum* of the *visio beatifica*: the happiness of the blessed in Heaven who see God face to face (7). Therefore, as Waldstein points out, there is “a beautiful paradox” present in the nature of law: its “first principle is the ultimate end” (7). In the context of the common good, “communal happiness,” and happiness of the polity, the relationship between rights-as-the-object-of-justice and the individual becomes clear (7). Rights are markers of the action or thing due to another person that is ordered to the “communal happiness” or common good (7). It is justice that “determines what is due to another” and “law that lays down what is just,” and “what is ordered to the good” (7). Therefore, as Waldstein explains of Thomas, rights are primarily objective, but also have a subjectivity to them (7). They are objective in that they are something owed to another but are subjective in that the person to whom they are owed has power over that object (7).

### C. The Enlightenment

Seventeenth-century English philosopher, John Locke, is broadly considered the main elucidator of the Enlightenment rights tradition. Locke’s rights doctrine in his *Second Treatise of Government* departs from the

anthropology of the Classical and Scholastic traditions. Locke rejects the understanding of the human person as a social and political creature and instead posits the human person as born without physical or metaphysical ties. This deracinated anthropology has severe implications for how Locke understands rights. Locke’s new anthropology begins with his radical exegesis of the Creation Narrative in the Book of Genesis. In Locke’s view, Adam is significant because he was born with perfect rationality. As Locke explains, “Adam was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable, from the first instant of his being to provide for his own support and preservation and govern his actions according to the dictates of the law of reason which God had implanted in him” (9). What separates Adam from his descendants is not any sort of fall from grace and turn towards sin as in the classical Christian sense, but rather simply that Adam’s descendants were born naturally (9). Because of this natural birth, they were born “ignorant and without the use of reason” (9). The purpose, then, of parenting and of life itself, is to grow in rationality. As Locke explains, “The power, then, that parents have over their children, arises from that duty which is incumbent on them, to take care of their off-spring, during the imperfect state of childhood. To inform the mind, and govern the actions of their yet ignorant nonage, till reason shall take its place, and ease them of that trouble, is what the children want, and the parents are bound to” (9). Thus, life’s purpose is not about living the Good Life, but rather, gaining reason. In stark contrast to the Socratics, Locke understands political life to be ordered not towards “the good” and virtue, but rather towards securing the right of each person to attain their self-possession. It is for this reason that Locke writes at the end of his *Second Treatise* that “the end of government is the good of mankind” and that rulers ought “to be opposed, when they grow exorbitant in the use of their power, and employ it for the destruction, and not the preservation of the *properties* [emphasis mine] of their people” (9).

Unsurprisingly then, Locke begins his direct commentary on natural rights by asserting that a person is not born into a community but exists prior to it and is born into a “state of nature” that is defined by “perfect freedom” and “perfect equality” (9). For Locke, the human person is not by nature a social creature but is rather a sovereign individual. In the “perfect freedom” of the state of nature, individuals have the ability “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” (9). In the “perfect equality” of the state of nature, “all the power and jurisdiction is

reciprocal, no one having more than another” (9). Locke is careful to note that “though this be a state of liberty, yet it is not a state of licence” (9). While people have the freedom to order their own actions, they cannot order them so as to interfere with others who are doing the same. What then leads to the creation of the body politic? Locke asserts that it is created out of the insecurity each person has over the possession of their property. As Locke explains, an individual is “constantly exposed to the invasion of others: for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure” (9). It is this insecurity that leads individuals to voluntarily give up their natural freedom in order to “join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties and estates, which I call by the general name, property” (9).

With each person being a sovereign individual and possessing property at risk of seizure by others, Locke understands natural rights as being the assurance of personal freedom, and the security to maintain personal goods. Locke explains that “Every man is born with a double right: first, a right of freedom to his person, which no other man has a power over, but the free disposal of it lies in himself. Secondly, a right, before any other man, to inherit with his brethren his father’s goods” (9). The right to personal goods is just as important as the right to personal freedom because for Locke, it is by using and laboring over goods that one comes to possess oneself and reach the fullness of one’s human potential. It is this capacity of the body to develop itself and labor over goods that leads Locke to conclude that the third and fourth fundamental rights are the rights to dispose of one’s body as one sees fit, and to be entitled to the product of one’s work. As Locke explains, “yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his” (9). For Locke, much of life consists of a person laboring in creation, taking possession over that which they create because a person has the right to the fruits of their own labor.

### III. AMERICA’S PLACE IN THE NATURAL RIGHTS TRADITION

Given this history of rights, which part of the historical rights tradition does America’s doctrine of natural rights fall into? More specifically, do the rights elucidated in the Declaration of Independence best align with the Lockean and Enlightenment conception of rights, or with the older Scholastic tradition and

its Socratic heritage? To answer this question, we will critically examine the accounts given by three twentieth-century thinkers: Jesuit priest and political philosopher, John Courtney Murray, S.J., French Catholic philosopher, Jacques Maritain, and American historian, Perry Miller.

#### A. America as the Last Natural Law Republic

In his book *We Hold These Truths: Catholic Reflections on the American Proposition*, John Courtney Murray offers this interpretation: America inherits its doctrine of natural rights from the Scholastic and Socratic traditions. Thus, America is the finest example of a republic in the Natural Law tradition. Murray believes that the unique longevity of Catholic thought demonstrates that the full meaning of natural right and liberal democracy is found beyond the philosophical, theological, and political prejudices of the time in which America’s creedal documents were written. Murray believes strongly in the Third Plenary Council of Baltimore’s 1884 statement that says: “We consider the establishment of our country’s independence, the shaping of its liberties and laws, as a work of specific Providence, its framers ‘building better than they knew,’ the Almighty’s hand guiding them” (10). In communion with the Bishops, Murray believes that understanding American natural rights requires an expansive lens that avoids reducing meaning to what is codified in writing. Thus, Murray contends that what is perhaps more important than America’s written Constitution, is its unwritten constitution, what Murray calls our “consensus” (10). This consensus, Murray says, “is an ensemble of substantive truths, a structure of basic knowledge, an order of elementary affirmations that reflect realities inherent in the order of existence. It occupies an established position in society and excludes opinions alien or contrary to itself” (10). It was this consensus that led to the American Revolution, a revolution that Murray accordingly believes can be better thought of as a “conservation” of the natural law, not a new conception of the body politic (10). Murray believed that this consensus was rooted in the medieval English common law and natural law tradition, and the Classical Greek and Scholastic definition of the human person as a social creature. As Murray says more fully:

The men who framed the American Bill of Rights understood history and tradition, and they understood nature in the light of both. They too were individualists, but not to the point of ignoring the social nature of man. They did their thinking within the tradition of freedom that was their heritage from England. Its roots were not in the

top of anyone's brain but in history. Importantly, its roots were in the medieval notion of the *homo liber et legalis*, the man whose freedom rests on law, whose law was the age-old custom in which the nature of man expressed itself, and whose lawful freedoms were possessed in association with his fellows. The rights for which the colonists contended against the English Crown were basically the rights of Englishmen. And these were substantially the rights written into the Bill of Rights (10).

Thus, America does not rest on the unstable foundation of Enlightenment rationalism but rather is the last vestige of a natural law tradition that was quickly dying in Europe. As Murray explains, "By reason of this fact the American Revolution, quite unlike its French counterpart, was less a revolution than a conservation. It conserved, by giving newly vital form to, the liberal tradition of politics, whose ruin in Continental Europe was about to be consummated by the first great modern essay in totalitarianism" (10). As Murray points out, "Constitutionalism, the rule of law, the notion of sovereignty as purely political and therefore limited by law, the concept of government as an empire of laws and not of men—these were ancient ideas, deeply implanted in the British tradition at its origin in medieval times" (10). With this solid European natural law foundation, what America uniquely gave to the world was the written Constitution, a constitution that "is explicitly the act of the people" (10). Its foundation in natural law, deference to history, and recognition of man's social nature, makes it fundamentally different from its French Revolutionary counterpart. Indeed, it was the French Revolution and not the American one, Murray contends, that was heavily influenced by John Locke. Locke's "law of nature," Murray claims, "results in the complete social atomism of the Constitution of 1791 and the Declaration of the Rights of Man and Citizen" (10). He continues, "there it appears that there are only two 'sovereignties': that of the individual over his private life and that of the state over all forms of social life" (10). Ultimately, French thinkers and their Enlightenment sympathizers, Murray contends, were fundamentally mistaken in their belief that "a state could be simply a work of art, a sort of absolute beginning, an artifact of which abstract human reason could be the sole artisan" (10). "Moreover," Murray says, "their exaggerated individualism had shut them off from a view of the organic nature of the human community; their social atomism would permit no institutions or associations intermediate between the individual and the state" (10).

Accordingly, Murray thinks that America's natural rights doctrine is not the fruit of Lockean Enlightenment thinking, but rather the product of the long tradition

of Scholastic thinking. Rights are markers of the object of justice that ultimately descend from God. They point towards the community but are equally rooted in the individual and one's freedoms and duties. The promulgation of the American creedal documents (and most especially the Bill of Rights) attest to this fact, and as Murray says more fully:

The philosophy of the Bill of Rights was also tributary to the tradition of natural law, to that idea that man has certain original responsibilities precisely as man, antecedent to his status as citizen. These responsibilities are creative of rights which inhere in man antecedent to any act of government; therefore they are not granted by government and they cannot be surrendered to government. They are as inalienable as they are inherent. Their proximate source is in nature, and in history insofar as history bears witness to the nature of man; their ultimate source, as the Declaration of Independence states, is in God, the Creator of nature and the Master of history (10).

In contrast to Locke, Murray understands rights as existing in the broader anthropological framework of the Classical and Scholastic traditions: Rights are granted by God and exist to guide a person in her naturally social existence. A person naturally exists in community and so acts in accord with justice whose markers are the rights that cannot be infringed on by others.

#### B. American Democracy and the Spirit of the Gospel

Though he speaks outside of the strictly American context, Jacques Maritain writes with the same sentiments as Murray when he stresses that democracy is essential in fostering the respect of the human person. For Maritain, liberal democracy and the natural rights that undergird it, is not a new innovation, but rather the best representation of justice as expressed in the Gospels. Indeed, the Gospel vision, Maritain explains, introduced new concepts of universal human equality, dignity, and consciousness to the world. As Maritain states in full:

Christianity announced to the peoples the kingdom of God and the life to come; it has taught them the unity of the human race, the natural equality of all men, children of the same God and redeemed by the same Christ, the inalienable dignity of every soul fashioned in the image of God, the dignity of labor and the dignity of the poor, the primacy of inner values and of good will over external values,

the inviolability of consciences, the exact vigilance of God's justice and providence over the great and the small (11).

It was admirable, Maritain believes, that the Middle Ages was a "sacral" age, a period of near-total religious unity in Europe (12). However, Maritain thinks that modern democracy best accords with the Gospel because democracy respects the separation of the spiritual and temporal realm, what Maritain characterizes as "the Gospel distinction between the things that are Caesar's and the things that are God's" (12). This distinction, Maritain thinks, does not lead to a rationalist, secular, and individualist democracy. Instead, modern democracy is "personalist" and considerate of religion (12). It respects and maintains religious pluralism and in so doing, upholds the dignity of each person as more than a mere individual (12).

Accordingly, Maritain asserts it is liberal democracy that corresponds to the Scholastic and Classical Tradition's anthropology of the human being as a political animal that seeks association in "political life" and communal life which includes the family and the body politic (12). Furthermore, Maritain thinks that liberal democracy stands as antithetical to strict Enlightenment individualism and social contractarianism. Indeed, Maritain describes the common good liberal democracy aims at in the same terms as the Scholastics do. The common good is: "neither the mere collection of private goods, nor the proper good of a whole which, like the species with respect to its individuals or the hive with respect to its bees, relates the parts to itself alone and sacrifices them to itself" (13). With a slight personalist derivation, Maritain explains that liberal democracy aims for the exact opposite of what Locke and the Enlightenment's rational individualists attempt to do. He says, the common good "is by nature the good human life of the multitude and is common to both the *whole* and the *parts*" (12). Maritain's concluding statement more concretely demonstrates this departure when he describes how the common good "involves as its *chief* value, the highest possible attainment (that is, the highest compatible with the good of the whole) of persons to their lives as persons, and to their freedom of expansion or autonomy—and to the gifts of goodness which in their turn flow from it" (14).

The functioning of rights in a proper liberal democracy, Maritain demonstrates, echoes strongly the Scholastic doctrine of rights mentioned above. As Maritain explains, "Every creature acts by virtue of its Principle, which is the Pure Act; as every authority worthy of the name (that is to say, just) is binding in conscience by virtue of the principle of beings, which is pure Wisdom" (12). This conception recognizes that

as creatures made in the *imago dei*, authority that binds human beings to obedience must be derived from the same principle which brought human beings into existence. That "principle" is God. Thus, Maritain continues, "every right possessed by man is possessed by virtue of the right possessed by God, Who is pure Justice, to see the order of His wisdom in beings respected, obeyed, and loved by every intelligence" (12). The purpose of rights, therefore, is to aid human beings in participating in the wise act of God's providence. Because rights relate to the human participation in Divine Providence, rights fall under the domain of the natural law. For Maritain, these rights are broken down into three distinct categories, "The Rights of the Human Person," "The Rights of the Civic Person," and "The Rights of the Working Person" (14). All three categories are rooted in Scholastic and Classical anthropology, with the first category being the most fundamental as it claims a direct Divine origin. "The Rights of the Human Person," Maritain explains, are "rooted in the vocation of the person (a spiritual and free agent) to the order of absolute values and to a destiny superior to time" (14). Chief among these rights is "that of the human person to make its way towards its eternal destiny along the path which its conscience has recognized as the path indicated by God" (14). In contrast to the Greeks, Maritain claims that the body politic ought to have no interference in this path. The second category of rights, "The Rights of the Civic Person," "spring directly from positive law and from the fundamental constitution of the political community" (14). The "Rights of the Working Person" "is the consciousness of the dignity of work and of the worker, of the dignity of the human person in the worker as such" (14).

### C. Puritan Continuity and Enlightenment Rupture

Perry Miller convincingly shows, however, that Murray and Maritain's hermeneutic of continuity between the Scholastic and Socratic traditions and America's natural rights tradition is slightly misplaced. As Miller demonstrates, the inheritors of the Scholastic natural rights tradition in America were not the Founding Fathers in 1776, but rather America's Puritan forebearers who arrived at Plymouth Rock in 1620 (15). The Puritans, Miller claims, were animated by the evangelical spirit of the Gospel and the medieval natural law, albeit within the lens of Calvinistic Puritanism (15). America's Founding Fathers, in contrast, were far removed from the sentiments of their forebearers and took what was by that time the empty shell of Puritan covenants and filled it with the Enlightenment doctrine of rights (15).

For far too long, Miller explains, historians have

attempted to draw a line of continuity between the Puritans and America's Founding Fathers, advocating for a vision of the Puritans as proto-Founding Fathers (15). This, however, ignores the reality that the Puritans had an entirely different conception of their place in America. The Pilgrims did not, as is often asserted, think of themselves as refugees who sought religious toleration and the individual liberty described by Locke. Rather, as Miller explains, the Pilgrims felt themselves to be singularly in possession of religious orthodoxy and viewed their journey not as a necessary misfortune, but as a supreme opportunity. Miller explains:

The Bay Company was not a battered remnant of suffering Separatists thrown up on a rocky shore; it was an organized task force of Christians, executing a flank attack on the corruptions of Christendom. These Puritans did not flee to America; they went in order to work out that complete reformation which was not yet accomplished in England and Europe, but which would quickly be accomplished if only the saints back there had a working model to guide them (15).

Indeed, the Puritans did not just seek purity of worship and governance for themselves, they saw themselves as creating a model for the rest of the world of how Christianity ought to be practiced. This new Puritan polity was grounded in the reality of Original Sin and the need for salvation. The Puritans believed that because of the Fall of Man, government has been instituted by God to restrain vices, enforce morality, and lead the community towards the Heavenly Place for which they were originally destined (15). Accordingly, the Puritans believed that "had Adam transmitted undiminished to his descendants the image of God in which he had been created, no government would ever have been necessary among men" (15).

Of course, this vision of political life is strongly Calvinistic. Nonetheless, Miller concludes that the foundation of the Puritan's political philosophy broadly shared in the Scholastic tradition. As Miller summarizes:

These views of the nature and function of the state were not peculiar to the Puritans of New England; they were the heritage of the past, the ideals, if not always the actuality, of the previous centuries;... that men should be arranged in serried ranks, inferiors obeying superiors, was the essence of feudalism; that men should live a social life, that profit-making should be restrained within the limits of the "just price," that the welfare of the whole took precedence over any individual advantage, was the doctrine of the medieval church, and of the Church

of England in the early seventeenth century (15).

Indeed, in continuity with the Scholastic and Classical tradition, Puritan America respected the distinction between the individual person, and the common whole. Miller explains, "There was, it is true, a strong element of individualism in the Puritan creed; every man had to work out his own salvation, each soul had to face his maker alone. But at the same time, the Puritan philosophy demanded that in society all men, at least all regenerate men, be marshaled into one united array. The lone horseman, the single trapper, the solitary hunter was not a figure of the Puritan frontier" (15). The Puritan colonists, to be sure, saw themselves as a people engaged in a wholly new task to redeem Christianity. Yet, they retained many principles of Medieval and Christian thought to do it. A clear and obvious break exists between the confidence in human nature espoused by the Scholastics, and the Total Depravity of the Calvinist Puritans. However, the Puritans' emphasis on duty as opposed to rights, to a common good in equal parts temporal and transcendent, the notion of law as a teacher of moral action, and of democracy as a covenant of free people in a politics of soul craft, puts them more squarely within the Scholastic tradition than their Enlightenment-minded eighteenth century successors. Indeed, even theologically speaking, it is not wholly accurate to say that Puritan life was obsessed with Total Depravity to the point of ignoring the Catholic tradition. Miller observes, "It is indeed a little surprising to the modern student to find how large a part of Puritan sermons was devoted to proving to people that they need not be weighed down with too great a sense of sin" (15). Hence, Murray and Maritain's praise of America for its continuance of the Scholastic rights tradition has been misled. The Puritans, in fact, inherited such a tradition, but it was not passed on to the Founding Fathers. Due to the simple passage of time, as well as Puritan infighting in the Colonies, the strong neo-scholastic political tradition of the Puritans was lost (15).

#### IV. THE INSUFFICIENCY OF RIGHTS LANGUAGE

By simple deduction therefore, the rights doctrine America shares in is the Enlightenment tradition typified by Locke. But is this rights tradition sufficient to guide the human person? Does it truly account for the nature of the human person and seek to form a person in that image? As contemporary French philosopher, Pierre Manent and the twentieth-century French philosopher, Simon Weil, demonstrate, the Enlightenment tradition of rights that America shares is insufficient to guide authentic political life. Manent shows how the Enlightenment's natural rights undermine an authentic view of nature,



and the natural condition of authority, putting forward instead an ontological fiction that establishes the human person's fundamental identity as "the being with rights" (16). Weil explains how identifying the human being as fundamentally a "rights bearer" denies the human capacity for life's highest things, the Transcendentals.

Manent explains that the Enlightenment doctrine of natural rights begins with an ontological shift that denies how human beings truly exist in nature (16). Human beings are unique and rooted individuals; they are born into particular families, with particular customs, in particular communities with distinct cultures. They are, as the Scholastic and Socratic tradition would have it, social creatures who at no point exist apart from political community. The laws governing the communities human beings live in, therefore, should be rooted in the natural state of human existence (which is one of social relationship) and governed by natural law. The Enlightenment rights doctrine, conversely, begins with an entirely artificial anthropology. As Manent explains, "While natural law issued commands in the name of a teaching implicit in human nature, in a *tendency* of human nature to society and to knowledge... modern natural right begins with a proposition concerning nature that reduces it to identity and separation: the bearers or bases of rights are sufficiently or even exhaustively defined by the fact that they are identical, or similar, and separate" (16). Enlightenment natural rights doctrine presupposes that the human person (deemed an "individual") theoretically exists prior to the political community, in a state of nature where each pursues his or her individual good. Human beings come together to better maintain security amongst themselves, procure resources, and better pursue their individual goods. Natural rights provide the mark of ensuring such a resolution is possible. As Manent asserts, however, calling these rights "natural" is paradoxical because though they claim to be rooted in the state of nature, they reject the validity of the natural differences in each human person in favor of abstract and theoretical perfect human equality (16). By rejecting an authentic conception of nature, and objective natural law, Manent explains that natural rights repudiate the Scholastic and Socratic tradition's idea of "the good society" or "'the best regime,' because discriminating or evaluating judgement no longer disposes of any criterion of humanity" (16). However, the logic of Enlightenment natural rights breaks down because, in fact, the idea of rights "presupposes the *prior existence* of a human world *already ordered* according to rules and purposes that cannot be derived simply from human rights" (16). Manent offers the following example to illustrate the falsity of this view: "If we wish, for example, to extend rights of access to the

university in a judicious way, it is important first to have a somewhat clear idea of the meaning of the university as an institution" (16). Similarly, if we wish to advance authentic rights, we must have a clear idea of the human person and how one ought to live, what one ought to do, etc. Natural rights, however, have as their premise the rejection of objectively good living because the state of nature rejects natural law objectivity.

Corresponding with the Enlightenment rights doctrine's rejection of an authentic view of nature is its rejection of the natural condition of authority. Ubiquitous in human life are instances of commands and acts of obedience. Authority, the demarcation of who gets to command and who must obey in different instances is thus natural to human life. As Manent explains, a recognition of this natural condition is a recognition of a key aspect of reality:

The necessity and legitimacy of commanding are given with the very constitution of the human world as a practical world, a world of action, a world that presupposes in its mere intelligibility that action has reasons that in principle govern it, reasons that the human agent often ignores or distorts, but without which he would be incapable even of choosing his perversity or his dissidence (16).

In our practical world, human beings naturally act. Such actions are not governed by mysterious forces beyond the control of the person, but rather are done in accordance with, or in rejection of, reasonable principles derived from the natural intelligibility of the world. These practically rational principles constitute the natural law, law that Manent characterizes as having authentic commands and authentic obeying because it is "the rule and measure of action" (16). Political life under this model is characterized by subsidiarity with commands and obediences being given at ascending levels of authority by persons in ascending positions of authority. Manent describes this as a "*practical and political order*" with "a gradient connected by many ladders none of whose rungs is left practically indeterminate—that is, none is exempt from the rule of action and the polarity commanding-obeying that corresponds to this rule" (16). This gradient provides clarity and order in every sphere of human existence and gives to the human person within that person's appropriate sphere of authority, the clarity needed for further action. In turn, Manent explains, "It is the human agent's clearer and deeper understanding of the reasons of action that allow him to introduce more order and reason in the part of the human world that is within his competence" (16).

The Enlightenment doctrine of rights, however, manufactures a fiction "that it is possible to produce the

command starting from a condition of noncommand, from a state of nature or of natural freedom, which would know nothing of command” (16). Natural rights pretend that it is possible to establish the ability to command “‘by convention’ without first having the ‘natural’ experience of it” (16). With its mythic basis, natural rights portray a world dictated by “the arbitrary commands of gods or of human beings” (16). What intervenes as the “principal ordering authority” in a natural rights world, is notably not natural rights, but rather political law (16). Unlike natural law, this political law does not govern an authentic “*practical and political order*” but rather a statist, polar order (16). As Manent describes, “the *statist* order is based on the polarity between two kinds of indeterminacy: the indeterminacy of a social life that tends toward ever more freedom, ever more ‘new rights,’ and the indeterminacy borne by a sovereign state that possesses a monopoly on legitimate commands” (16). This order is able to function with such indeterminacy because it falsely redefines lawgiving as the act of “guaranteeing and promoting the rights in which natural freedom consists” instead of “setting down the best rules or the best regime” (16). This tension between ever-expanding freedom, and the state’s increasing monopoly on coercive force results in a paradox of law: “The modern state intends to rule a human world that believes itself or wishes itself to be without law or rule” (16). In reality, of course, such a task is impossible. Because the world is fundamentally a world of practical action, and all actions need principles to guide them, human beings will always be under a rule of law, a rule that commands and demands obedience.

The statist and polar order, however, makes determining where exactly such commands and obediences come from, impossible. The indeterminacy of the Enlightenment’s political order leads a person to adopt as his or her identity, “the being with rights”, who ignores nature and the natural end of life (death) and lives life for the purpose of expanding individual rights (16). Because of the fictions propagated by the statist-political order, the human person no longer sees herself as an agent who gives and receives commands. Instead, a person now feels governed by the desire of maintaining a fictional “equality of conditions at the start”, an equality supposedly displayed in the state of nature (16). “This form of life,” Manent says, “would understand itself rather as the seat of an unceasing effort to authorize and encourage the individual-living-being to recompose all the significant elements of the human world in order to make them conform to the idea that he has of himself” (16). Rights, therefore, convey a spirit of limitless and untethered expansion.

In her essay, *Human Personality*, Simone Weil

demonstrates that the language of Enlightenment natural rights and its exaltation of the human personality is unable to authentically account for that which is most important to human flourishing, namely, “justice,” “truth,” and “beauty” (17). These terms are known as the Transcendentals; the qualities recognized as the “most common notions” in human existence (18). They were formulated in Classical Antiquity as the Good, the True (or the Just), and the Beautiful, and in the Middle Ages as the One, the True, and the Good (18, 19). Weil describes these Transcendentals as “the image in our world of this impersonal and divine order of the universe” and says that “Nothing inferior to them is worthy to be the inspiration of men who accept the fact of death” (17). Weil laments that human beings are not motivated to pursue these most high Transcendentals because the modern rights tradition (that Weil places as beginning in 1789 with the creation of the Declaration of the Rights of Man and Citizen, though for our purposes can be traced to the Enlightenment that preceded it) puts forth a hyper-personalized vision of life that distracts human beings from their pursuit. Rights language, Weil explains, sacralizes the human personality and creates a public morality centered around its protection. As seen in the events of the French Revolution, however, this attempt is ill-fated and the Enlightenment rights doctrine “has proved unable, because of its intrinsic inadequacy, to fulfil the role assigned to it” (17). As Weil explains, “The notion of rights is linked with the notion of sharing out, of exchange, of measured quantity. It has a commercial flavour, essentially evocative of legal claims and arguments. Rights are always asserted in a tone of contention; and when this tone is adopted, it must rely upon force in the background, or else it will be laughed at” (17). By the very definition of modern right, Weil continues, there is nothing “that prevents me from putting that man’s eyes out if I am allowed to do so and if it takes my fancy” (17). Under the Enlightenment notion of rights such an act, Weil argues, is excusable because it would only hamper that man’s physical ability, not his personality.

This ludicrousness, Weil says, prompts the question of what really is sacred about the human person? Weil asserts, “It is neither his person, nor the human personality in him, which is sacred to me. It is he. The whole of him. The arms, the eyes, the thoughts, everything. Not without infinite scruple would I touch anything of this” (17). For Weil, the notion of sacred personality is far too reductive for the human person. So too, as further reading of Weil demonstrates, is the notion that respect is due to the human person because he is a collection of good parts. Weil continues, “Although it is the whole of him that is sacred to me, he is not sacred in all respects and from every point of view.

He is not sacred in as much as he happens to have long arms, blue eyes, or possibly commonplace thoughts” (17). Instead, Weil asserts that such a person ought to be respected and spared from harm because if harm would be done to that person, “His soul would be lacerated by the thought that harm was being done to him” (17). This is because what “is sacred in every human being” is “that good and not evil will be done to him” (17). As Weil continues, “The good is the only source of the sacred” and “there is nothing sacred except the good and what pertains to it” (17). Human beings are not sacred because they have a distinctive character, can think complex thoughts, or are a collection of beautiful parts. Rather, human beings are sacred because they are fundamentally good as creatures made in the *imago dei* and thus due goodness not evil. In this way, “what is sacred in a human being is the impersonal in him” (17). In turn, Weil continues, what causes other things to be good is their impersonality: what “is sacred in science is truth,” Weil asserts, and “what is sacred in art is beauty” because “truth and beauty are impersonal” (17). This all becomes “too obvious” when reflecting on beautiful and true things such as “Gregorian chant, Romanesque architecture, the Iliad, the invention of geometry,” etc. (17). All of these things are beautiful and true because they do not manifest personality, but rather go beyond it. Hence, “If a child is doing a sum and does it wrong, the mistake bears the stamp of his personality. If he does the sum exactly right, his personality does not enter into it at all” (17). Indeed, the Enlightenment conception of rights offers a hyper individualistic view of human life that exalts the human personality.

#### V. GOING FORWARD: SUGGESTIONS FROM THE CATHOLIC INTELLECTUAL TRADITION

This article has shown that America’s doctrine of natural rights is inherited from the Enlightenment contractarian position typified by John Locke. Such natural rights are insufficient to guide the human person in political life because they do not account for a particularly human way of living. They ignore the social ties that bind each person to a specific community, family, and circle of friends, and accordingly offer as an “image of the good person” a person who continuously expands his or her individualism in cooperation with government. This ignores, as Simone Weil aptly explains, the real and unique capacities of the human person to strive toward the transcendentals, to extend beyond the individual personality and embrace life’s highest goods. Then, the question arises of “What is to be done” (16)? This paper offers as a solution retethering America’s natural rights doctrine to the Scholastic tradition via a return to emphasizing the local community as

opposed to the State. Indeed, as John Courtney Murray does well to show us, the meaning of the Constitution of America (and by extension, the Declaration of Independence and Bill of Rights) is not limited to the literal words that compose it, it includes the unwritten constitution that exists in the consensus of the people. Though America’s creedal documents themselves are the products of Enlightenment thinking, the thoughts behind the rights enumerated in those documents can be retethered to the Scholastic tradition by influencing the consensus or unwritten constitution, rather than changing the documents themselves. Outlining the specifics of how this could be done practically would require far more space to write than this article permits. However, I will assert, at the very least, that retethering America’s natural rights doctrine to the Scholastic and Socratic tradition requires renewing our appreciation of America’s Puritan legacy and its emphasis on the richness of the local community.

In his book, *Why Liberalism Failed*, contemporary American political philosopher, Patrick Deneen, points toward the New England township as a model for a politics that once again takes seriously the community over the expansive State (20). It is fitting to take seriously the political model of such towns because, as Alexis de Tocqueville notes, these local communities distinguish America from other nations. De Tocqueville writes: “The political existence of the majority of the nations of Europe commenced in the superior ranks of society, and was gradually and imperfectly communicated to the different members of the social body. In America, on the other hand, it may be said that the township was organized before the county, the county before the State, the State before the Union” (1). Though such townships have long been unrecognized in political discourse, a love of the local community is written on the hearts of many Americans: Many “feel-good” films center around small towns, artists such as Norman Rockwell captivated American audiences by evoking localist imagery, and politicians will frequently invoke “small-town America” to appeal to the sensibilities of voters. In these small democratic communities, liberty coincides with “self-discipline” and political life, and political life is dignified as the most noble of human activities (20). Indeed, when de Tocqueville observed such towns in the 1830s, he noted “The cares of political life engross a most prominent place in the occupation of a citizen in the United States, and almost the only pleasure of which an American has any idea is to take a part in the Government, and to discuss the part he has taken” (1). In small communities like these, laws are the result of a group of people reflecting on the environment that they live in. As in the Scholastic and Socratic traditions, laws are ordered to the attainment of virtue via the authentic

freedom to choose the good. As de Tocqueville notes, the Puritan understanding of liberty is best described by Cotton Mather in his *The Ecclesiastical History of New-England*, when he explains:

There is a liberty of a corrupt nature which is effected both by men and beasts to do what they list, and this liberty is inconsistent with authority, impatient of all restraint; by this liberty ‘sumus omnes deteriores’: ‘tis the grand enemy of truth and peace, and all the ordinances of God are bent against it. But there is a civil, a moral, a federal liberty which is the proper end and object of authority; it is a liberty for that only which is just and good: for this liberty you are to stand with the hazard of your very lives... (1).

Indeed, in the New England township where, like any democracy, authority is “Of the people, by the people, for the people,” laws are the act “of a people imposing laws upon themselves directly” to embrace the good (20). The ongoing political activity of the people, therefore, is not the expansion of rights towards autonomy. Rather, it is “the ongoing discussion and disputation and practices of self-rule in particular places with familiar people over a long period of time” (20). More basically, it is a communal engagement in the rational reflection on experience that is constitutive of the natural law. In this way, as de Tocqueville explains, democracy “is not the laws’ creation, but the people learn to achieve it by making the laws” (1, 20). In the small democracies of the New England townships, it is understood that it is the community’s duty to prepare successive generations for the noble responsibility of maintaining this freedom. As de Tocqueville describes, “Town-meetings are to liberty what primary schools are to science; they bring it within the people’s reach, they teach men how to use and how to enjoy it” (1).

It is perhaps surprising that an article promising to conclude with considerations from the Catholic Intellectual Tradition would extoll the virtues of the Puritan township. Yet, as Miller has shown us, the Puritan political tradition is far more the result of Scholasticism than it is the Enlightenment. Reflecting the Scholastic tradition, a Puritan town had a strong conception of the common good with laws ordered towards facilitating virtue for each citizen. It had a balanced understanding of the community and the individual. Of course, the Puritan township was thoroughly Protestant in religion, yet the political model described above distinctly instantiates a chief tenant of Catholic Social Teaching: subsidiarity. Subsidiarity, or “the principle that decisions should always be taken at the lowest possible level or closest to where they

will have their effect” is why the local townships are, as Tocqueville says, “schools of liberty” (1, 21). As Deneen stresses, the tradition of self-governance is one that appreciates *bottom-up* governance more than top-down governance and educates successive generations to hold and instantiate the same appreciation (20). If America is to remain sound as a nation, it is worth taking a longer view of America’s history, one that does not simply begin in 1776, or view any time prior as simply leading up to that apex moment. Instead, the Puritan tradition must be appreciated to what it is in itself: a tradition that stretches back to the Middle Ages with a consistent anthropology, rights doctrine, and conception of the common good. A lasting America is an America with a stable rights tradition capable of responding to changing human realities. By looking to the Puritan tradition, America’s rights doctrine and its accompanying anthropology has the benefit of a longer and more consistent history ordered to true human flourishing.

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