

## The Constitution of Liberty within Christendom

The civilization of the West is rendered an intelligible unit and distinguished from the alternatives by three characteristics present nowhere else: monotheism in religion, philosophy and science as a means for understanding the natural world, and self-government. The first originates with the Jews; the second and third, with the Greeks. They become fully intertwined in the Middle Ages only under the aegis of Western Christianity.

Of course, self-government and liberty are not normally associated in the popular mind with the Roman church. For this error, there is warrant. Classical republicanism, the peculiar form of self-government invented by the Greeks, managed to survive in a dispirited and attenuated form under Hellenistic and Roman domination—but, eventually, it succumbed altogether, and it did so largely because, in its capacity as a universal religion, Christianity destroyed the little that remained of the ancient city's particularist foundations. Friedrich Nietzsche was on to something when he dubbed Christianity "Platonism for the people," for it accomplished for the great body of ordinary folk what ancient philosophy had only threatened to do for a tiny and relatively inconsequential elite: it devalued the quest for office, for power, and for glory, and it rendered citizenship

and civic loyalty at best a secondary concern.<sup>1</sup> Where Pericles' Athenians had been expected to "judge worthless" any "man who takes no part in politics" and could be described as "one who minds his own business," Paul's Thessalonians were enjoined, for the sake of respectability, "to find honor in being quiet" and "to mind" their own "private affairs."<sup>2</sup> Tertullian tells us that his fellow Christians remain "cold in the face of all ardor for glory and honor" and that they have "no need for political gatherings" whatsoever. "There is nothing," he concludes, "more alien to us than the commonwealth (*res publica*)."<sup>3</sup> In making this last point, he no doubt goes too far—but not by much. To Christians inclined to take politics seriously, Augustine poses an unanswerable question: "In so far as concerns this life of mortal men, which is conducted and brought to conclusion within a few days, what does it matter under whose rule lives a man who is destined to die—as long as those who rule do not force him to commit impious and iniquitous deeds?"<sup>4</sup>

Not surprisingly, when the Bible re-

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placed Homer, the lives of the martyrs and saints supplanted Xenophon's *Cyropaedeia* and Plutarch's biographies of the noble statesmen and warriors of ancient Greece and Rome. Under the new dispensation, spiritual and temporal authority were both thought to descend from God; and so, properly speaking, men everywhere were subjects, not citizens. In fact, just as the Church was committed to its tutor the pope, so the kingdom was entrusted to its lawful ruler, and the city to its magistrates—all of whom ruled their charges by the grace of God.<sup>5</sup> In time, to be sure, representative assemblies were established in the various kingdoms of the Christian West, and civic republics reappeared in Italy and elsewhere. But it is striking that self-government was initially justified not with an eye to man's nature as a political animal and to the glorious role assigned the political community in completing and perfecting what nature had already offered men<sup>6</sup>—but in terms of the far more prosaic principle governing the Roman law of private corporations as it had been applied in legal cases concerning the management of waterways: "What touches all in similar fashion shall be by all approved."<sup>7</sup>

The subsequent recovery of Aristotle's works, their translation into Latin by William of Moerbeke, and their gradual absorption occasioned second thoughts on the part of some humanists and even a jurist or two.<sup>8</sup> But if truth be told, the heightened civic consciousness which emerged in the republics of Renaissance Italy under the influence of Aristotle, Cicero, and the other ancient writers was never more than half-hearted, if that.<sup>9</sup> Within Christendom (and, even more so, the House of Islam), politics could never regain the primacy it had been accorded within the pagan polities of ancient Greece and Rome. For, as Machiavelli did not fail to recognize, no one who embraced a system of character formation

grounded on the distinction between the city of God and the city of man could honestly and with full conviction repeat the dictum which Francesco Guicciardini had lifted from Gino di Neri Capponi and Machiavelli had subsequently made his own: "I love my native city more than my soul."<sup>10</sup>

And yet, if the Greek *polis* and the Roman *civitas* disappeared, much of their legacy did not. To conquer Rome, Christianity had to absorb classical culture and learning; and to do that, it had to confront and come to terms with a political philosophy that had managed to defeat, accommodate, and, in some measure, even impose its hegemony on the poetry which served as a foundation for that culture and learning.<sup>11</sup> Tertullian might fulminate against the Christian propensity for employing "that wretched Aristotle, who introduced for the heretics dialectic, which is so expert at building up and tearing down, so crafty in its statements, so forced in its conjectures, so harsh in its arguments, so productive of strife—an annoyance even to itself." He might ask, "What has Athens to do with Jerusalem?" He might wonder, "What has the Academy to do with the Church (*Ecclesia*)?" He might demand to know, "What have heretics to do with Christians?" And in the end, he might proudly assert: "Our education takes place at the Stoa of Solomon, who stipulated that the Lord must be approached in simplicity of heart. Off with those who have put forward a Stoic, Platonic, and dialectical Christianity. After Jesus Christ, we have no need for curiosity; nor do we need inquiry after the Gospel. When we believe, we desire to believe nothing more. For we believe this before all else: that there is nothing else that we ought to believe." Tertullian might repeat himself endlessly in the most eloquent Latin prose. He might cite Paul's injunction to the Colossians to beware lest "some-

one rob” them of the true faith “through philosophy and an empty deception in tune with human tradition, in tune with the elements of the cosmos, and not in tune with Christ.”<sup>12</sup> But his efforts were of no avail.\*

Christianity was not, like Judaism and Islam, a religion of holy law; it was first and foremost a religion of faith. Moreover, the Gospel of John had identified the Godhead with speech, argument, and reason (*logos*), and it had described Christ himself as the *logos* made flesh.<sup>13</sup> Even Paul speaks of what is demanded by Christianity as “reasonable servitude (*logike latreia*).”<sup>14</sup> Of course, the author of the epistles to Timothy and Titus also denounced as “blind and demented” those who, “knowing nothing, betray a pathological interest in inquiries (*zeteseis*) and the logical disputes (*logomachias*) which give rise to envy, strife, blasphemy, base suspicions, and the violent contentions of human beings corrupt in mind and deprived of the truth”; and in the first epistle to the Corinthians, he juxtaposed “the Greeks” who “seek (*zetousi*) wisdom” with the Christians who “preach Christ crucified.” But, as even the most vociferous opponents of philosophy were aware, in the Gospel of Matthew, Christ is said to have promised his followers: “Seek (*zeteite*), and ye shall find.”<sup>15</sup> Yet only two centuries after Tertullian had passed from the scene, when his fellow North African Augustine contended that “faith is nothing if it is not thought through,” he spoke for what had already become the Christian mainstream.<sup>16</sup>

Tertullian unwittingly provides testimony foreshadowing his own defeat, for it is not without significance that, in the passage cited, he calls the Church by the name given the public assembly in the ancient Greek *polis*: whether he liked it or not, the civic *ekklesia* of classical Hellas lived on within the Christian congregation. The

man’s eloquence is itself a sign of the reappearance of politics in a new guise. For this, the evidence is dramatic. In the late fourth century A.D., when Gregory of Nyssa visited Constantinople, he found the townspeople, to his great exasperation, debating the theological questions pertinent to salvation with the same verve that their ancestors had reserved for disputes touching on matters of political prudence. “If you were to ask a shopkeeper for your change,” he later remembered, “the man would philosophize to you concerning what is begotten and what is not. If you were to inquire concerning the price of bread, the baker would reply, ‘The Father is greater and the Son, inferior.’ And if you were to ask whether your bath is ready, the attendant would specify that the Son takes his being from no being.”<sup>17</sup> In the early fourteenth century, when Jacques Fournier, the future Pope Benedict XII, became bishop of Pamiers in Ariège in the Comté de Foix and conducted a severe inquisition in his diocese, he found the peasants resident in the mountain village of Montaillou and the illiterate shepherds who wandered back and forth across the Pyrenees in search of work arguing about questions of faith with no less interest and intensity than had been evidenced by the shopkeepers, bakers, and bath attendants of Gregory’s Constantinople.<sup>18</sup> Nearly a millennium had passed, and nothing had changed. Throughout the Middle Ages, Christianity remained what it had been virtually from the start: a great debating society.

There is a sense, then, in which the Church absorbed the *res publica*, the republic, the public sphere: for the larger questions that had occupied the Greek *polis* and the Roman *civitas*, those pertaining to advantage, to justice, and to the common good, were judged in the end to be matters of religious rather than mere political concern, and they were subsumed within the realm of

theology—the realm in which speech and reason (*logos*) were applied by the learned to questions concerning God (*theos*). Within Christendom, the Church claimed and was accorded moral and political hegemony: it exercised by divine right magisterial power; it possessed the teaching *magisterium*.

There were, of course, other spheres in which men were left to their own devices to govern their own affairs. The Church claimed spiritual hegemony, but no more. To monarchs, feudal nobles, and communes, it left the managerial, administrative side of politics. This largely coincided with what, in ancient Greece, had been subsumed under *oikonomia*, “economics” or household management: in consequence, medieval self-government foreshadowed and prepared the way for modern self-government in focusing on what the Romans had contemptuously called the *res privata*—the private or domestic sphere, the realm of privation, of labor and provision. It is not, then, fortuitous that Gratian and the other pioneers of canon law found it convenient to revive and elaborate as the foundation for medieval self-government the principle governing the Roman law of *private* corporations as it had been applied in legal cases concerning the management of waterways: “What touches all in similar fashion shall be by all approved.” The original principle codified common sense by denying to those upstream the right to take all the available water for their own use and to deprive those downstream of that which they, too, had a self-evident right to share. When applied more generally, it nicely described the restricted species of politics that is principally concerned with the accommodation of needs and desires within an association or corporation that is itself narrowly conceived of as constituted by common interests.

This development was rendered possible

by the failure of Charlemagne’s heirs to hold Western Christendom together. Had they succeeded in this endeavor, the Holy Roman Empire would probably have come closely to resemble its analogue in the Greek East, where late antique Roman forms survived and even flourished, and liberty had no place. There, the division of responsibility between the spiritual and the secular power was only notional, and Caesaro-Papism was the norm, for the Byzantine Emperor’s control of the sword rendered him, in effect, supreme over the Church.

In the West, once Charlemagne’s experiment with universal monarchy failed, precisely because the Church was not co-extensive with any particular realm, it managed to establish in some measure its independence from secular control. The Papal monarch was not subject to any particular ruler; and, at times, wielding the weapons of excommunication and edict, he and his bishops managed to exercise considerable leverage within the secular realm. The church that preached submission to the governing, civil authorities was itself often insubordinate.

The liberties conceded to the Church by the secular potentates were part of a larger pattern of political insubordination. In the absence of an effective universal monarchy, western Christendom dissolved into an exceedingly loose federation of notionally subordinate, but effectively independent polities. The weakness everywhere of centralized power made possible the preservation of certain elements of western Europe’s Germanic heritage that would otherwise have fallen by the wayside. If kings were no longer elected by army assemblies as in the days of Tacitus, there nonetheless persisted a notion that popular consent was somehow involved, and monarchs customarily took a coronation oath at the time that they were invested with the magisterial office. In taking that oath, they normally bound

themselves to observe the customary laws that were a noteworthy feature of Germanic practice. Moreover, as is evident in the Icelandic sagas, not only law but law-giving and even primitive parliaments were part of the West's Germanic heritage. Medieval monarchs were supposed to be supreme—but neither arbitrary nor absolute.

Reinforcing this was brute fact: the feudalism that emerged from the anarchy that followed the failure of Charlemagne's Caesaro-Papist experiment was a constructed order. Kings who purportedly ruled by the grace of God secured allegiance, in fact, by exchanging an oath of fealty with their vassals, an oath that linked lord and vassal alike in a system of reciprocal obligations with land being conferred in return for service. If one broke the contract, the other was released from his obligation to perform.<sup>19</sup> In practice, then, it was impossible for a monarch to make good on the absolutist claims implicit in the notion that he was God's viceroy on earth. His powers were hedged in by the liberties accorded the church, by his promise to obey the law, and by the feudal contracts that bound him—just as they bound the vassals without whose cooperation and support he would perhaps have had authority but certainly no power. A monarch, such as England's King John, who sought to liberate himself from such limitations, was likely to face a reckoning of the sort that he, in fact, encountered at Runymede. As a document, the Magna Carta—extracted from John by a coalition of bishops and barons—nicely embodied the pattern of relationships that gave rise to medieval liberty.<sup>20</sup>

The principle that “what touches all in similar fashion shall be by all approved” was initially lifted from Roman law and embedded in the canon law by Gratian in the 11th century. Within its narrowly ecclesiastical context, it served to make sense

of the fact that the Pope was elected by the College of Cardinals and that monks tended to elect their abbots; the Canons of Cathedrals, their bishops; and the masters at universities, their deans. It was inevitable that principles which prevailed within the Church be applied to the secular order. Canon law was, within western Christendom, the only universal law: indirectly, at least, it effected everything everywhere. That Gratian's principle should be cited to make sense of comparable practices already existing in the secular sphere was perfectly predictable. That it should inspire a vast extension of such practices also made good sense.

Monarchs were expected to secure their livelihoods from their own estates and found it impossible to conduct wars without additional revenues. Restrained by law from seizing that which was not their own, they solicited contributions from their subjects, summoning parliaments to parley—to talk and take council—concerning the well-being of the realm, promising a redress of grievances and securing consent to taxation in return.<sup>21</sup> Cities secured charters guaranteeing their right to self-government from distant monarchs intent on weakening the feudal magnates in the neighborhood.<sup>22</sup> Within communes, guilds received charters devolving on them the right to police a given craft or profession. The peasants were excluded but virtually all other men within medieval society were, in one fashion or another, drawn into networks of consultation under the aegis of the principle that “what touches all in similar fashion shall be by all approved.”

The charters and constitutions that dictated the procedures by which Popes and Emperors, bishops, abbots, and magistrates were elected and that set the terms of self-governance, specified the rights and privileges of those within a given association, and defined its membership were not uni-

versal in their application. They were not abstract. They were particular—peculiar to a given corporation. In consequence, medieval men tended to value their *liberties* rather than liberty itself. But the principle underpinning the chartered liberty of the Christian epoch was no less universal and no less abstract than the principle embedded in our own Declaration of Independence. It is—or, at least, it seems—but a short step from asserting that “what touches all in similar fashion shall be by all approved” to contending 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,” and that “to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed” so that “whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.” The character of the remarkable step that bore Western man from the medieval to the modern principle, the manner in which, and the reasons why it was taken deserve exceedingly careful attention.

## Notes

Unless otherwise specified all translations are my own. In the notes, I have used the standard abbreviations for classical texts and books of the Bible. 1. Cf. Friedrich Nietzsche, *Jenseits von Gut und Böse* Vorrede, in *Werke*, ed. Karl Schlechta (Munich 1966) II 566, with Numa Denis Fustel de Coulanges, *The Ancient City* (Baltimore 1980) 344-88, and Montesquieu, “Dossier de *L'esprit des lois* no. 380,” in Charles de Secondat, baron de La Bréde et de Montesquieu, *Oeuvres complètes de Montesquieu*, ed. Roger Caillois (Paris 1949-51) II 1098. 2. Cf. Thuc. 2.40.2 with 1 Thess. 4:11-12, and

see Thuc. 2.63.3. 3. Tert. *Apol.* 38 (Migne, *PL* 1.526-31). 4. August. *De civ. D.* 5.17. 5. See Walter Ullmann, “Juristic Obstacles to the Emergence of the Concept of the State in the Middle Ages,” *Annali di storia del diritto* 12-13 (1968-69): 43-64. Note also Marc Bloch, *The Royal Touch: Sacred Monarchy and Scrofula in England and France* (London 1973) 1-243, 262-71, and Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton 1957). 6. See Paul A. Rahe, “The Primacy of Politics in Classical Greece,” *The American Historical Review* 89 (1984): 265-93, and *Republics Ancient and Modern I: The Ancien Régime in Classical Greece* (Chapel Hill 1994). 7. Cf. *Cod. Iust.* 5.59.5.2 with *Dig.* 39.3.8, and see Gaines Post, “Corporate Community, Representation, and Consent,” in *Studies in Medieval Legal Thought* (Princeton 1964) 27-238. See also Yves M. Congar, “Quod omnes tangit ab omnibus tractari et approbari debet,” *RD* 36 (1958): 210-59; peter N. Riesenber, “Civism and Roman Law in Fourteenth-Century Italian Society,” *Explorations in Economic History* 7 (1969): 237-54; and Riesenber, “Citizenship at Law in late Medieval Italy,” *Viator* 5 (1974): 333-46. 8. See Ronald Witt, “The Rebirth of the Concept of Republican Liberty in Italy,” in *Renaissance Studies in Honor of Hans Baron*, ed. Anthony Molho and John A. Tedeschi (DeKalb, Ill., 1971) 173-99. Joseph P. Canning, “A Fourteenth-Century Contribution to the Theory of Citizenship: Political Man and the Problem of Created Citizenship in the Thought of Baldus de Ubaldis,” in *Authority and Power: Studies on Medieval Law and Government presented to Walter Ullmann on His Seventieth Birthday*, ed. Brian Tierney and Peter Linehan (Cambridge 1980); 197-212; and Canning, “The Corporation in the Political Thought of the Jurists of the Thirteenth and Fourteenth Centuries,” *History of Political Thought* 1 (1980): 9-32. 9. Figures such as Coluccio Salutati and Leonardi Bruni were attracted by the example of classical antiquity, as Hans Baron, *The Crisis of the Early Italian Renaissance: Civic Humanism and Republican Liberty in an Age of Classicism and Tyranny* (Princeton 1966), suggests—but as a Christian, Salutati evidenced a marked ambivalence regarding the relative value to be placed on political life of a sort more typical of his contemporaries and their successors than the singlemindedness to be found in unbelievers such as Guicciardini or Machiavelli: see Ronald G. Witt, *Hercules at the Crossroads: The Life, Works, and Thought of Coluccio Salutati* (Durham, N.C., 1983). Even among the humanists, the latter were the exception, not the norm: Paul Oskar Kristeller, *Renaissance Thought: The Classic, Scholastic, and Humanist Strains* (New York 1961) 70-91. 10. Consider Francesco Guicciardini, *Dialogo del reggimento di Firenze*, ed. Roberto Palmarocchi (Bari 1932) 162, in

light of Gianfranco Folena, "Ricordi politici e familiari di Gino di Neri Capponi," in *Miscellanea di studi offerta a Armando Balduino e Bianca Bianchi per le loro nozze* (Padua 1962) 29-39 (esp. 35), and see Renzo Sereno, "The Ricordi of Gino di Neri Capponi," *APSR* 52 (1958): 1118-22; then cf. Machiavelli, *Istorie fiorentine* 3.7 and Letter to Francesco Vettori on 16 April 1527, in Niccolò Machiavelli, *Tutte le opere*, ed. Mario Martelli (Florence 1971) 695-96, 1250-51, with August. *Ep.* 91.1, and see Machiavelli, *Discorsi 1 Proemio*, 4, 2.2, 3.1, 27, 31, 43, in *Tutte le opere* 76, 82-83, 148-51, 195-97, 233-34, 237-39, 250-51. 11. See Paul Wendland, *Die hellenistisch-römische Kultur in ihren Beziehungen zum Judentum und Christentum* (Tübingen 1972); Johannes Geffcken, *Das Christentum im Kampf und Ausgleich mit der griechisch-römischen Welt: Studien aus seiner Werdezeit* (Leipzig 1920); Pierre Champagne de Labriolle, *History and Literature of Christianity from Tertullian to Boethius*, trans. Herbert Wilson (New York 1925); Werner Jaeger, *Early Christianity and Greek Paideia* (Cambridge, Mass., 1961); and Peter Brown, *The World of Late Antiquity, A.D. 150-750* (London 1971) 82-95. Cf. Charles Norris Cochrane, *Christianity and Classical Culture* (New York 1959). Note also Ernest L. Fortin, *Christianisme et culture philosophique au cinquième siècle: La querelle de l'âme humaine en Occident* (Paris 1959). 12. Cf. Tert. *De praescr. haeret.* 7 (Migne, *PL* 2.22-23) with Col. 2:8. For an explication of this and the other pertinent passages from Tertullian, André Labhardt, "Tertullian et la philosophie ou la recherche d'une 'position pure,'" *MH* 7 (1950): 159-80. 13. John 1:1-34. Cf. Gen. 18:16-19:29 with 21:1-22:18 and Job 28:12-28, 38:1-42:17. 14. Rom. 12:1. 15. Cf. 1 Tim. 6:4-5 and 1 Cor. 1:21-23 with 1 Tim. 1:4, 2 Tim. 2:23, and Titus 3:9; and see Matt. 7:7; then, consider Jean Daniélou, "Recherche et tradition chez

les Pères du II<sup>e</sup> et du III<sup>e</sup> siècles," *NRTh* 94 (1972): 449-61. 16. August. *De praedestinatione sanctorum* 5 (Migne, *PL* 44.963). See *Ep.* 120.1-5, *De doctrina Christiana* 2.40.60-61. 17. Gregory of Nyssa, *De deitate filii et spiritus sancti* (Migne, *PG* 46.557). 18. See Emmanuel Le Roy Ladurie, *Montaillou: The Promised Land of Error*, trans. Barbara Bray (New York 1978). 19. See Marc Bloch, *Feudal Society*, tr. L. A. Manyon (Chicago 1961). Note also Georges Duby, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century* (Ithaca 1978). 20. See Joseph R. Strayer, *On the Medieval Origins of the Modern State* (Princeton 1970) 3-56; Walter Ullmann, *The Individual and Society in the Middle Ages* (Baltimore 1966) 53-98; J. C. Holt, *Magna Carta and Medieval Government* (London 1985) 1-22, 123-78, 203-15; A. E. Dick Howard, *Magna Carta: Text and Commentary* (Charlottesville 1964); and, then, consider Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA 1983) 49-519. 21. See Arthur P. Monahan, *Consent, Coercion, and Limit: The Medieval Origins of Parliamentary Democracy* (Kingston and Montreal 1987). See also Strayer, *On the Medieval Origins of the Modern State* 57-88; *Medieval Representative Institutions*, ed. Thomas N. Bisson (Hinsdale, IL 1973) 1-92, 103-51; and George L. Haskins, *The Growth of English Representative Government* (New York 1960). 22. See Peter Riesenbergh, *Citizenship in the Western Tradition* (Chapel Hill 1992) xv-xxiv, 85-186; Monahan, *Consent, Coercion, and Limit*, 148-59; and John H. Mundy and Peter Riesenbergh, *The Medieval Town* (Huntington, NY 1958) Nos. 1, 3-9, 11-20, 23-26, 28, 31, 34-40, 43-44. Note also Daniel Waley, *The Italian City-Republics*, 3rd edition (London 1988) xiii-172, and

### Errata Corrigenda

The editors would like to correct errors left in Prof. James Lehrberger's superb tribute to the legacy of Frederick D. Wilhelmson in the last issue of *The Intercollegiate Review* ("Christendom's Troubadour," vol. 32 No. 2, spring 1997). A technical error caused several words to be dropped at the end of page 54 and the beginning of page 55. The truncated sentence should read: Standing in the dynamic tradition of Christian philosophy, Professor Wilhelmson enlarged this heritage and applied it to metaphysical questions of our own day. Existence (*esse*) is not a "presence" (*pace* Heidegger); it is not a concept, and it neither "is" nor "is not" (*pace* Hegel).

Additionally, on page 54, Kierkegaard was inadvertently associated with Tertullian and his "I believe because it is absurd" theology. The author had asked that Kierkegaard be deleted. Finally, the date on the bottom of pages 52-55 should have read spring 1997 and not 1996. The editors apologize to both author and reader for these errors.