

Cultural Heritage and Contemporary Change  
Series VII, Seminars, Volume 11

## **Freedom and Choice in a Democracy**

*Volume I*

# **Meanings of Freedom**

Edited by  
*Robert Magliola, John Farrelly*

The Council for Research in Values and Philosophy

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Gibbons Hall B-20  
620 Michigan Avenue, NE  
Washington, D.C. 20064

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Printed in the United States of America

**Library of Congress Cataloging-in-Publication**

Freedom and choice in a democracy : meanings of freedom / edited by Robert Magliola, John Farrelly.

p.cm. – (Cultural heritage and contemporary change. Series VII: Seminar on culture and values ; v. 11)

Includes bibliographical references and index.

1. Liberty. 2. Democracy.

I. Magliola, Robert. II. Farrelly, John. 1927-. III. Title. IV. Series.

JC585.F734 2003  
320'.01—dc21

2003011240  
CIP

ISBN 1-56518-186-7 (pbk.)

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# Introduction

*George F. McLean and Robert Magliola*

The dramatic pace of change in recent times manifests the power of the basic human drive to be free. Often, freedom movements have defined themselves in terms of "liberation from"--from colonialism, from totalitarian, from prejudice. This evokes passion and upon success triggers explosive joy. The achievements of the last 50 years have been marked by three such celebrations of hard fought freedom: the end of the Second World War, the establishment of newly independent nations and the opening of the Berlin Wall.

Each such victory, however, brings with it new and even greater challenges. Surviving oppression required noble fortitude and forbearance, but "freedom for" a life that is fully human requires a yet broader and deeper range of virtues. To live freedom requires forgoing blind self-affirmation which, in the name of privacy and choices, disregard their effects upon others. The building of a truly human community cannot be achieved without truth and justice, love of one's neighbor and magnanimous civic concern, creativity and even genius in the classical sense of that term.

It was thought perhaps naively that upon the end of the highly centralized controls of the Marxist era all would fall easily into a liberal mode in which the new freedom would be exercised socially. What was not expected was the extent to which new freedom could be subverted by private egoism that could now flow into public extortion.

The new challenge raised by freedom in our days is not merely to be free from state, system, and ideology, but to create out *of the very stuff of freedom* itself those structures, traditions and commitments which will enable a people:

- (a) to make decisions about their future and their relations with others which mobilize the free efforts of all in a cohesive, subsidiary and creative manner;
- (b) to develop local and national policies for the promotion of human life in the spheres of health, education and culture, of employment, business and politics; and
- (c) to engage as full and free participants in this process of decision making, implementation and fulfillment all sectors of the population, and indeed all persons, even those presently marginalized.

Such issues of freedom and choice are central to the human challenge at this point of transition. If this century is to experience new levels of democratic life a more rich notion of freedom must itself be elaborated. Philosophy must grow with and through the new and dramatic affirmations of liberation toward the articulation of new modes of human life worthy of free peoples.

To respond to this challenge it is necessary to combine the rich experience of the various cultures and the technical insights of the various sciences in a creative effort to deepen present wisdom and trace out new pathways for this century. This volume attempts to sort out some meanings of freedom especially in the Western tradition.

Part One, "Towards the Transcendent Horizon of Freedom," supplies historical and theoretical background, and sets the general parameters for this work.

Chapter I, by George McLean, "Meanings of Freedom and Choice," correlates three basic types of freedom to three philosophical moments in history. It argues that western philosophy manifests three levels of the experience of freedom. The first is concerned with autonomy in choosing whatever it will. To this there has been added the importance in this of willing not indiscriminatively, but rather willing as one ought. Both of these, however, need to be assumed at a third, or existential level, in which freedom is the responsible process creative and transformative choice operative within the context of Transcendence for the sake of self and others.

Chapter II, by John Farrelly, "Human Flourishing and Contemporary Experience," examines whether it is still "perfective" for the human person to orient oneself toward Ultimacy. Farrelly argues that orientation towards transcendence is in accord with contemporary theories of "self-making" such as those of the psychotherapist Erik Erikson, who defines the mature personality not as the result of mechanistic processes, but as a free agent who transcends towards others in caring concern.

Chapter III, by James Wiseman, "Human and Divine Freedom in the Teaching of the Christian Mystics," examines the foundational contributions of Christianity to the theory and practice of freedom. Gregory of Nyssa, from the Patristic Era, emphasizes that our freedom is a participation in Divine freedom, and that freedom is not the ability to arbitrarily choose 'this' or 'that', but rather, freely to choose the 'good'. Jan van Ruusbroec, from the Medieval Period, founds freedom in the 'ground' of the soul, and as

enabling the free use of our various powers, including intellect and will. Karl Rahner, the 20th century theologian, emphasizes that freedom transcends the objects of individual inner and outer experience and aims towards the boundless Mystery which is the Divine.

Part II, "Classical Liberalism, Classical Communitarianism, and Choice," compares--from an international perspective--more individualist and more centralized social models.

Chapter IV, by Charles R. Dechert, "Community and Freedom: The Constraints of Civility," argues that contemporary nation-communities are beset by attacks on community virtue and cohesion. After supplying a short history of European 'personalism', Dechert critiques communities in terms of ten functional prerequisites of a 'civil' society.

Chapter V, by Gregory L. Froelich, "The Problem of Community and Participation," adjudicates the relation between individual freedom and community need. Froelich deploys Aristotle, Aquinas, and Wojtyla to argue that individual freedom is bolstered, not impeded, by genuine community loyalty and service.

Chapter VI, by Habib C. Malik, "Freedom and Pluralism: An Essay on the Human Condition," uses Nicholas Berdyaev and Martin Buber, among others, to argue that "limits on the exercise of freedom ensure its maximality." Authentic freedom is both inner and outer, enabling individualism and 'openness to others' to proceed in tandem.

Chapter VII, by Aleksandr Dobrynin, "Freedom's Paradoxes: In Search of Their Roots and Fruits," contends that the source of freedom must be found "within the transcendent in order for its fruit to emerge in earthly life." Examining and gathering support from Aquinas and Kant, Dobrynin studies in particular the totalitarian and post-totalitarian state, and the threat of a new 'tribalism'. He argues that an understanding of a community as a 'people of God' should not be confused with belief in institutional taboos and rituals: the authentic Divine ground establishes the equality of all human beings as free persons who bear the metaphysical responsibility for their own free choices.

Part III, "Freedom and Choice in Constitutional Democracy," explains the competing understandings of freedom which originate and characterize the United States Constitution and its subsequent interpretative traditions.

Chapter VIII, by Raymond B. Marcin, "Freedom and Choice in American Constitutional Theory," traces, from the 18th century through to contemporary times, the disagreements between "classical liberalism," which understands the prime function of government to be the arbitration of individual and factional self-interest, and "classical communitarianism," which understands the prime function to be the cultivation of civic virtue so that the "commonwealth" (or community-as-a-whole) is moral, free, and unified.

Chapter IX, by Patricia Lines, "Compulsory Education and the Problem of Freedom and Democratic Education: The Case of Home Schooling," studies the history of American Constitutional law in terms of the "Federalist" and "Anti-Federalist" positions originally staked out by the U.S.A.'s "Founding Fathers." Legal issues pertaining to "home schooling" are treated as a paradigmatic case in point, since Federalists tend to oppose its legality and Anti-Federalists tend to protect it.





# Chapter I

## Meanings of Freedom and Choice

*George F. McLean*

In approaching the study of freedom and choice in a democracy one encounters a bewildering diversity regarding the very notion of freedom. In one sense, this might be a first confirmation of the reality and central importance of freedom. For if freedom truly is central to human existence as such then it will be a central concern of almost all philosophies regarding the person. The passion and universality with which the meaning of freedom is sought would appear to confirm that this is indeed the case. Further, if freedom be the affirmation and expression of each person in his or her uniqueness, then we can expect that the variety of its conception will be as broad as the variations of the sense of human self-realization. The amazing range in the notions of freedom confirms this as well.

Hence, though the skeptic might say that what has so many meanings has little meaning at all, it would appear more probable that we are dealing here with a fundamental characteristic of human existence or perhaps its very nature. If so we can hope that if carefully approached the variety of notions of freedom, especially of they can be seen as cumulative rather than contradictory; might provide us access to something of the meaning of being.

The task of this paper is than twofold. First, it will search through the many theories of freedom to identify its three basic types, and from these draw out dialectically a general notion of freedom. Second, it will return to these three general theories to situate them in their epistemological and metaphysical contexts as a way of sketching the unfolding of freedom and the progressively deeper levels at which human life can be lived.

### Theories of Freedom

Every encyclopedia—especially philosophical ones—must contain a number of surveys of the notion of freedom. What is of interest here, however, is not only to list the multiple notions of freedom, but to identify their range and inter-relations in order to arrive at some sense of the very essence of freedom. In this there have been a number of basically convergent efforts. One is that of L.-B. Geiger to winnow through the senses of freedom identified in Lalande's *Vocabulaire technique et critique de la philosophie* (pp. 542-551). Geiger's study, done as part of a project for the *Dictionnaire des termes fondamentaux de la philosophie et de la pensée politique*, is limited to the seven definitions of Lalande and to their situation in the context of French philosophy.<sup>1</sup>

Here we shall draw especially upon the work of Mortimer J. Adler and the team of The Institute for Philosophical Research which was published as *The Idea of Freedom: A Dialectical Examination of the Conceptions of Freedom*.<sup>2</sup> Their corporate examination of main philosophical writings identified three correlated modes in which freedom has been understood, namely, circumstantial, acquired and natural, and their corresponding modes of self, i.e., "the ability or power of the self in virtue of which freedom is possessed," namely, self-realization, self-perfection and self-determination."<sup>3</sup> This yields the following scheme:

*Mode of Possession Mode of Self*<sup>4</sup>

- 1. Circumstantial <—————> 1. Self-realization
- 2. Acquired <—————> 2. Self-perfection
- 3. Natural <—————> 3. Self-determination

To this schema political liberty could be added as a variant of circumstantial self-realization and collective freedom as a variant of acquired self-perfection. The modes of self correspond to the modes of possession, thereby constituting a class; e.g., self-realization (as permitting an individual to act as he wishes for his own good as he sees it) will always relate to circumstantial mode of possession. It is possible, however, that a mode of self might correspond as well to an additional mode of possession. Thus, the circumstantial mode of possession is significant not only for self-realization, but also for self-perfection and self-determination.

Using the above scheme the Institute team categorized as follows the positions on freedom of the main body of philosophers.<sup>5</sup>

The categorization has a number of uses. First it enables one at a glance to identify something of the understanding and concerns regarding freedom of a particular thinker. Second, it can enable one to gauge what comparisons between which philosophers might be possible and potentially helpful on a specific issue.

For our purpose of discovering not only the divisions but the nature of freedom this categorization might serve a third purpose, namely, it opens a path by which to not merely uncover a common denominator but to explore the foundations of the notion of freedom. This will not be the same as a basic understanding of the ontology or psychology of politics of freedom—that must be the search of the particular theoreticians. However, if an area of convergence in the multiple understandings of freedom can be determined this can orient the attention of our historical and theoretical search as toward answering to the question: what is freedom?

The team of the institute for Philosophical Research began their dialectical search for the answer to the question "what is freedom?" by dividing theories of freedom among three categories, namely:<sup>6</sup>

(A) *Circumstantial freedom of self-realization*: "To be free is to be able, under favorable circumstances, to act as one wishes for one's own individual good as one sees it";

(B) *Acquired freedom of self-perfection*: "To be free is to be able, through acquired virtue or wisdom, to will or live as one ought in conformity to the moral law or an ideal befitting human nature"; and

(C) *Natural freedom of self-determination*: "To be free is to be able, by a power inherent in human nature, to change one's own character creatively by deciding for oneself what one shall do or shall become"; to which can be added:

- (D) Political liberty; and
- (E) Collective freedom.

Note that each of these statements is not a generic statement over and above which the particular theories in the category add specific difference. Rather, they are analogous statements of the common content of the theories in that category in a manner sufficiently open to embrace the different instances in the category and yet sufficiently distinct to enable these to be contrasted to the theories in another category. For example, (B) "To be free is to be able, through acquired virtue or wisdom, to will or live as one ought in conformity to the moral law or an ideal befitting human nature" states a common understanding, which is diversely realized by:

(B1) Augustine: To be free is to be able, through receiving God's grace, to escape from bondage to sin and to live in accordance with the divine law, expressing the love of God in everything one wills;

(B2) Spinoza: To be free is to be able, through the achievement of adequate knowledge of the eternal necessities, to conquer one's passions and live in accordance with reason or the laws of one's own nature; and

(B3) Freud: To be free is to be able, through acquiring insight, to resolve the conflicts within oneself and live with some approximation to the ideal of the healthy or integrated personality.<sup>7</sup>

All of these differ from A and C in that none of those thinkers would say that these are instances of the freedom which they propose, namely, that to be free is: (A) "to be able under favorable circumstances to act as one wishes," or (C) "by a power inherent in human nature to change one's own character creatively by deciding for oneself what one shall do or shall become."

If now we wish to use these major types of freedom to look, at a still further (X) level of generalization for a single analogous notion of freedom, then we could formulate this search in the following manner:<sup>8</sup>

*A man who is able*

(A) under favorable circumstances, to act as he wishes for his own individual good as he sees it

or

(B) through acquired virtue or wisdom, to will or live as he ought in conformity to the moral law or an ideal befitting human nature

or

(C) by a power inherent in human nature, to change his own character creatively by deciding for himself what he shall or shall not become

*is free in the sense that he (X).*

In carrying out this process of generalization in order to determine what is common to A and C attention to these points will be helpful:

a. *Ability to Act*: the power to act appears in A, B and C. It should be taken as open not only to actuation, but to the possibility of acting or not acting, even if that ability not be exercised or be related to different goals. Thus it is:

A. "the circumstantial ability to perform the movements called for by one's own desires and purposes," i.e., the good as one sees it for oneself,

B. "the acquired ability to will or live as one ought," i.e. for a goal that is set for and attracts all men, and

C. "the natural ability to decide creatively the course of one's life or action" with a view to formative changes in one's own character.<sup>9</sup>

b. *Analogous Concept*: A general notion of freedom must be open to all of these as regards actuation or at least the power to act, the nature of the ability as well as its goal. This openness, however, is not one of limitation achieved by simply omitting the difference; it is rather that of being broad enough to include all of these actually, though not explicitly.

c. *Self and Other*: Note that all these concern the self, whether as "self realization," "self-perfection" or "self-determination," and that all do this with some implied contrast to an "other." In the vast survey of related philosophic literature this contrast to the "other" appears in terms of freedom as arising from within or from my own will in contrast to something or someone outside of myself or even to the lower and morally intransigent side of man's nature if it opposes one's freedom. One's decisions and plans are one's own only if made by this present active self, and not merely to and for him.

In addition to *an ability to act in a certain way*, which is present in all conceptions of freedom, we now see that such ability or power is that whereby *the self is exempt from the power of another*. Through the exercise of such ability or power, what a man does is *his own act*. It proceeds *from his self*, and the result it achieves is a property *of his self*—the realization of his self, the perfection of his self, the determination or creation of his self. It is not something which happens *in him*, not something which is imposed *on him*, not something which is done *to him* or *for him*.<sup>10</sup>

d. *Liberation and Autonomy*. The self then is the principle or source of freedom, of the acts he performs which manifest freedom. As the person is not free when subject to an alien power rather than to his own, the terms "independence" and "autonomy" are generally synonymous for "freedom" and "liberty."

This is reflected in the treatment of freedom as liberation in ancient as well as contemporary times, of being one's own master (Aquinas, Spinoza) or of autonomy (Kant).

From these three general notions of freedom Adler and his team draw the following most general statement of freedom: "A man is free who has in himself the ability or power whereby he can make what he does his own action and what he achieves his own property."<sup>11</sup> This has two implications. First, freedom consists in being the active source of what one does or becomes, not the passive object of what others do. Thus, that which one becomes is the result of one's own making, and what one achieves is proper to oneself, i.e., his own or his property. Conversely, unfreedom consists in either lacking the power to make what one does one's own or being overpowered by another so that what happens to one is the work of another.<sup>12</sup>

Thence arises the following composite statement of freedom in its three modalities (A-C) and in its most general form (X).

*A man who is able*

(A) under favorable circumstances, to act as he wishes for his own individual good as he sees it

or

(B) through acquired virtue or wisdom, to will or live as he ought in conformity to the moral law or an ideal befitting human nature

or

(C) by a power inherent in human nature, to change his own character creatively by deciding for himself what he shall or shall not become

*is free in the sense that he (X) has in himself the ability or power whereby he can make what he does his own action and what he achieves his property.*<sup>13</sup>

What has been done thus far is to follow Adler's team at the Institute for Philosophical Research as it winnowed the breadth of philosophical literature to identify certain basic categories of freedom and then to draw out a general analogous statement of freedom. This has not been a theoretical or deductive procedure but a dialectical one. It looked historically for the various human understandings of freedom and then from them composed a sufficiently open description of freedom to include—though not in explicit detail—the positive content of this basic and shared human project and experience.

Now we shall reverse the field, that is, we shall look into the philosophical basis from which have arisen the various theories of freedom identified in the above process of generalization. Our goal here will be to bring to explicit detail the bases, modes and goals of freedom.

What appears striking is that if one takes not the ways in which some theories overlap and include a number of types of freedom, but the pattern of those which are focused upon only one type of freedom, or if one looks to the highest type of freedom which a theory can take into account, then one finds that each of the three types of freedom delineated by the Institute of Philosophical Research corresponds to an epistemology and metaphysics. Circumstantial freedom of self-realization is the only type of freedom recognized by many empirically-oriented philosophers; acquired freedom of self-perfection is characteristic of more rational, formalist and essentialist philosophers; while natural freedom of self-determination is developed by philosophers who attend also to the existential dimension of being. This suggests that the metaphysical underpinnings of a philosophy control its epistemology and that especially in modern times this controls its philosophical anthropology and ethics. With this in mind the following review of the three types of freedom will begin from their respective metaphysical and epistemological contexts and in that light proceed to its notion of freedom.

### **Freedom in an Empirical Context**

The reduction of freedom to choice arises not in classical ancient and medieval philosophy, where it is contextualized within a relation of intellect and will as open to limitless truth and goodness, but among modern empiricist philosophers focused exclusively upon a circumstantial freedom of self-realization. This is especially characteristic of the Anglo-Saxon cultural tradition for which significant knowledge is of matters of fact. It arose against the background of William of Ockham's late medieval Nominalism. Its moving cause was the desire to promote public discourse by making all evidence equally available to all persons. To do so John Locke proposed supposing the mind to be a white paper void of characters and ideas and then following the way it comes to be furnished. This he insisted was exclusively via experience, that is, either by sensation or by reflection as the mind works upon the material of the sensations.<sup>14</sup>

David Hume drew the natural conclusion that all objects of knowledge must then be either matters of fact as drawn from direct sensation or of relations between these ideas. Here, it is important to note that "matters of fact" does not refer to the existence or actuality of a thing or to

its essence, but simply to the experience of one member of a pair of sensible contraries. Effectively this is a choice, e.g., between white rather than black, or sweet rather than sour.<sup>15</sup>

The restrictions implicit in this appear starkly in Rudolf Carnap's "Vienna Manifesto." This shrinks meaningful knowledge and significant discourse to describing "some state of affairs" in terms of empirical "sets of facts" which can be fitted into a body of science. It excludes speech about wholes, God, the unconscious, *entelechies*, grounds of meaning or anything that goes beyond the immediately given contents of sense experience. To any such statements Carnap suggests that one simply ask "What do you mean by your statements?" in order to bring out that they are "completely devoid of meaning if taken as the metaphysicians intend them to be taken."<sup>16</sup>

In these terms it is not possible to speak of appropriate or inappropriate goals or even to evaluate choices in relation to self-fulfillment. The only concern is which of the contraries I choose and whether circumstances allow me to carry that out. Individuals, of course, may change their own choices, and they may differ from and even contradict the immediate and long-range objectives of another. This will require compromises and social contracts in the sense of Hobbes. John Rawles will even attempt to work out a set of such compromises, thereby bridging to a Kantian formalism.<sup>17</sup> But the basic concern is the ability to do as one pleases.

This has two conditions. The first is execution which translates my will into action. Thus, John Locke sees freedom as "being able to act or not act, according as we shall choose or will,"<sup>18</sup> and Bertrand Russell sees it as "the absence of external obstacles to the realization of our desires."<sup>19</sup> The second is individual realization as the accomplishment of one's good as one seeks it. Self-realization here is understood only in terms of one's personal idiosyncrasies and temperament, which in turn reflect each person's individual character. Such a goal can be only what appeals to one, with no necessary relation to real goods and to duties which one ought to perform.<sup>20</sup> "Liberty consists in doing what one desires,"<sup>21</sup> and the freedom of a society is measured by the latitude it provides for the cultivation of individual patterns of life.<sup>22</sup> If there is any ethical theory in this it can be only one that is utilitarian, hopefully with enough breadth to recognize other people and their good as well as my own.

This first type of freedom would appear to be the contemporary sense of "choice" in Anglo-Saxon circles. It is the theory underwritten by a pervasive series of legal precedents in this century following Justice Brandeis' notion of privacy. This now has come to be recognized as a constitutional right; perhaps more significantly, in the American legal system the meaning of freedom has been reduced to this. It is important to note the way in which this derived from Locke's politically motivated decision (hence, itself an exercise of freedom) not only to focus upon empirical meaning, but to eliminate from public discourse any other knowledge. Its progressively rigorous implementation which we have but sampled in the references to Hume and Carnap, constitute an ideology in the sense of a selected and restrictive vision. It controls minds and reduces freedom to willfulness. In this perspective liberalism is grossly misnamed, and itself calls for a process of liberation.

### **Freedom in a Formalist Context**

The second type of freedom identified by the team of the Institute for Philosophical Research, namely, acquired freedom of self-perfection is a step in that direction for it acknowledges the ability of man to transcend the empirical in order to envisage moral laws and ideals. As noted above, this is found in such Platonically oriented philosophers as Plotinus, Spinoza and Bradley where all is understood in terms of ideal patterns of reason and of nature. Kant's architectonic

work in articulating this and situating freedom can help us to grasp this move beyond this understanding of freedom simply as a choice between contraries understood in terms of sense knowledge and to move to a level of freedom understood in more formal terms. Here freedom is seen to consist in the ability not only to act as one pleases, but to will both autonomously and as one ought, whether or not this can be enacted.<sup>23</sup> Moral standards are absolute and objective, not relative in the sense of being determined by each person for him or herself and according to his individual tendencies and tastes.<sup>24</sup>

### *The Critique of Pure Reason*

It is unfortunate that the range of Kant's work has been so little appreciated. Until recently the rationalist impact of Descartes directed almost exclusive attention to the first of Kant's critiques, the *Critique of Pure Reason*, which concerned the conditions of possibility of the physical sciences. Its rejection of metaphysics as a science was warmly greeted in empiricist, positivist and, hence materialist circles as a dispensation from any search beyond what was reductively sensible and hence phenomenal in the sense of inherently spatial and/or temporal.

Kant himself, however, quite insisted upon going further. If the terms of the sciences were inherently phenomenal, then his justification of the sciences was precisely to identify and to justify, through metaphysical and transcendental deductions respectively, the sets of categories which enable the phenomenal world to have intelligibility and scientific meaning. Such *a priori* categories belong properly to the subject inasmuch as it is not material.

We are here at the essential turning point for the modern mind, where Kant takes a definitive step in identifying the subject as more than a wayfarer in a world encountered as a given to which one can but react. Rather, he shows the subject to be an active force engaged in the creation even of the empirical world in which one lives. The meaning or intelligible order of things is due not only to their creation according to a divine intellect, but also to the work of the human intellect and its categories. If, however, man is to have such a central role in the constitution of his world, then certain elements will be required, and this requirement itself will be their justification.

First there must be an imagination which can bring together the flow of disparate sensations. This plays a reproductive role which consists in the empirical and psychological activity by which it reproduces within the mind the amorphous data received from without according to the forms of space and time. This merely reproductive role is by no means sufficient, however, for since the received data is amorphous, any mere reproduction would lack coherence and generate a chaotic world: "a blind play of representations less even than a dream."<sup>25</sup> Hence, the imagination must have also a productive dimension which enables the multiple empirical intuitions to achieve some unity. This is ruled by "the principle of the unity of apperception" (understanding or intellection), namely, "that all appearances without exception, must so enter the mind or be apprehended, that they conform to the unity of apperception."<sup>26</sup> This is done according to the abstract categories and concepts of the intellect such as cause, substance and the like which rule the work of the imagination at this level in accord with the principle of the unity of apperception.

Second, this process of association must have some foundation in order that the multiple sensations be related or even relatable one to another, and hence enter into the same unity of apperception. There must be some objective affinity of the multiple found in past experience—an "affinity of appearances"—in order for the reproductive or associative work of the imagination to be possible. However, as such this unity does not exist in past experiences. Rather, the unitive rule or principle of the reproductive activity of the imagination is its productive or transcendental work

as "a spontaneous faculty not dependent upon empirical laws but rather constitutive of them and hence constitutive of empirical objects."<sup>27</sup> That is, though the unity is not in the disparate phenomena, nevertheless they can be brought together by the imagination to form a unity only in certain manners if they are to be informed by the categories of the intellect.

Kant illustrates this by comparing the examples of perceiving a house and a boat receding downstream.<sup>28</sup> The parts of the house can be intuited successively in any order (door-roof-stairs or stairs-door-roof), but my judgment must be of the house as having all of its parts simultaneously. The boat is intuited successively as moving downstream. However, though I must judge its actual motion in that order, I could imagine the contrary. Hence the imagination in bringing together the many intuitions goes beyond the simple order of appearances and unifies phenomenal objects in an order to which concepts can be applied. "Objectivity is a product of cognition, not of apprehension,"<sup>29</sup> for though we can observe appearances in any sequence, they can be unified and hence thought only in certain orders as ruled by the categories of the mind.

In sum, it is the task of the reproductive imagination to bring together the multiple elements of sense intuition in some unity or order capable of being informed by a concept or category of the intellect with a view to making a judgment. On the part of the subject the imagination here is active, authentically one's own and creative. Ultimately, however, its work is not free, but necessitated by the categories or concepts as integral to the work of sciences which are characterized by necessity and universality.

#### *The Critique of Practical Reason and The Foundations of the Metaphysics of Morals*

Many materialist philosophies of a reductionist character, such as positivism and the materialistic dialectic, are happy to leave the matter there. The necessity of the sciences gives control over one's life, while their universality extends this control to others. Their hope is that once, by means of Kant's categories, the concrete Humean facts have been suffused with a clarity corresponding to the rationalist's simple natures Descartes' goal of walking with confidence in the world may yet be achievable.

For Kant, however, this will not do. Clarity which comes at the price of necessity may be acceptable and even desirable in digging ditches, building bridges and the back breaking slavery of establishing heavy industry, but it is an appalling way to envisage human life. Hence, in his *Foundations of the Metaphysics of Morals* and his *Critique of Practical Reason* Kant proceeds to identify that which is distinctive of the moral order. His analysis pushes forcefully beyond utilitarian goals, inner instincts and rational scientific relationships—precisely beyond the necessitated order which can be constructed in terms of his first *Critique*. None of these recognizes that which is distinctive of the human person, namely, freedom. To be moral an act must be based upon the will of the person as autonomous, not heteronomous.

This becomes the basic touch stone of his philosophy; everything thence forward will be adapted thereto, and what had been written before will be re-contextualized in this new light. The remainder of his *Foundations* will be composed in terms of freedom; his entire *Critique of the Faculty of Judgment* will be written to provide a context that enables the previous two critiques to be read in a way that protects this freedom.

First, in the *Foundations* he rearticulates the whole notion of law or moral rule in terms of freedom. If all must be ruled or under law, and yet in order to be free the moral act must be autonomous, then my maxim must be something which I as a moral agent give to myself. This, in turn, has surprising implications, for if the moral order also must be universal, then my own maxim



must be fit to be a universal law for all persons.<sup>30</sup> On this basis freedom emerges in a clearer light. It is not the self-centered whimsy of the circumstantial freedom of self-realization; it is not despotic; it is not the clever self-serving eye of Plato's rogue.<sup>31</sup> Rather, as the highest reality in all creation, freedom is power that is wise and caring, open to all, and bent upon the realization of "the glorious ideal of a universal realm of ends-in-themselves." It is, in sum, free men living together in righteous harmony.<sup>32</sup>

### *The Critique of Judgment*<sup>33</sup>

Despite its central importance, I will not remain on practical reason because it is rather in the *Critique of the Faculty of Judgment* that the freedom previously discovered unfolds its truly pervasive social and cosmic significance.

Kant is so intent not merely upon uncovering the fact of freedom, but upon re-conceiving all in its light that he must now further contextualize all the work he has done thus far. For he faces squarely modern man's most urgent question, namely, what will be the reality of his newly uncovered freedom when confronted with the necessity and universality of the realm of science as understood in the *Critique of Pure Reason*? Will the scientific interpretation of nature trap freedom within the inner realm of each person's heart, and reduce it at best to good intentions or to feelings towards others? When we attempt to act in this world or to reach out to others must all our categories be universal, and hence insensitive to that which marks others as unique and personal; must they be necessary, and hence leave no room for freedom? If so then public life can be only impersonal, necessitated and anonymous. Finally, must the human spirit be reduced to the sterile content of empirical facts or to the necessitated and, in its materialist mode, violent unfolding of the dialectic? If so then philosophers cannot escape the suicidal choice between either comic irrelevancy as traffic directors in the jungle of unfettered competition or tragic complicity as jailers in the *gulag* of the mind. Freedom would indeed have been killed; it would pulse no more as the heart of mankind.

Though subsequent ideologies of liberal capitalism and totalitarian collectivism were willing to accept as total the scientific laws of the market place or of the dialectic, Kant's answer would be a resounding No! Taking as his basis the reality of freedom—so passionately if tragically affirmed in our lifetime by Ghandi, Martin Luther King and now from the Berlin Wall to Tienanmen Square—Kant proceeded to develop his *Critique of Judgment*. He did so precisely in order to provide a context within which freedom and scientific necessity could coexist, indeed in which necessity could be the support and instrument of freedom.

In the face-off between freedom and necessity his refusal to compromise freedom both leads him to affirm the teleological character of nature as the broader context of scientific necessity and provides the justification for his affirmation. For if there is to be room for human freedom in a cosmos in which man can make use of necessary laws, if science is to contribute to the exercise of human freedom—then nature too must be directed toward a goal; it must be manifestive throughout of intent within which free human purpose can be integrated. In these terms nature no longer is alien to freedom, but expresses divine freedom and is conciliable with human freedom. Though Kant's system will not enable him to affirm that this teleological character of reality is a metaphysical reality, nevertheless, we must proceed "as if" it is teleological precisely because of the undeniable reality of human freedom in this ordered universe. This is the second part of his *Critique of Judgment*, the "Critique of Teleological Judgment."<sup>34</sup>

But if teleology in principle provides the needed space, how can freedom be exercised; what mediates it to the necessary and universal laws of science which the first *Critique* sought to ground? This is the task of Part One of the *Critique of Judgment*, its "Critique of the Aesthetic Judgment,"<sup>35</sup> and it is here that the imagination reemerges to play its key integrating role in human life. From the point of view of the human person, its task is to explain how one can live in freedom with nature for which the first critique had discovered only laws of universality and necessity: how can a free person relate to an order of nature and to structures of society in a way that is neither necessitated nor necessitating?

Above we saw how the *Critique of Pure Reason* appreciated the work of the imagination in assembling the phenomena to be not simply the registering, but the production of the objective order. However, this productive work took place in relation to the abstract and universal categories of the intellect and was carried out under a law of unity which dictated that such phenomena as a house or receding boat must form a unity—which they could do only if assembled in a certain order. The objective order was a human product, but it was a universal and necessary one for the related sciences were valid both for all things and for all people.

Here in "The Critique of the Aesthetic Judgment" the imagination has a similar task of constructing the object, but not in a manner necessitated by universal categories or concepts. Nonetheless, there are essential similarities. As in the first critique the approach is not from *a priori* principles which are clear all by themselves and are used to bind the multiple phenomena into a unity. On the contrary, under the rule of unity the imagination moves to order and reorder the multiple phenomena until they are ready to be informed by a unifying principle on the part of the intellect, the appropriateness of which emerges from the reordering carried out by the productive imagination.

In the "Critique of the Aesthetic Judgment" the imagination in working toward an integrating unity is not confined by the necessitating strictures of categories and concepts or their structures. Instead it ranges freely over the full sweep of reality in all its dimensions to see whether relatedness and purposiveness can emerge. Hence, in standing before a work of nature or of art it might focus upon light or form, sound or word, economic or interpersonal relations—or, indeed, upon any combination of these such as a natural environment or a society, which may be encountered either as concrete realities or as expressed in symbols.

Throughout all of this the ordering and reordering by the imagination can bring about numberless unities. Just as the range of materials is unlimited, so is the range of the unities which can be elaborated by the productive imagination. Unrestricted by any *a priori* categories, it can integrate necessary patterns or dialectic within its own free production, and integrate scientific universals within its own unique concrete harmonies. This is the properly creative work of the human person in this world.

In the third critique the productive imagination continues a true unity by bringing the elements into an authentic harmony. As this cannot be identified through reference to a category because freedom then would be restricted within the laws of necessity of the first critique, it must be recognizable by something free. To extend the realm of human freedom to the whole of reality this harmony must be able to be appreciated not purely intellectually in terms of relation to a concept, but aesthetically by the pleasure or displeasure of the free response it generates. It is our contemplation or reflection upon this which shows whether a proper and authentic ordering has or has not been achieved.

Hence, the aesthetic judgment is concerned not with a concept,<sup>36</sup> but with the pleasure or displeasure, the elation at the beautiful and sublime or the disgust at the ugly and revolting which

flows from our contemplation or reflection. One could miss the integrating character of this pleasure or displeasure and the related judgment of taste<sup>37</sup> by looking at it reductively as a merely interior and purely private matter, taking place at a level of consciousness unrelated to anything but an esoteric, indeed stratospheric, band of reality. That would ignore the structure of Kant's work, which he laid out at length in his first "Introduction" to his third critique.<sup>38</sup> He conceived his critiques of the aesthetic and teleological judgments not as merely juxtaposed to the first two critiques of pure and practical reason, but as integrating both into a richer whole.

Developing the new level of aesthetic sensitivity enables one to take into account ever greater dimensions of reality and creativity and to image responses which are richer in purpose, more adapted to present circumstances and more creative in promise for the future.

This is manifest in a good leader such as a Churchill or Roosevelt. Their power to mobilize a people lies especially in their rare ability to assess the overall situation, to express it in a manner which rings true to the great variety of persons, and thereby to evoke appropriate and varied responses from each according to his or her capabilities. As personable, free and creative, such work of the aesthetic judgment is not less, but more inclusive in its content, applications and the responses it evokes from others.

Such experiences of aesthetic taste, passed on as part of a tradition, become components of a culture. Some thinkers such as William James and Jürgen Habermas,<sup>39</sup> fearing that attending to these free creations of a cultural tradition might distract from the concrete needs of the people, have urged a turn to the social sciences and their employment in pragmatic responses or in social analysis and critique. Kant's third critique points in another direction. Though it integrates, it does not focus upon universal and necessary scientific social relations or even directly upon the beauty or ugliness of concrete relations. Its focus is rather upon our contemplation of the integrating images of that which we imaginatively create as manifesting the many facets of beauty and ugliness—actual and potential.

The focus here is not directly upon the beauty or ugliness as in things themselves, but upon our contemplation of our freely created integrating images of these things. This contemplation, in turn, is appreciated in terms of the free and integrating response of pleasure or displeasure, enjoyment or revulsion it generates most deeply within our whole person.

In this way it is one's freedom itself at the height of its sensibility which serves as a lens presenting the richness of reality in varied and heightened ways: it is both spectroscop and kaleidoscope of being. Even more, freely, purposively and creatively, our imagination weaves through reality focusing now upon certain dimensions, now reversing its flow, now making new connections and interrelations. In the process reality manifests not only its forms and their potential interrelations, but its power to evoke our free response of love and admiration or of hate and disgust. In this manner our freedom becomes at once the creative source, the manifestation, the evaluation and the disposition of all that we imaginatively can propose.

What emerges finally is that all is purposive, that all must be seen *as if* created out of love and for our personal evaluation and response. As free, our task is to assess and choose among the many possibilities, and through our imagination creatively to project them into the flow of actual being. In this manner we enter into that teleology called Providence by which all are drawn to Resurrection and New Life.

## **Freedom as a Mode of Existence**

Beyond both of these dimensions: (A) circumstantial self-realization predicated upon sense knowledge and the ability to act as I choose, and (B) the acquired freedom of self-perfection predicated upon a formal sense of reason and will, there emerges a third dimension of freedom. In relation to the other two it is possible now to delineate something of the challenge this faces if it is not simply to be distinguished from them, but to integrate their contributions and beyond to fulfill tasks they leave undone. Thus, in relation to freedom (A) it will have to take account of the reality of human choices while providing them with guidance and meaning; and it will have to relate seriously to the circumstances in which freedom is exercised, that is, to treat them not just negatively as conditions to be removed, but positively as factors to be provided. Similarly, in relation to freedom (B) it will have to relate law and norm to the concrete personal exercise of human freedom. For this it will have to provide not only another way of thinking about things—the thinking "as if" of Kant's third critique, but a real relationship between law and life in such wise that the free living of the law is life indeed.

To knit all this together there will be needed an integral and integrating philosophy which unites the body and mind in order to relate freedom (A) articulated in terms of the senses and concrete circumstances to the emphasis of freedom (B) upon mind and formal laws. This integration cannot be achieved, however, if one's thinking and understanding of reality remains in the materialist terms of the empiricists or the spiritualist terms of the formalists for then the reality of the distinction of body and spirit, of matter and form will leave one trapped in one or the other side of the dichotomy. To develop an integrating philosophy it will be necessary to go beyond both, and hence beyond the essence even of a human being, to his existence. The development of such a philosophy and the hence deepening of attention beyond external choice or internal formal freedom took place in a number of steps.

This is of special interest today as peoples react to the limitations of materialism as a context for human life and to the formal laws of a dialectic as interpreted by the Party or state. It is not enough to say that one can automatically become free if one but acquiesces or decrees for oneself these universal laws. Instead, there is need for a sense of reality which will provide at once for the dignity of the person, individual creativity in the physical world and social cohesion. For the required metaphysical basis we shall look initially to the Ancient Greeks for theory of choice in Aristotle's ethics, to the contribution of freedom to philosophic thought in the Christian context, to notions A and B of freedom through the systematic work of Aquinas, and finally to the enrichment of the whole through phenomenologies of the person.

### *Greek Philosophy of Choice*

Aristotle, in his *Nicomachean Ethics*, makes a first contribution to providing a more adequate foundation for freedom (A) and its field of free choice. He opens and closes the work with studies of the notion of happiness in order to assure an integral range of goods available to human concern. In this way he opens horizons of his ethics beyond material pleasures and social honors to contemplation as the highest knowledge of the highest good.

However, he sees the realm of freedom as being concerned not properly with goals, but with deliberation and the choice of means for an end. His ethics is concerned with actions for which we are held responsible, namely, voluntary actions as originating in the agent. He qualifies this further by excluding those done under ignorance or compulsion, and acts done by children or done in the spur of the moment. Finally, he concentrates upon actions done by *proairesis* or preferential choice.<sup>40</sup>

These are done on the basis of deliberation regarding, not the end, but means which remain in our power in the actual circumstance. This is the "deliberate desire of things in our own power"<sup>41</sup> and can be called "either desireful reason or reasonable desire."<sup>42</sup> Elsewhere, however, Aristotle uses the term freedom in a more general manner as applicable to the choice of ends as well as means and to the specification of the object as well as the exercise of the act. The general notion of free will, however, is but inchoate in the classical Greeks; and the term, *autechousion*, appears only later in Greek philosophy along with the problem of morality.

Aristotle's ethics centers largely upon virtues for choosing the ethical alternative and is supported by his studies of the operative faculties of man in his psychology or *De Anima*. But it did not provide the means for understanding the basic dynamism of freedom of the human act within and by which such moral choices are made. This would require a basic shift of horizons. For Aristotle substance was form and philosophy began with physics as the dynamic of the process of change in forms. Man, in turn, was understood as custodian of nature. Hence, the power of deliberate choice was central to his ethics.

Basically, this was because the Greeks had presupposed matter to have existed always; the horizon of their sensibilities therefore extended as far as the forms according to which matter was of this rather than that type. For Aristotle the most manifest realities were things precisely in a process of change from one form to another which he analyzed in his *Physics*. His *Metaphysics* is searching out the richest manifestation of being focused upon substance, according to which a thing was constituted in its own right. Primarily this means a search for being as autonomous (*autos*),<sup>43</sup> for to be meant first of all to be itself, to have an identity, unity. This brought out the importance of independence, but is this as rich a notion as freedom? Some clues can be found in what from our later vantage point appear as strange anomalies in Aristotle's thought.

The theology of Aristotle is replete with disconcerting paradoxes: God is most knowing, but does not know limited beings; he is the cause of all finite causality, but is not an efficient cause; all in physical reality is changing, except matter, which is eternal. These paradoxes manifest that Aristotle's thought has soared high, and evoke still more penetrating metaphysical insights.<sup>44</sup>

### *Christian Philosophy of Freedom*

If there were limitations to the project of Aristotle and the notion of being needed to be deepened in radically new ways in order to open a new sense of freedom, this would require radical development in the fundamental horizon of the Western mind. This was precisely the impact of Christianity. By applying to the Greek notion of matter the Judeo-Christian heritage regarding the complete dominion of God over all things, the Christian Church Fathers opened human consciousness to the fact that matter too depended for its reality upon God. Thus, before Plotinus, who was the first philosopher to do so, the Fathers already had noted that matter, rather than simply being considered eternal, also stood in need of an explanation of its origin.<sup>45</sup>

This was elaborated also in the course of the Trinitarian debates. To understand Christ to be God Incarnate it was necessary to understand Him to be Son sharing fully in the divine nature. This required that in the life of the Trinity his procession from the Father be understood to be in a unity of nature: The Son, like the Father, must be fully of the one and same divine nature. Through contrast to this procession of a divine person it became possible to see more clearly the formal effect of God's act in creating limited and differentiated beings. This would not be in the same divine nature for it resulted, not in a coequal divine person, but in a creature radically dependent for its being. But to push the question beyond nature or kind to dependence in existence is to open

the direct issue of the reality of these beings. What must be explained is not only form, but of matter as well; the question becomes not only how things are of this kind, but how they exist rather than not exist. This constituted an evolution in man's awareness of being as what it means to be real. It would no longer be the question of change or even of the compossibility of forms, which Aristotle had taken as a sufficient response to the scientific question "whether it existed"; instead "to be real" had come to mean to exist or to stand in some relation thereto.

As a result, the horizons of human sensibility were vastly expanded and deepened. It was no longer merely the Greek question of how beings had this, rather than that, form, or even of the identity of a being in contrast to all others. It became the much more radical issue of being as existing, rather than not existing. Quite literally, "To be or not to be" had become the question. This deepened dramatically the earlier Greek sense of self-awareness and will, which now came to mean consciously to assume and to affirm one's existence, and hence to be and to act freely.

Cornelio Fabro suggests that not only did this deepened metaphysical sense of being open the possibility for a deeper sense of freedom, but that it arose in and from the sense of freedom proclaimed in the Christian Kerygma. This was focused not upon Plato's sun at the mouth of the cave, but upon the Son of God, the eternal Logos, personally incarnate and in time, who gave his life to gain the victory over sin and death and to rise to new life. The victory was won in principle by Christ on the Cross, but it had to be accepted freely by each person.

This free response to the divine redemptive invitation, Fabro suggests, was a key factor in the development of human awareness of being as existence. The radically total and unconditioned character of this invitation and response goes beyond any limited facet of one's reality, and any particular consideration according to place, time, occupation or the like. It is a matter of the direct self-affirmation of one's total actuality. Its sacramental symbol is not one of transformation or improvement, or even of dissolution and reformation; rather, it is that of immersion in the waters of death and emergence to radically new life. This directs the mind, beyond any generic, specific or even individual form, to the unique reality that I am as a self for whom living is freely to dispose of my very act of existence. This opened a new awareness of being as that existence by which beings stand outside of nothing (the "ex-sto" of existence), and this not merely to some minimum extent, but to the full extent of their actuality. The graded manner in which this is realized concretely, Cornelio Fabro called an intensive notion of being.<sup>46</sup>

It took a long time for the implications of this new dimension of human awareness to germinate and to find its proper philosophic articulation. Over a period of many centuries the term "form" was used both in its original meaning as kind and to express this new meaning of act as the direct affirmation of being as existing. As the distinction between the two meanings was gradually clarified, proper terminology arose in which the act of existence by which a being simply is was expressed by existence (*esse*), while that by which a being is of this or that kind came to be expressed by "essence".<sup>47</sup>

Was this then a theology based upon revelation of the Trinity, rather than a philosophy available by the light of natural reason? What depended formally upon the mystery of the Trinity and its revelation in Christ must be theology. But today we are more conscious of the cultural and social context within which thought takes place. Like economics and even mathematics, Philosophy is a product of persons living in place and time; it reflects their physical and social circumstances, above all it reflects their deepest personal experiences. For instance, Erickson has made us aware of the essential importance of developing trust as a basis for moral consciousness, and hence of the problems experienced by a person deprived of love in the earliest months of life. We should not suppose persons to be less susceptible to their cultural context in developing their

sensibility to the richest dimensions of being. It was the sense of meaning experienced through the ages and articulated in the myths which provided Plato with the content of the ideas. This heritage was sorted out, not created, by his dialectical method.

In philosophizing the Christian thinkers returned to Platonic and Aristotelian themes with a new heart and mind, sensitized by their new Trinitarian experience of unity, truth and goodness. The result was an inversion of the Aristotelian perspective even by those who were most Aristotelian in the technical implementation of their philosophy. Whereas for Aristotle philosophy began at the point of initiation of knowledge, namely, through the senses and hence the work of physics, the overpowering Christian Trinitarian sense of what it meant to be corresponded to his *Metaphysics* XII, the *noesis noeseos* which Aristotle referred to as life divine. Being then was primarily not limited and changing, but unlimited (as Parmenides had seen immediately) and eternal; not material and potential, but spirit and fullness of life; not obscure and obdurate, but light and truth; not inert and subject to external movers, but love and freedom. This was the Christian *kerygma*, and philosophy done in its light would undergo a conversion in depth

Aristotle's dictum that in knowledge the mind becomes all things was enriched by an appreciation that not only was the natural object of the intellect being, but that the human mind and heart were open to Being Itself. Augustine would brilliantly rearticulate the Platonic and neo-Platonic theme of unity and diffusion, expressing all in origin and destiny as the One, which is being expressed through participation and sought as the point of final fulfillment and rest. In this context mind and heart are not primarily empty and potential, but in whatever degree they are realized in acts of knowledge and will they are reflections of Truth and Love.

Yves Simon draws out some of the implications of this for human freedom, pointing out that it is based not in indeterminism which would leave the will with the impossibility of deriving something from nothing, but in supra-determinism.<sup>48</sup> That is, it is precisely because the human intellect and will are open to the infinite and original Truth and Good that they can respond to any participated and limited good whatsoever without being necessitated thereby. In this lies the essence of freedom both as liberation from determining powers whether internal or social and thus being autonomous, while at the same time being positively oriented toward the good and its realization in all circumstances and in limitless ways. This is the positive attraction of the good and the realistic, loving and vital source of the human creativity of which Kant spoke in his "Critique of the Aesthetic Judgement."

The implication of the Christian context for a metaphysics of freedom extends not only to the highest Being as source and goal of all and to the general character of being of whatever type. It effects as well the technical junctures of metaphysical theory making possible a resolution of some of the dilemmas faced by anyone who would exercise freedom in this world. First, as noted well by Marx and the empiricists, if freedom is to be a human reality it must be exercised by man as a physical being in physical circumstances. The ability to do this will depend on the ability to overcome a dualism of spirit and body and to unite them in the one human subject. This will be essential for giving meaning and guidance for freedom (A). Second, if freedom (B) must be exercised through reason under law and according to what a human person truly is then it will be necessary to understand the relation of essence and existence in such wise that one is not called upon to face issues of freedom in a manner unrelated to nature, or to struggle with requirements of human nature which cannot be part of or might even stand against a free and responsible life. It was the special contribution of Thomas Aquinas to work out these two relationships at the point of convergence of Aristotelianism and Christian Platonism in the high Middle Ages.

## *Freedom and Its Circumstances*

For understanding the exercise of freedom in one's physical circumstances, Thomas provides two foundational insights concerning matter:

- (1) as the subjective potency for form it is clearly distinguished from the form as act;
- (2) this, in turn, enables it to be strictly united with the form to constitute the one essence of material beings.

The first of these, by clarifying the real distinction and hence the nature of the principles of physical nature, allows for an adequate statement of the physical realm. The distinction of matter as potency from form as act eliminated the notion of matter containing a previous element of form, the *rationes seminales*, from a transcendent source. In this way change became a completely physical phenomenon explained by physical causes, rather than merely the temporal actuation by a transcendent agent of a form it had earlier in matter. Analogously, the rejection of illumination is also a recognition of the sufficiency of the nature of finite beings in the realm of knowledge, in distinction from their being simply intermittent flashes of divine insight. The reality of physical causality and physical change is thus assured along with the legitimacy and necessity of the work of the human mind seeking proportioned causes in the same order and of the human will applying these causes in act.

It has even been suggested<sup>49</sup> that this point was so firmly established by St. Thomas on the basis of the new Aristotelianism that it constituted a contribution to the naturalistic orientations which were to arise in subsequent centuries. At any rate, it is certain that the replacement of transcendent causality by direct physical causality invokes great effort in the natural sciences by assuring that all in the physical order can and must be explained in terms of principles on the physical level, and that these principles can be discovered by proportioned neotic methods, that is, by methods which initiate their investigation and are guided to their conclusion by information received through the senses. There is nothing in this incompatible with the methods and contribution of empirical investigation and pragmatic learning. On the contrary, it would seem to postulate such investigations and provide both their very *raison d'être* and the final intelligence of their results. Similarly it explains the real importance of the attention of the physical circumstances of choice as focused upon in freedom (A). These become not mere external circumstances to be removed in order for choice to be exercised, but integral moments of the concrete exercise of freedom in time. They are the modes of human freedom.

A second element of special interest in the physical philosophy of St. Thomas is the extent of the union of form and matter. In previous times this union had been conceived as a loose and even violent imposition or insertion of one in the other. In some forms of Neo-Platonism, it resulted in understanding the presence of the soul in the body as a form of punishment. Aristotle provided a key to progress on this point by his doctrine of the *symbolon*, that is, the unit of matter and form as potency and act constituting the natural physical unit.

There remained, however, much work to be accomplished. On the one hand, Aristotle's proximity to the Platonic identification of being and form would not allow him to introduce matter into the very essence of things.<sup>50</sup> On the other hand, the proximity of the union of form with matter in the *symbolon* would not allow the form in such a unity to be the principle of nonmaterial action. Hence, there arose the need for some superior form or intellect, separated from the form of man's matter or corporeal form, as the principle of the activities of his intellect and will. This



problem had but partially been solved in the philosophy of St. Thomas' more immediate medieval predecessors, for though they placed the spiritual form within man's essence it was there as a spiritual form alongside the corporeal form. After some initial hesitation on this point, St. Thomas concluded that man's spiritual form must be his unique substantial form.<sup>51</sup> The gradual approximation of matter and spirit, which began soon after the early appreciation of the difference between the two, was thus drawn to a culmination in which the spiritual form of man was the form of his matter.

This is replete with implications. If this relation to matter pertains to the human form as such, then the realization of man's spiritual dignity, far from rejecting material considerations, must be stamped by a material note in order to be truly human. If, too, this form is the form of matter, then the material activities of man must possess a distinctively human dignity and be subject to properly human and ethical norms.

This insight into the union of matter and spirit in man is of particular importance to modern thought laboring under the impediment of the dichotomy between matter and spirit deriving from the Cartesian man's effort to conceive all in clear and distinct terms. In providing insight into the essential role of man's body for his spirit, it corrects the rationalist-idealist and Kantian impression that only in some formal transcendence of heteronomous circumstance or of man's physical requirements could man's true autonomy and the perfection of man's intellectual potentialities be realized. In contrast, Thomas' understanding of the spiritual form as the very form of man's matter opens the way for integrating the physical and social dimension of man and his environment in the exercise of his freedom.

### *Freedom and Law*

When we turn to the normative dimension of ethics as directive of the exercise of freedom, we face one of its central dilemmas. On the one hand, if freedom is pure spontaneity then how can it be related consistently to good rather than evil in order to be promotive of our life and that of the community? On the other hand, if it is simply ruled by universal law, then in what way is it ours—in what way is it free? This directs our attention to the issue of nature and essence particularly in its relation to existence and the free exercise of being. The advance made by Aquinas in this point is central to his philosophy and to our problematic.

The foundation of this achievement was mentioned above when it was pointed out that the recognition of the insufficiency of earlier levels of explanation led to a deepening of the ultimate metaphysical perspective. Where, previously, intellectual inquiry had stopped with the study of the informing of matter and of transcendent forms, it now pushed on to inquire concerning being as a relation to existence or *esse* whose emergence with the development of the Christian context has been described above. Gradually during the Middle Ages the principles of essence and *esse* emerged more clearly in the philosophical mind preparing the way for Thomas's proper contributions.<sup>52</sup> In these, the actuality of all was clearly rooted in the element of *existence* and the act-potency relationship of Aristotle was broadened to provide an understanding of the relation within being of the principle of existence with that of essence.<sup>53</sup>

This is of special note here in our project regarding the relation of freedom (B) to freedom (C), to the relation of ethical laws to the actual exercise of freedom. For what Thomas made clear was that as really distinct neither essence on which norms are based nor the existence in which freedom is actually exercised are beings in their own right, but principles of being. Neither then is intelligible by itself but only as a relation to the other, i.e., essence is that by which the existence

is *what* it is and existence is that by which essence is or exists. Hence, it is not possible to think of essence except as a relation to existence which for man is the exercise of freedom, nor is it possible to even think of existence or the exercise of freedom except as an actuality of some nature or type. Hence, rather than think of freedom as essentially arbitrary choice or willful preference without norm it is conceivable only in relation to the concrete human nature or essence of the person who wills. As with circumstance and choice (freedom A), and choice and norm (freedom B), so also moral law and the free achievement of one's perfection (freedom C). Further, this provided the principles by which the Platonic notion of participation could now be seen as an exercise of freedom within the fully transcendent perspective of being as a relation to *esse*.<sup>54</sup> A thing whose essence is not its being, consequently, is not self-sufficient through its essence, but by participation in being itself or God whose essence is existence.

Such a philosophy assimilates the insights of the philosophies of essence and can improve upon them by relating their contribution to intelligibility to *esse* and life within the context of being.<sup>55</sup> It assimilates as well the more recent insights of the philosophies of existence, for which it can provide a similar service by providing for them from within a relation to essence and intelligibility.<sup>56</sup> With both of these it goes a step further by opening their full meaning by relating it to the vivifying presence of the subsistent existent whose essence is his existence, God Himself.

A similarly synthetic element in the first philosophy of Thomas can be seen in relation to the transcendental properties of being. For Thomas these are convertible with one another and with being, while following an order or pattern in their manifestations of being. Because the properties are convertible and necessary, the philosophical insights predicated upon any one of them are not only not foreign to those predicated upon any other but may even be said to require and unfold them. Thus, insights concerning the unity or the order of being, its intelligibility or truth, and its dynamic character as good are present. What is more, they are present as ordered one in relation to the other in such a way that the dynamism of the good is intelligible, while the intelligibility is ordered, and through the unity all are rooted in the perfection of Being Itself.<sup>57</sup>

This has major contemporary importance for modern philosophy, in the light of its reduction in empiricism of all to the work of the senses or in Kantian formalisms of all to reason void of real content. The reaction of the existential phenomenologies seeking freedom C in commitment based on love or goodness needed to be reintegrated with other modes of freedom in order to be located in its concrete circumstance and to be guided by ethical norms. The complete realization of the values sought in each of these orientations can be achieved—but not in isolation.

## **Conclusion**

From this emerges a sense of person which is truly the image of God in this world. He is part of nature, but rather than being subject thereto in terms of a mere producer or consumer, by his freedom he is truly a creative and transforming center. His is the responsibility for its protection and promotion. Similarly, he is by nature social and a part of society, but rather than being subject thereto in terms of object he is a creative center who is fittingly an integral part of its decision-making process. Movements of freedom reflect the emergence of the concept of the person and its fuller role in social life. This human dignity, equality, and participation in the socio-political process become central concerns. It is not surprising then that as nations new and old turn to democracy and its heightened sense of the dignity of the person in their active role as free members of society, their people take up an avid interest in religion.

Three characteristics of this newly appreciated freedom stand out. First, self-affirmation is no longer simply a choice of one or another type of object or action as a means to an end, but a radical self-affirmation of existence within Existence Itself. Second, self-consciousness is no longer simply self-directed after the manner of Aristotle's absolute "knowing on knowing"; rather, the highest consciousness knows all that it creates and more limited instances of self-awareness transcend themselves in relations with others. Finally, this new human freedom is an affirmation of existence as sharing in Love Itself, the creative and ultimately attractive divine life—in Indian terms, of "Bliss" (*ananda*).

This new sense of being and of freedom reflects the radical character of the Christian mysteries. Expressing far more than a transition from one life style to another, the new meaning is based in Christ's death and Resurrection to new life. Hence, Christian baptism is a death to the slavery of selfishness and a rebirth to a new life of service and celebration with others. This is carried out by divine grace, but is no less a radically free option for life on one's own part.

This new life of freedom means, of course, combating evil in whatever form: hatred, injustice and perhaps especially the oppression of freedom. But it is not centered upon negations. Its heart is rather in giving birth in this world to the goodness of being and bringing this to the level of human life that is marked by love and beauty. Choices are made in this context for this is freedom.

## Notes

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2. (Garden City, N.Y.: Doubleday, 1958), 2 vols.

3. Adler, I, 586.

4. *Ibid.*, p. 587.

5. *Ibid.*, pp. 592-594.

6. *Ibid.*, p. 606.

7. *Ibid.*, pp. 606, 607.

8. *Ibid.*, p. 608.

9. *Ibid.*, p. 609.

10. *Ibid.*, pp. 612, 613.

11. *Ibid.*, p. 614.

12. *Ibid.*, p. 615.

13. *Ibid.*, p. 116.

14. John Locke, *An Essay Concerning Human Understanding* (New York: Dover, 1959), Book, Chap. I, Vol. I, 121-124.

15. David Hume, *An Enquiry Concerning Human Understanding* (Chicago: Regnery, 1960).

16. Rudolf Carnap, Hans Hahn and Otto Neurath, *Wissenschaftliche Weltauffassung: Der Wiener Kreis (Vienna Manifesto)*, A. Blumberg, trans., in J. Mann and G. Kreyche, *Perspectives on Reality* (New York: Harcourt, Brace and World), pp. 483-486.

17. *The Theory of Justice* (Cambridge: Harvard Univ. Press, 1971).

18. *An Essay Concerning Human Understanding*, A.C. Fraser, ed. (New York: Dover, 1959), II, ch. 21, sec 27; vol. I, p. 329.

19. *Sceptical Essays* (London: Allen & Unwin, 1952), p. 169.

20. Adler, p. 187.

21. J.S. Mill, *On Liberty*, ch. 5, p. 15.
22. Adler, p. 193.
23. Adler., p. 253.
24. *Ibid.*, p. 257.
25. Immanuel Kant, *Critique of Pure Reason*, trans. N.K. Smith (London: Macmillan, 1929), A 112; cf. A 121.
26. *Ibid.*, A 121.
27. Donald W. Crawford, *Kant's Aesthetic Theory* (Madison: University of Wisconsin, 1974), pp. 87-90.
28. Kant, *Critique of Pure Reason*, A 192-93.
29. Crawford, pp. 83-84.
30. Immanuel Kant, *Foundations of the Metaphysics of Morals*, trans. R.W. Beck (New York: Bobbs-Merrill, 1959), Part II, pp. 38-58 [421-441].
31. Plato, *Republic*, 519.
32. *Foundations*, III, p. 82 [463].
33. Cf. Hans Georg Gadamer, *Truth and Method* (New York: Crossroads, 1982), Part I, pp. 1-2; pp. 39-73; and W. Crawford, espec. Ch. 4.
34. Immanuel Kant, *Critique of Judgment*, trans J.H. Bernard (New York: Hafner, 1968), pp. 205-339.
35. *Ibid.*, pp. 37-200.
36. See Kant's development and solution to the autonomy of taste, *Critique of Judgment*, nn. 57-58, pp. 182-192, where Kant treats the need for a concept; Crawford, pp. 63-66.
37. See the paper of Wilhelm S. Wurzer, "On the Art of Moral Imagination," in G. McLean, ed., *Moral Imagination and Character Development* (Washington: The Council for Research in Values and Philosophy, 1991) for an elaboration of the essential notions of the beautiful, the sublime and taste in Kant's aesthetic theory.
38. Immanuel Kant, *First Introduction to the Critique of Judgment*, trans. J. Haden (New York: Bobbs-Merrill, 1965).
39. William James, *Pragmatism* (New York: Washington Square, 1963), Ch. I, pp. 3-40. For notes on the critical hermeneutics of J. Habermas, see G. McLean, "Cultural Heritage, Social Critique and Future Construction," in *Culture, Human Rights and Peace in Central America*, R. Molina, T. Readdy and G. McLean, eds. (Washington: Council for Research in Values and Philosophy and The University Press of America, 1988), Ch. I. Critical distance as an essential element requires analysis by the social sciences of the historical social structures as a basis for liberation from internal determination by, and from dependence upon, unjust interests. The concrete psycho- and socio-pathology deriving from such dependencies and the corresponding steps toward liberation therefrom are the subject of the chapters by J. Loiacono and H. Ferrand de Piazza in *The Social Context and Values: Perspectives of the Americas*, G. McLean and O. Pegoraro, eds. (Washington: Council for Research in Values and Philosophy and The University Press of America, 1988), Chs. III and IV.
40. W.D. Ross, *Aristotle, a Complete Exposition of His Works and Thought* (New York: Meridian, 1959), p. 195.
41. *Nicomachean Ethics*, III, 2, 1113 a 12.
42. *Ibid.*, IV, 2, 1139 b 5.
43. Aristotle, *Metaphysics* VII, 4 1029b 13.

44. George F. McLean and Patrick Aspell, *Ancient Western Philosophy: The Hellenic Emergence* (New York: Appleton Century Crofts, 1971), p. 221.
45. G. McLean, *Plenitude and Participation: The Unity of Man in God* (Madras: The University of Madras, 1978), pp. 53-57.
46. Cornelio Fabro, *Participation et causalité selon S. Thomas d'Aquin* (Louvain: Pub. Univ. de Louvain, 1961).
47. Cornelio Fabro, *La nozione metafisica de partecipazione secondo S. Tommaso d'Aquino* (Torino: Società Ed. Internazionale, 1950), pp. 75-122.
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49. Frederick Copleston, S.J., *A History of Philosophy* (Westminster, Md.: Newman, 1955), III, 342.
50. *Metaphysics*, VII, 7, 1032 b 1. See S. Mansion, "Positions maîtresses de la philosophie d'Aristote," in *Aristote et Saint Thomas d'Aquin* (Louvain: Pub. Univ. de Louvain, 1955), pp. 58-67.
51. Contrast *In sententiis*, 1, d. 8, q. 5, a. 2 with *Summa theologica*, 1, q. 76, especially aa. 3, 4 & 6; *Q. D. de spiritualibus creaturis*, a. 3; *Q.D. de anima*, a. 9. Cf. M.-D. Roland-Gosselin, *Le "De Ente et essentia" de S. Thomas d'Aquin* (Paris: Vrin, 1948), 110-17.
52. Fabro, *La Nozione*, pp. 75-122.
53. J.-D. Robert, "Le principe: actus non limitatur nisi per potentiam subiectivam realiter distinctam," *Revue philosophique de Louvain*, 47 (1949), 59-78.
54. *Summa contra gentiles [On the Truth of the Catholic Faith]*, trans. Anton Pegis, et al. (Garden City, N.Y.: Hanover House, 1955), I, c. 22:9.
55. Louis de Raeymaeker, "L'idée inspiratrice de la métaphysique Thomiste," *Aquinas*, III (1960), 81-82.
56. de Finance, "Valeur et taches actuelles du thomisme," *Aquinas*, III (1960), 139.
57. *Q.D. de veritate*, q. 21, a. 3.



## Chapter II

# Human Flourishing and Contemporary Experience

*John Farrelly*

In classical Western and Eastern cultures, human flourishing was generally understood as brought to completion only by the human person's relation to the Ultimacy, the Sacred or God. But this manifests a personal identity or self so different from the identity that many assume is consistent with our contemporary culture that it raises the question whether it is still perfective for the human person to so orient himself or herself toward an Ultimate or God. It raises the question whether human persons are properly characterized by absolute transcendence in the sense of an orientation to constitute themselves freely by their relation to an absolute horizon of being and value. This leads us then to an aspect of critical reflection on the meaning of human flourishing. Should we appropriate ourselves in our time and place as subjects with a dynamism toward absolute transcendence? This question seems to be an essential component of the question of what our freedom is *for* positively. It is particularly central to a critical evaluation of the view that a person is free who "is able . . . through acquired virtue or wisdom to will or live as he ought in conformity to the moral law or an ideal befitting human nature."<sup>1</sup>

Classical thought had no difficulty with this self-appropriation. To give one example from Western culture, Thomas Aquinas writes that "the image of God is found in the soul as it is oriented or inclined to be oriented to God. . . . We find the image of God not as the mind [of man] is oriented absolutely to itself, but as through this it can be further oriented to God."<sup>2</sup> The word by which Thomas and Christian tradition designated the individual human being was 'person'. Initially, this word referred to a mask that an actor used and thus the character that the actor played, and it was used by Roman law to indicate one who had legal rights. Christian theologians used it in reference to the Father, Son, and Holy Spirit. Tertullian determined the theological vocabulary in the West when he distinguished in God "three persons in one substance."<sup>3</sup> The word thus developed from first having a phenomenological meaning to having a metaphysical and theological meaning. In Thomas too we find these different senses, though the last two predominate. The phenomenological meaning is clear in his explanation that a special word, 'person', was formed to designate the "individual substance of a rational nature" (Boethius' analysis of person in the sixth century), because such individuals, as distinct from lower animals, "*have others, but they act of themselves*."<sup>4</sup> It is an agency that takes its origin from within in freedom and reason that characterizes the person, as distinct from one that is an automatic response to external stimulus. In this phenomenological description of the person, he takes the adult as illustrative, for it is in the adult that an agency that can be called self-possession is primarily found. The word 'person' for Thomas then means primarily the whole subsisting and acting individual who relates himself to self, to others and to God. He understood 'person' to signify "that which exists of itself and not in another" in a rational nature, or that which subsists, i.e. exists as a substance, rather than as an accident, in a rational nature. And he adds, "person signifies that which is most perfect in the whole of nature, namely one who subsists in a rational nature."<sup>5</sup>

This calls the philosopher to infer a metaphysical structure to account for this agency. What enables the individual human being to have such agency is the metaphysical structure of the person—human nature or substance and the act of being (*esse*) that actualizes it and the human powers that emerge from this being—as the ultimate intrinsic principles of the person. And the

actualization (*esse*) of this person in the sense of his fulfillment is the intrinsic horizon of this human agency; through this the person orients himself to other human beings and their actualization and to God. So the agency of the person has as its metaphysical root this dynamic structure and as its intrinsic horizon his actualization as a person.

Prominent modern philosophical views of the person have emphasized self-consciousness or freedom in a way that, at times, dissociates these from *the one who is* self-conscious or free or exercises agency.<sup>6</sup> But at this point, we only wish to recall that classical thought had no difficulty in asserting the transcendence of the human person or an orientation to God out of a choice that comes from love and knowledge as properly characteristic and perfective of the person. (Perhaps we should note that ‘transcendence’ here is a metaphor. It is a verbal noun meaning ‘going beyond and above’. We could as well use the metaphor of going deeper, i.e., beyond the superficial self to the one we more truly are.)

In the nineteenth and twentieth century this transcendence has been frequently denied. For many social scientists, psychologists, sociologists, and philosophers religion is an alienation of the person rather than his perfection. Many people in our time appropriate their intentionality in accord with a widespread contemporary naturalistic historical consciousness as oriented toward their individual or communal future in history, but not as oriented properly toward God as the fulfillment or the meaning of their lives. Whether people think that persons are their own construction or the product of society or due to both, many tend to appropriate their fulfillment as located in themselves or in society rather than in their relation to God. They interpret the fact that individuals and societies construct their own future through changes appropriate to their historical circumstances, that they do so within particular cultures, and that they do so freely as opposed to classical views such as that of Thomas.

How can we from contemporary experience critically evaluate whether it is proper to and perfective of the human persons to construct themselves in accord with a distinctively human good that preexists their choices and is normative for them, and to do so in a horizon of an absolute good and absolute transcendence? I suggest that we should turn to a *phenomenology* that helps us to understand the intentionality present in a growing person as he or she is in search of genuine human values in history, and ask whether this process shows that its meaning is the person’s orientation toward a properly human good and an absolute dimension of value and meaning, and reflects a potential in the person for such a horizon.

I suggest that for this phenomenology we turn to developmental psychology that shows us something of why and how the growing person tends to reorient himself to progressively more adequate human values, and how such growth is due to the person’s self-construction in accord both with a distinctively human potential and an enlarging social environment. This avoids the interpretation of human behavior in the reductionist manner of the behaviorists. And it also avoids an interpretation of this behavior through mind and human ideals in a way that is divorced from the matrix of the body and social environment, as some proponents of the "Human Potential Movement" or even of the "Third Force" at times seem to propose.<sup>7</sup> For our purposes it is helpful to use the social sciences; philosophers who do not use the social sciences in reflecting on human transcendence tend to give us an analysis of this that is too abstract to be persuasive in our time.

More specifically, I suggest that we can appropriate as genuinely honest to our own experience of ourselves much of the work of Erik Erikson. Erikson’s question was "how is the mature personality constituted?" and his answer was on the level of social, organic and ego processes interacting in an evolutionary fashion. This work—at times supplemented and corrected by the work of others—offers an analysis of the development of the human person that, in its general



framework, is widely accepted in our time and shows the human person in his search for meaning to be reorienting himself in a way that manifests a significant degree of transcendence. This analysis does not substitute for the concrete experience of religious people in our time, but it supports in a way proper to psychology and philosophy the view that the transcendence which classical thought asserts, and which we ourselves and many others still appropriate, is basically not counter to but in accord with and demanded by a self-making that accepts the genuine values and insights of our time. This helps us critically evaluate and modify a classical analysis of human transcendence, such as we find in Aquinas.

Erikson's work is readily available and widely known, and so we shall be brief in our use of it here. We shall (1) initially indicate something of the question he seeks to answer, the kind of evidence he uses, and his relation to Freud in his epigenetic analysis of the growth of the person; (2) secondly, we shall select aspects of his analysis of the growth of the person through adolescence and by this briefly evaluate Aquinas' understanding of the person as oriented toward a good or fulfillment that is properly human and characterized by 'sui dominium' or agency that originates action, and (3) finally we shall suggest that Erikson's studies of adult stages of growth support the absolute character of human transcendence. This is in service of our critical question whether human persons in our time should appropriate human transcendence found in religion as proper to them and perfective of them.

### **Framework and Evidence for Erikson's Analysis of Personality Development**

Erikson had a view of what constitutes mature personality, and then sought to analyze the stages and factors through which this mature personality structure evolved. He thought that maturity was not restricted to that of genital sexuality, but was characterized even more by what he called "generativity," namely, care or a concern for the development of the next generation even at significant cost to the adult. This normative adult personality is the evolutionary result of the child's progressive structuring of self (ego processes) within stages of interaction between the enlarging social environment (social processes) and the child's maturing human potential (organic processes). Whereas some contemporary interpretations of human development ascribe this almost wholly to society and some almost wholly to the individual person, Erikson—with many others—interprets it as occurring through the interaction of these two agencies.

What type of evidence does Erikson offer for his interpretation of the person's growth? Initially he based his interpretation on a clinical method and the evidence it offers; later he enlarged his insights toward an explicit interpretation of the normal order of human development. The diagnostic interview shows the clinical method.<sup>8</sup> "The psychoanalytic method," Erikson notes, "is essentially a historical method. Even where it focuses on medical data it interprets them as a function of past experience."<sup>9</sup> The patient (or his family) looks back to the onset of the disturbance, and the patient and doctor together try to understand what "world order (magical, scientific, ethical) was violated and must be restored before his self-regulation can be reassumed."<sup>10</sup> The therapist has to interpret the bit of interrupted life presented to him, and he cannot avoid the involvement this calls for. He has a model of man or a variety of models of man and the human processes in his mind (as the physician has in his own sphere of concern) as an essential element that allows this interpretation. In his own model or models Erikson certainly takes some elements from Freud, although he dissociates himself from Freud's mechanistic interpretation of these elements. This full model of man is in debt also to his study of anthropology (specifically his experience with two American Indian cultures—the Sioux and the Yurok), his evolutionary

viewpoint (he refers to the theorist of evolution, C. Waddington, at times), other psychologists (e.g. he draws on similarities between Piaget's insights and his own in reference to adolescents), his own experience of life and his great clinical sensitivity. One factor we should recall is the involvement of his own ethical sentiments:

The evidence is not 'all in' if he [the therapist] does not succeed in using his own emotional responses during a clinical encounter as an evidential source and as a guide in intervention, instead of putting them aside with a spurious claim to unassailable objectivity . . . .

Any psychotherapist, then, who throws out his ethical sentiments with his irrational moral anger, deprives himself of a principal tool of his clinical perception. . . . (W)e somehow harbor a model of man which could serve as a scientific basis for the postulation of an ethical relation of the generations to each other.<sup>11</sup>

This kind of subjectivity is essential if we are to avoid a reductionist interpretation of man on the model of the physical sciences. A final criterion of the value of the therapist's interpretation is found in the therapeutic results that occur in the patient. Does he emerge from the encounter more whole and less fragmented than when he entered it? Erikson bases his theory on evidence such as this, and he presents it in part as a heuristic device, as a theory that is subject to support or counter-evidence.

Erikson accepted elements from Freud but put them in a new context. Freud had studied the neuroses of adult patients and related their illnesses to factors operative in childhood stages of pregenital sexuality that they had not integrated into mature genitality. Erikson's study of somatic processes, social processes, and ego processes in human growth was dependent on but developed Freud's factors of id, super-ego and ego. Erikson finds that the child successively centers for satisfaction on different areas of the organism and on activities somewhat correlated with these (*somatic processes*). And we have to acknowledge qualitative differences among these stages, rather than consider later stages as hidden searches for the satisfaction proper to the earliest stage. The child at a particular stage seeks satisfaction not simply in the activity of a particular organic zone but in a general organic mode of activity correlated with this zone, and indeed in a modality of life proper to this stage. Erikson recognizes a maturation of a human potential that extends beyond the organic and is not reducible to it, and finds that with this maturation the intentional center of the person's search for meaning shifts and enlarges.

A distinctive aspect of Erikson's study within the Freudian tradition is the way he integrates the *social processes* as one central positive factor essential for the emergence of the child and adult. It is the very encounters between the social environment and the child at varied stages of maturation of his organic and human potential that presents those turning or critical points that provoke the child's growth. Societies can fail in offering the experiences and support essential for the child's development, but since the welfare of a Society depends upon its "maintenance of the human world," a society tends to safeguard and encourage the proper rate and sequence of the child's potentialities for interaction.<sup>12</sup>

Erikson was aware, however, of the failures of societies in this regard. For example, society in the United States did not, at the time of his early writings, give positive encouragement for the growth of blacks, but rather sought to give them a negative identity. Now, some decades after Erikson's initial writings, we unfortunately see an erosion of social support for children's growth toward maturity. For example, there is now a smaller proportion of two parent nuclear families in

the United States.<sup>13</sup> Also particularly in the 1960s and 1970s in the United States, there seemed to be a widespread jettisoning of traditional Judaeo-Christian values in the area of personal and familial life among cultural leaders, the media and significant portions of our people. This process continued in the 1980s, though perhaps at a slower rate. If one adds to this the amount of addiction to alcohol and drugs, the increase of violence and the claims to equal moral validity of many alternate life-styles, one concludes that society offers children much less support for trust and for a sense of the validity of universal moral values than was the case when Erikson wrote his famous book on *Childhood and Society*. What implications does this have for Erikson's conclusions? Does it mean that there is not a normative sequence of stages of growth for children and even adults, or does it mean that to acknowledge this and support this in our time demands that we be more counter-cultural? More and more psychologists, educationists and religious leaders are acknowledging the damaging effects on children of divorce in the family, drugs and violence in the environment and amorality and consumerism in the media. With others, such as Alasdair MacIntyre,<sup>14</sup> I suggest that these circumstances make an effort at critically evaluating the implications of freedom of choice in our culture more necessary, and efforts at developing communities that support genuine human values more critical. The third factor for Erikson is *ego processes*. For Freud (particularly in the final stages of his thought) the ego was the reality principle whereby the individual, recognizing that the quest for some satisfactions that the id insistently demanded resulted only in greater suffering, defensively adjusted the organization of his instinctual impulses to what reality allowed. Disciples of Freud gave the ego more attention, explored its defenses, and also acknowledged that it had energies independent from the id and assigned to it functions that were not simply defensive but also adaptive. Erikson writes:

The ego was gradually seen to be an organ of active mastery . . . in integrating the individual's adaptive powers with the expanding opportunities of the 'expectable' environment. The ego thus is the guardian of *meaningful experience*, that is, of experience individual enough to guard the unity of the person; and it is adaptable enough to master a significant portion of reality with a sense, in this world of blind and unpredictable forces, of being in an *active state*.

Some of these prerogatives (that the ego must and does guard) are a sense of *wholeness*, a sense of *centrality* in time and space, and a sense of *freedom* of choice. Man cannot tolerate to have these questioned beyond a certain point.<sup>15</sup>

In brief, the development of the child's personality depends not only on the encounter between the expanding social environment and his or her maturing human potential, but also on how he or she structures the self within this encounter. It is the three together that are essential to our understanding of an individual's 'career'. And in the case of a disturbance of this development, the convergence of the three processes "makes the catastrophe retrospectively intelligible, retrospectively probable,"<sup>16</sup> though the factors are not the 'cause' of the disturbance in some mechanistic way.

Erikson integrates these factors operative in human growth in the context of the *epigenetic* principle. The development of the fetus in the womb offers a model for the development of the person in society toward maturity. In the fetus' growth there is a ground plan; and out of this ground plan "parts arise, each part having its time of special ascendancy, until all parts have arisen to form a functioning whole."<sup>17</sup> Similarly, the child interacts with the social environment according to a ground plan based on the gradual maturation of its capacities. As this happens, the enlarging social environment interacts with the growing person to evoke responses appropriate to

his age and thus also to the growing person's development toward a maturity that Erikson describes particularly as generativity. There are then stages by which the individual approaches maturity (or, in different degrees, fails in this approach), that is, "the *normative sequence of psychosocial gains* made as at each stage one more *nuclear conflict* adds a new *ego quality*, a new criterion of accruing human strength."<sup>18</sup> Certain attitudes contribute to the person's growth to this maturity, and others are opposed to it.

If we ask why the growing person continually restructures his personality in this sequence of stages, there are two ways in which psychoanalysis has explained this. Freud developed an explanation by displaced energies in a rather mechanistic manner, an explanation that is perhaps particularly appropriate for those blockages of growth that Freud studied so deeply. But he also developed a clinical interpretation of the individual's search for meaning—an interpretation based on the recognition that the individual's actions, symptoms, dreams and associations are symbols of his intentionality. Both of these are found in Erikson, but the former is vestigial and the latter predominant. For him a person changes primarily because "the encounter with some living fellow creature serves as a catalyst that enables the person to transform himself and shape his own self,"<sup>19</sup> For example, a child who has just learned to walk repeats his new found skill again and again out of his delight in functioning, but also "under the immediate awareness of the new status and stature of 'one who can walk', with whatever connotation this happens to have in the coordinates of his culture's space-time."<sup>20</sup> Erikson has great sensitivity to the meanings these new achievements have for the growing child, and he interprets them more by their orientation to future meanings than by their relation to earlier drives or displaced energies.

### **Initial Stages of Growth and Human Transcendence**

Our question here then is basically whether a contemporary phenomenological approach to the constitution of the mature personality supports what so many people of our time still hold, namely, that contemporary experience does not disqualify but does modify the classical assertion of human transcendence, that it is still perfective for the person to orient himself to transcendence. Does a contemporary phenomenology both positively evaluate Thomas' interpretation of the transcendence of the human person and modify and enlarge it by relating it to what we now know about the process by which the adult person is constituted or evolves? Notice that in answer to this question we are juxtaposing two views of the person, those of Aquinas and of Erikson. Thomas' question was primarily "what is it that enables one to have mastery over himself (*sui dominium*)," and his answer was on the level of metaphysical principles of being and human powers of intellect and will.<sup>21</sup> The agency of the person has as its metaphysical root this dynamic structure and as its intrinsic horizon his actualization as a person.<sup>22</sup> Erikson's question was "how is the mature personality constituted?" and his answer was on the level of social, organic and ego processes interacting in an evolutionary fashion. How can we relate these?

We should note also that Erikson's interpretation of the person has extended itself beyond the phenomenological toward a sense of "I" that verges on the person as a metaphysical agent. While the ego for Erikson is an unconscious dynamism, the "I" is conscious and reflects on the various selves in the composite Self.<sup>23</sup> Perhaps we should note here that Erikson's distinction between the ego and the Self has been found to be a contradiction by some critics.<sup>24</sup> Without attempting to resolve the particulars of Erikson's vocabulary, we can note that he finds a need in human experience to acknowledge a basic "I" in the human agent. <sup>25</sup> The phenomenological and the

metaphysical approaches to the person are interrelated since the former raises the question of the latter and the latter is known through the former; we need both.<sup>26</sup>

We see graphically in Erikson that the person in the sense of the mature personality expressed in act is gradually constituted through a series of stages distinguished by successive interactions of the person and society as the capacities of the human organism develop. To recall a skeleton of this development, we may note an aspect of each stage from infancy through adolescence. In the first year of life the interaction is between the infant at its most undeveloped stage and the mothering figure through the care she takes of it. By this interaction, it is critical that the child develop a sense of basic trust on balance over distrust. This "sense of" basic trust is what is primarily called for at this stage. At the toddler stage, the interaction is between the child with some increased muscle control and his or her parents. Part of this encounter centers around the question of the child's muscle control, e.g., in toilet training (given great emphasis in our culture). Through this interaction it is critical that the child be encouraged to have a sense of autonomy and achievement on balance rather than be induced to muscle control by shaming tactics. The older pre-school child has a wider social environment and strengthening muscles that allow much more movement and play, and a certain interest in the opposite sex (and specifically in the parent of the opposite sex). In interaction at this stage it is critical that the child be brought to integrate this new dimension with an overriding sense of initiative rather than through a dominant sense of guilt. A resolution of the Oedipus complex (and, we may add, the Electra complex) through identification with the parent of the same sex is part of this process that makes way for the school age child's interaction with a still larger social environment and the challenge this presents to learn the tools of the culture. The child gets satisfaction and recognition out of task fulfillment, and the specific ego and/or self development at this time is to gain a sense of industry rather than a dominating sense of inferiority. The strengths that accrue to the child at a particular stage depend on earlier growth and contribute to later growth; these strengths are to be fostered at each stage, but there does seem to be a stage where specific strengths are called forth with special urgency. Through all of this one sees that there is a certain relativity in the child's development, because it depends upon the culture in which he or she grows and the differentiated conditions of the child (e.g., through sex, age, abilities, etc.) and the parenting agents. But this does not take away from there being normative stages and requirements for the child to develop toward a specifically human maturity. We see also the possibilities of failures on the part of parents and others concerned for the child and on the part of the child, with all the damaging effects that these have and the consequent need for healing. These failures are possible for many reasons. One reason we can note here is that to progress to a further stage demands a letting go of a narrower horizon of human values and personality structure no longer adequate to the task of being human. While it takes time and the development of structures for the child to appreciate many human values, it can also be threatening to let go of a current structure and focus when this is no longer sufficient; and the value that calls for this change can appear to be a counter-value. The very fact that we recognize some actions and attitudes of the child as failures or regressions testifies to there being a specifically human good that is normative for the child's development and the parent figures' care and concern.

Without at all presuming to present adequately an analysis of child personality development, we may recall one significant addition and adjustment to Erikson's analysis. Robert W. White agreed with much of Erikson's correction of Freud and tried, like Erikson, to make the psychoanalytic theory of personality development more adequate to the reality of child development. He was uneasy with the adequacy of Erikson's theory to cover the child's motor and

cognitive development. And so he turned to Arnold Gessel's and Jean Piaget's work, because if we are to fully grasp the ego's relation to reality we must:

draw into the picture the facts of manipulation, locomotion, language, the mastery of motor skills, the growth of cognition, the emergence of higher thought processes, indeed the whole putting together of man's complex repertory of adaptive behavior.<sup>27</sup>

The energy present in these processes cannot be adequately explained by the instinctual energies proposed by Freud, namely, libido and aggressiveness, and broadened by Erikson. Nor can they be explained by some neutralization of such energies over a process of time, or by another instinct such as the instinct for mastery. These activities of adaptation and reality testing seem to have a pleasure of their own attached to the mastery that is not reducible to that of the instincts. The infant engages in these actions when his organic needs are satisfied, and he does so in a spirit of employment. Thus they do not appear to satisfy libidinous or aggressive instinctual needs, or to have the consummatory aim of feeding or aggression. To account for these aspects of adaptation that Erikson's interpretation seems to leave out, White proposed that there are independent ego energies that are associated with the sensori-motor system. He called this energy 'effectance', and the motivation found in this adaptive activity the developing 'sense of competence'. And he saw his proposal not as a substitute for what Erikson proposed, but rather as a complement to his interpretation. I would agree that this addition makes Erikson's analysis more adequate to the reality of child development, and that what White adds to the picture in reference to the young child has its correlates in each stage of the person's development. It leads to a broader view of the ego's engagement with reality and of the ego in the sense of that which is operative in our agency, and of which we are indirectly or directly aware through our agency.

In adolescence, of which we are particularly conscious in our non-traditional culture, the growing person's interaction with the social environment is modified by the changes he or she undergoes at puberty, the larger social environment, the increased capacity for what Piaget calls "formal operations" or ability to make hypotheses and test them (about life as well as about the physical world), and the need for the young person somewhat later to take more responsibility for himself and his future, making choices about occupation, lifestyle, marriage, etc. The young person is challenged in a period of rapid change to establish some degree of coherent identity that embraces but subsumes earlier achievements while preparing to take a part in the adult world, rather than to be dominated by an identity diffusion or a 'foreclosed identity', i.e., an over-identification with an authority figure, ideology or goal that blocks out too much of what it means to be human. We may note here that it may be that there is a somewhat different stage sequence for girls and boys at this point. Carol Gilligan has challenged Erikson's sequence here, namely the establishment of identity and then of intimacy in young adulthood, as based specifically on the experience of boys; she suggests that for girls the establishment of capacity for intimacy may precede the formation of adult identity.<sup>28</sup> Whatever may be true of this, young people must have, among many other supports, some overall view and acceptance of themselves and their world—some framework for choice and values other than simply those of their subculture or unreflected interests.

This phenomenology of the constitution of the self, as brief as it is, supports the view that there is what we may call a constitutive human good, i.e., a kind of fulfillment that is appropriate to the human person antecedent to his or her free act, and a kind of human attitude toward it, that is normative for the human person. One cannot with impunity construct oneself or seek to construct

those whom one influences by any blueprint one may choose. Some goals and attitudes are appropriate for and perfective of the person, and some are regressive or destructive. The modern recognition that we construct our own personalities and make our own choices does not subvert the reality of human nature and its implications for human action, but rather gives us a profounder understanding of it.

Erikson's analysis of personal growth modifies an earlier view of what it means to be human. What Erikson shows is that there is a psychogenesis of the personality through the growing child's restructuring of the self in view of his or her changing interaction with the enlarging social environment and the maturing human potential. What may appear in some earlier philosophers as excessively 'vertical' interpretations of human transcendence unmodified by cultural diversity, and what may be present in some contemporary excessively 'horizontal' interpretations of human development that do not acknowledge a normative human nature are in a way synthesized in Erikson's framework. Specifically, through this process there is transcendence in the agency of the person, for the adolescent has a far more active, free and conscious agency (or should have) than the younger child.<sup>29</sup> This dynamic structure of agency develops because, with the enlarging human potential that is becoming actual at this time, earlier forms of the human agency are no longer sufficient for the interaction between the person and the environment. The earlier forms of agency then are surpassed and subsumed at this point. The person in the sense of 'one who is' acts through structured dynamisms that developmental psychology studies and that evolve through time. It is primarily in virtue of the young person's search for meaning that this development takes place. Similarly there is a kind of deepening that is normative for the adolescent, in the sense that he be in contact with and act from a capacity or a self that is more fully human than the more surface forms of agency found in childhood. We cannot do justice here to the pain this revolution—as well as evolution—in personality may well entail, with all the dislocations experienced at adolescence.

There is a transcendence in the social environment that impinges on the young person if it is compared to that of his childhood. And there is also a transcendence in the horizon of the young person if it is compared to the one he had as a younger child; it includes more fully human values (or, once more, it is normative that it do so, if there is not to be regression) such as the acceptance of more responsibility for one's own life and that of others. This does not exclude a continuation of earlier structures nor a kind of "regression in the service of growth." That the change through the growing person's history should lead to such transcendence is normative for both the young person and the social environment that is responsible for his or her development. We know how, sadly and even tragically, this is so often not the case. But the very tragedy and loss that results when this growth does not occur shows how normative this transcendence is for young people. And we can see in the lives of many people that losses, e.g., of parents, can indirectly and eventually promote human transcendence.

Developmental psychology and specifically Erikson show us that it is part of being human that there be in the person a "tendency for new characteristics to emerge from previous, global characteristics" and "a tendency (for behavior) to become hierarchically organized, . . . for earlier developments to be continuously subsumed under later developments."<sup>30</sup> The stages of increasingly human agency that Erikson and others analyze in the development of the child and adolescent are possibilities of the human person before they are actualities and are oriented toward the fulfillment of the person. Their sequence similarly is a possibility of the human person—a possibility of which Thomas was not aware as we are today, though classical thought was not

without a sense of the stages of life. This raises from another perspective the question Thomas faced as to what it is that capacitates the person for a distinctively personal action and life.

Perhaps we must now say that not only the powers to know and to act freely have metaphysical roots, but that the very sequence of the stages of personal growth emerges from the metaphysical roots of the person as the first *intrinsic* principle enabling the child to so act and change, and that this sequence is directed to and evoked by the actualization of the person (*esse*) as the deepest *intrinsic* principle of this process.<sup>31</sup> Earlier dynamic structures are expressions of the possibility of being human, but when they are experienced as no longer adequate for the human fulfillment being evoked by children's changing relation to their social environment and by the maturation of their human potential, they are let go as dominant attitudes, and a more adequate dynamic structure is formed into which the earlier one is subsumed. They are transcended. The epigenetic principle seems to be not only physical and psychological, but even rooted in the metaphysical principles of the person. Moreover, Erikson's analysis shows us that the human person is essentially related to a social environment; the person, philosophically considered, is not only an 'in-itself' or 'sui dominium' but a relationship or intentionality to other persons. There is room for this in Thomas' philosophy; in fact, by giving greater emphasis to this on the philosophical level, it is more understandable that he speak of the three in the Trinity—Father, Son, and Holy Spirit—as three *persons*.

We do not pretend to have resolved all differences between these two approaches to the person. For example, how is Erikson's understanding of the psychic apparatus related to Thomas? There is only one thing we will note about this here. The agent of human action in the full sense of agent is the person or the "I." But the person acts through structured dynamisms whether one considers these to be the "ego" in Erikson's sense or the "appetites" (sense and intellectual) with the virtues and vices in Thomas' sense. In this agency there is a dimension of consciousness and a dimension of pre-consciousness and even unconsciousness, as shown by repression, transference and creative imagination in service of growth. The person is in process of transcendence within an environment; it is this person that we should seek to appropriate for ourselves, understand in others and explain philosophically and theologically.

### **Adult Stages of Life and Absolute Transcendence**

Does Erikson's analysis of the life cycle of the person support the view that a transcendence toward an absolute not limited to history is proper to and normative for the human being? We can recall very briefly the three adult stages Erikson proposes, show how this whole process strongly supports human orientation toward ultimacy, and conclude that if there is this ultimate then it is perfective for the person to constitute his personality through relation to it or him. In early adulthood, in both marriage and the work world, the young person is challenged to develop the "capacity to commit himself to concrete affiliations and partnerships and to develop the ethical strength to abide by such commitments, even though they may call for significant sacrifices and compromises."<sup>32</sup> This calls the young person to let go gradually much of the self-concern that was dominant in him as an adolescent. He or she may well refuse to adjust to the larger communions in these adult relationships because of fear of ego loss, and consequently experience a deep sense of isolation and self-absorption. Thus the young person turns either more toward intimacy and mutuality or toward isolation.

We should note that some psychologists who have studied adult stages, particularly in men, have given great attention to young adults' formation of a profession or occupation and growth



into this, a matter that is seldom a smooth process.<sup>33</sup> Some men never seem to get beyond exploring and experimenting in the job world; some make solid commitments early, but without much examination of self or the value system underlying their goals. They may later regret their lack of exploration. Some are over-achievers whose thoughts and plans are almost wholly centered on this achievement. Our society induces this attitude by the way it values 'success' and money. Some integrate work and family life better than this. We should note too that even when, as now in the United States, women are free to follow most professions, most women opt for the role of wife and mother in the family, even though for economic reasons many of these must work outside the home.<sup>34</sup> Young adults are also called by their environment to take more responsibility in political and social affairs than earlier—to a recognition of the rights of others and of the community and an acceptance of their responsibilities in these areas.

In middle adulthood, there is for men frequently a "mid-life crisis," in reference to which the beginning of Dante's *Divine Comedy* is at times quoted:

Midway this way of life we're bound upon,  
I woke to find myself in a dark wood,  
Where the right road was wholly lost and gone.<sup>35</sup>

These words were written by Dante in his 42nd year, but they recall a concrete experience he had some five years earlier when he was banished from Florence, his property was confiscated, and his work and hopes for Florence were dashed. Dante's experience is treated at times as a paradigm for a kind of crisis that many men face about this age in our society. For middle-class men it largely involves the question of meaning in work, whether they have been successful or not. A man's work at this point in life frequently appears to have less meaning than earlier, and this sense of loss of meaning may be complicated by difficulties in his marriage, loss of parents, etc. Erikson speaks of the challenge of generativity at this stage—the challenge to have a greater concern for establishing and guiding the next generation whether these are one's own children or others, to move toward a dominant attitude of care for others rather than continuing to fixate on one's own achievement, or, failing that, to experience more and more stagnation and regression to an obsessive need for pseudo-intimacy. Carl Jung found with his own patients that the question of meaning in life comes to the fore much more critically at this stage. He writes of his patients over thirty-five that "all have been people whose problem in the last resort was that of finding a religious outlook on life."<sup>36</sup> We should note that women's stage at this period of life may again be asynchronous with that of men. Since early adulthood the center of their concern has usually been care-giving. In mid-life, her children need her less, and she may have a sense of a loss of functionality that gave meaning to her earlier life. Her husband and children fill her life less at this time at least on a functional level, and she may well in her own way have to raise the question of meaning at a deeper level.

In late adulthood, there is at some time a loss of work, of physical abilities and a possible loss of spouse. Thus there is a loss of functionality highly regarded in our society, a loss of self-image if it depends on this, and perhaps more loneliness. Erikson interprets this stage as the deepening of a theme central to earlier stages and the fruit of the seven earlier stages. This stage calls a person to face and accept the meaning of his life *as a whole*. Erikson calls this ego integrity. By this he means that even though one recognizes the relativity of one's own life and culture, he accepts it as transcending this relativity, as something of value and an experience that makes him share what is

central in the lives of men and women of other ages and cultures. This self-acceptance is possible if the person has faced the challenges of the earlier periods of life:

Only in him who in some way has taken care of things and people and has adapted himself to the triumphs and disappointments adherent to being the originator of others or the generator of products and ideas—only in him may gradually ripen the fruit of the seven stages.<sup>37</sup>

‘Life-review’ seems to be part of the life of the elderly. The self-acceptance of this age is a "post-narcissistic love of the human ego—not of the self—as an experience which conveys some world order and spiritual sense, no matter how dearly paid for."<sup>38</sup> Of course, it may be that a man or woman cannot or will not accept themselves in this way, and so experience in some degree a kind of disgust or even despair, because it is too late to start over. Thus Erikson sees the ego challenge at this stage of life to lie particularly in the call to integrity or the possibility of despair. The negativity of the experience of death is the final challenge at this stage. And from the realization that death is possible for us and for those we love at each stage, it seems to challenge the meaning of life as a whole and of each stage—unless it too is a passage to a still more transcendent stage of life.

Does this support the view that the human person is characterized by a transcendence to a dimension that is trans-historical and trans-secular? Certainly, these adult stages are themselves characterized by transcendence. For as the social environment changes, e.g., through the possibility and then reality of marriage, family, work life, and involvement in the responsibilities of the larger society, the adult is called to decenter from the self and to be more inclusive of spouse and children, of colleagues in work and those whom they serve and of the larger society. This reflects an enlarging human potential—a human capacity for such enlargement of concern. The fact that we honor those who have such concern and decry it when they fail in this shows that it is not simply a matter of self-interest but a part of the constitutive human good and potential for men and women to live in society with others, and for them to seek together the common good of society. The fact that men and women who reject this enlargement of horizon experience a constriction of meaning also shows this call to be proper to what it means to be human. This supports what Thomas Aquinas writes: "the particular good is ordained to the common good as its goal; for the being (*esse*) of the part is for the being of the whole; hence also the good of the nation (*gentis*) is closer to God (*divinius*) than the good of one man."<sup>39</sup> We gain our being from family and society, and our being is a participation in the larger community; thus it is part of being human for us to be concerned for the good of the community even more than for our own good, to be interested in this good, and orient ourselves toward it freely, even at cost to oneself.<sup>40</sup>

And this whole process strongly supports the view that we as humans are meant for some dimension of life and meaning larger than the simply secular and historical. Our self-orientation toward an absolute dimension of being, value and good is the deepest dimension of what it means to be human. We can see this in elements of the process and in the process as a whole. For example, love and justice show this. We admire those who, when the demands of love or justice call them to accept a diminishment of their own life, willingly accept this, and do so even when it means that they must jeopardize and perhaps lose their lives. If we admire these men and women as exemplifications of what is best in human beings, we are supposing that through this loss they are putting first in their lives a larger dimension of being. They can only do so freely if they are energized by this larger dimension of meaning, and so their acceptance and our admiration suppose that this is not a total loss of being on their part but the entrance into a larger dimension—as

religion claims at the cost of the lesser. Moreover, their view of obligations of justice as having an absolute character to them implies that they take an attitude toward limited goods within a context of an absolute good and their orientation to it. If they only related to others' rights, for example, within a context of history and the contingent, there would not be a sufficient basis to sense an absolute obligation to acknowledge these rights.

The way that the meaning of one stage in part depends on its contribution to a later stage, and the way one stage relates to another, how it demands a letting go and a recentering in a way that manifests a greater concern for a moral order of good and for others, and how a fixation at one stage through, for example, seeking all one's meaning from 'achievement' or possessions blocks out true growth—all this shows that through the stages of life we are meant for progressively more meaning, not less, even though this may well be a mystery to us and at the cost of great personal loss.

Death itself, in this process, is not totally without antecedents in earlier stages of life; and the losses one must accept at earlier stages of life suggest that death itself is not the end but a passageway toward a still larger dimension of life. If each earlier stage presents a challenge that is proportioned to an enlarging social environment and the maturation of a human potential at a deeper level, then it would seem that death is similarly a challenge due to the fact that we face an environment larger than the simply secular or historical and that the human potential is perfected through relating to this environment even more than to the more limited environments that immediately engage us in earlier stages—and indeed that throughout our life we are more deeply engaged with this mystery than with what is more apparent and apparently immediate to us. It suggests also that this still larger social environment is itself engaged with us through the process of our lives. It would seem that our lives have immeasurably more meaning than is acknowledged by those who fixate on the immediate to the exclusion of this larger environment, human potential and horizon. Erikson sees the presence of religion in a special way in the earliest stage of life. At that stage, the mother's care reassures the infant that all will be well, and thus evokes in the infant a basic trust and hope. Such assurance is ultimately meaningless if man has no more than human resources and if death is the final end.

If there is indeed this larger environment and larger horizon and larger human potential, then it is perfective for the individual person to constitute himself or herself in a way that centers on this horizon, relates to this environment and acts from this personal depth. In fact, it would seem that through the whole process of life, it is this "I" that should be aborning. The person is called to assume this center and subsume earlier and lesser dimensions of human life and relationships within this overriding horizon and relationship. The person who does this is the one who fully accepts himself. The person who does not is rejecting himself in his deepest possibility for the purpose of fixating on a more superficial self whose continuing meaning depends wholly on this larger context. Such fixation is strongly encouraged by much of our present culture and society. So much so that one social scientist finds that suppression of absolute transcendence is the basic illness in our time and source of much other illness. Acceptance of limits in human life has lost meaning for many modern men and women because there is no longer any horizon of meaning sufficiently transcendent to justify this acceptance to them. And so they narrow their horizon of meaning in order to escape facing death and other limits. Ernst Becker describes the modern neurosis that results from this:

Neurotic symptoms serve to reduce and narrow—to magically transform the world so that he [the neurotic] may be distracted from his concerns of death, guilt, and meaninglessness.

The ironic thing about the narrowing of neurosis is that the person seeks to avoid death, but he does it by killing off so much of himself and so large a spectrum of his action-world that he is actually isolating and diminishing himself and becomes as though dead.<sup>41</sup>

In conclusion, we hold that it is indeed perfective and proper for us as human to constitute ourselves freely and primarily through relating to this more than human environment and horizon, and that we are more in touch with what is deepest in ourselves and our possibilities when we act out of such a relationship. To reject such a relationship is to reject oneself at one's deepest level; it is to be deeply alienated from oneself and from reality and from meaning in life. Of course, this depends upon the reality of this larger than human environment and horizon. Here we have simply sought to show that a naturalistic interpretation of modern historical consciousness is not honest to the whole reality of being human, and that an interpretation of human transcendence tied to a pre-modern understanding of the self is not adequate to our present experience.

## Notes

1. See George McLean paper, "Meanings of Freedom and Choice," p. 7.
2. Thomas Aquinas, *Summa theologiae*, I, 93, 8.
3. See, e.g., Lawrence Porter, "On Keeping 'Persons' in the Trinity," *Theological Studies* 41 (1980) 530-548; Adolf Trendelenburg, "A Contribution to the History of the Word Person" *The Monist* 20 (1910) 336-359.
4. *S. T.*, I, 29, 1.
5. *Ibid.*, articles 2 and 3.
6. See George McLean, "The Person and Moral Growth," chapter 12 in George McLean, David Schindler, Jesse Mann and Frederick Ellrod (ed.), *Act and Agent: Philosophical Foundations for Moral Education and Character Development* (Lanham, Md., 1986) 361-394 for an analysis of contributions to the philosophical understanding of the person that derive from antiquity through the modern age.
7. See D. Yankelovich and Wm. Barrett, *Ego and Instinct. The Psychoanalytic View of Human Nature—Revised* (New York, 1970) 225-226. Also see a critique of the reductionism found in much modern psychology in Bernard Rosenthal, *The Images of Man* (New York, 1971). For positive though qualified support for Freud's analysis of 'oral' and 'anal' personality types and the reality and resolution of the Oedipus complex, though less support for the succession of Freud's phases, see Seymour Fisher and Roger Greenberg, *The Scientific Credibility of Freud's Theories and Therapies* (N.Y. Basic Books, 1977), e.g., 164, 165, 400, 401.
8. See Erik Erikson, "The Nature of Clinical Evidence," *Insight and Responsibility* (New York, 1964), 47-80.
9. Erik Erikson, *Childhood and Society* (2nd ed., New York, 1965), 16.
10. *Insight*, 54 .
11. *Ibid.*, 73-74.
12. See *Childhood*, 270.
13. Some statistics from the 1990 United States census relevant to this are the following. In 1960 the portion of the U.S. households that was composed of mother, father and one or more minor children (traditional families) was 40%; this dropped to 31% in 1970, and in 1990 to 26%. Between 1970 and 1980 there was an 82 % increase in number of single parent families, and between 1980 and 1990 a 41% increase. The number of divorced mothers grew by 9% a year in the 1970s and by 1.6% a year in the 1980s. Single parent households were in 1990 nearly three

times more common among blacks than among whites. See *Washington Post*, Saturday, February 2, 1991, p. A6.

14. See Alasdair MacIntyre, *After Virtue. A Study in Moral Theory* (U. of Notre Dame Press, 1981).

15. *Insight*, 148-149.

16. *Childhood*, 37 .

17. E. Erikson, "Identity and Life Cycle," *Psychological Issues* (New York, International Universities Press, 1956) 52.

18. *Childhood*, 270.

19. Yankelovich and Barrett, 152.

20. *Childhood*, 235. On creative imagination, see also Matthias Neuman, "Towards an Integrated Theory of Imagination," *International Philosophical Quarterly* 18 (1978); George F. McLean (ed.) *Moral Imagination, the Humanities and Character Development* (Washington, D.C., Council for Research in Values and Philosophy, forthcoming).

21. See Karol Wojtyla, *The Acting Person* (Dordrecht, 1979) and "The Person: Subject and Community," *Review of Metaphysics* 33 (1979-1980) 273-308.

22. See John Farrelly, *(God's Work in a Changing World* (Lanham, Md., 1 985) 238-242, 272-273.

23. See E. Erikson, *Identity: Youth and Crisis* (N.Y., 1978) 216-221; also see Donald Capps, "Erikson's Life-Cycle Theory: Religious Dimensions," *Religious Studies Review* 10 (1984) 120-127. For stages of development that Erikson studies in the infant through adulthood, see *Childhood*, ch. 7, "Eight Ages of Man," 247-274.

24. See, e.g., Wolfhart Pannenberg, *Anthropology in Theological Perspective* (Philadelphia, 1985) 198.

25. See E. Erikson, *The Life Cycle Completed. A Review* (New York, 1982) 85 f. It seems to me that we can largely resolve these confusions if we use the "I" for the person or subject in the metaphysical sense of the one who is and acts. We can use the word "self" for this same person considered as an indirect or direct object of consciousness and speech, though of course the self is not fully known. But the "I" acts through a whole series of structured dynamisms that evolve in the course of development, as analyzed by Erikson and others. Since we are indirectly and directly aware of the self only through our agency by these structured dynamisms, it is usually limited dimensions of the self of which we are conscious. Much of the self usually escapes us, since we are acting through limited dimensions of it. There is a phenomenological sense in which we have many selves that we try to integrate, and thus these can be considered 'partial selves'. Yankelovich and Barrett criticize the psychoanalytic tradition for not getting beyond ego, superego and id; it presumes "that there is no such entity as a human person aside from the sum of these subdivisions of the psychic apparatus" (323). Erikson seeks to get beyond this, but does not achieve clarity. One problem for Erikson is that he wishes to preserve the word "ego" for the unconscious and the word "I" for the conscious. To make this the determinative element in this linguistic distinction seems to create more problems than it is worth. If one wishes to use the word "ego" for an agency within the metaphysical person, then it and the partial selves would be interrelated somewhat as the metaphysical "I" and the metaphysical self are interrelated.

26. See references in note 21.

27. Robert White, *Ego and Reality in Psychoanalytic Theory. A Proposal regarding Independent Ego Energies* (New York, 1963) 20-21. Also see Susan Harter, "Effectance Motivation Reconsidered: Toward a Developmental Model," *Human Development* 21 (1978) 21-

33; Robert Kegan, *The Evolving Self: Problem and Process in Human Development* (Harvard U. Press, 1982); and Richard Knowles, chapters 10 and 11 on Erikson and White in Richard Knowles and George McLean (ed.), *Psychological Foundations of Moral Education and Character Development, An Integrated Theory of Moral Development* (Lanham, Md., 1986) 239-292. Also see Margaret Mahler, Fred Pine and Anni Bergman, *The Psychological Birth of the Human Infant: Symbiosis and Individuation* (New York, 1975). This sees the process as dialectical—by which the new-born, who almost identifies with his mother, grows to emphatically differentiate himself from her through a negativism at about the age of two and still later comes to identify himself with his parent, but now with his own agency and distinctness.

28. See Carol Gilligan, *In a Different Voice* (Cambridge, 1982); and Sharon Parks, *The Critical Years: The Young Adult's Search for a Faith to Live By* (New York, 1986).

29. See *God's Work*, pp. 134-138.

30. Richard Lerner, *Concepts and Theories of Human Development* (Reading, Mass., 1976) 117 .

31. See *God's Work*, 118 et seq., where I relate the constitutive human good as a dynamic principle to the restructuring of the growing person's moral judgment and action. In the same work (138 et seq.) I defend an understanding of the person as essentially related to an environment, or as essentially a cultural being.

32. *Childhood*, 263.

33. See George Vaillant, *Adaptation to Life* (Boston, 1977) and Daniel Levinson, *The Seasons of a Man's Life* (New York, 1978).

34. See Robert Schell (ed.), *Developmental Psychology Today* (New York, 1975), chapter 20, "Early Adulthood: Selecting the Options".

35. Translated by Dorothy Sayers. Also see Lillian Troll, *Early and Middle Adulthood* (Monterey, 1975) on mid-life stresses and reassessments, pp. 64 ff.

36. C. G. Jung, *Modern Man in Search of a Soul* (New York, 1933) 264.

37. *Childhood*, 268.

38. *Loc. cit.*

39. *Summa contra Gentiles*, III, 17.

40. See "The Human Good and Moral Choice," in *God's Work*, chapter 6, 108-160, where I treat the question of human rights in relation to man's orientation to a constitutive human good.

41. Ernest Becker, *The Denial of Death* (New York, 1973) 181. Becker quotes here from Otto Rank.

### Chapter III

## Human and Divine Freedom in the Teaching of the Christian Mystics

*James Wiseman*

At the very beginning of the 1990s, a wave of euphoria was sweeping over much of the world as openings toward democracy took place in one Eastern European country after another. Ways to further democratization still remain open, and those instructed by their study of history to take a long view of international affairs have every reason to remain optimistic. In the short term, however, it must be acknowledged that the euphoria of New Year's Day, 1990, was not nearly as much in evidence a single year later. A mood of sober realism, if not pessimism, had set in, a mood reflected in an address given by the former foreign minister of Hungary, Gyula Horn, on the occasion of his receiving the city of Aachen's "Karlspreis" for his efforts in making it possible for thousands of citizens of the German Democratic Republic to travel to the West by way of Hungary. After expressing his deep gratitude for the honor bestowed on him by the citizens of Aachen and by the German Federal Parliament, he went on to warn:

No one should be tempted to indulge in the illusion that the historic struggle taking place here is of no concern to them. If we are unsuccessful in bringing about democracy—a new civilized order—from Moscow to Berlin and from Sofia to Warsaw, and if the old order is able to remain intact or even strengthen its position in some places, then this will represent a fundamental threat to Europe as a whole.<sup>1</sup>

Minister Horn added that he was proud that his fellow Hungarians had been among the first to recognize the anachronism of Stalinism and take up the struggle against it. "We recognized," he said, "that the only nations which can be free are those which acknowledge the truth." In particular, this means recognizing the truth about what it means to be a human being. There are many potential sources for insight into such truth. One thinks of classic works in philosophy and literature, of what can be learned through civilized dialogue with peoples of other cultures, of the insights offered by psychologists, sociologists, and anthropologists. The purpose of this paper is simply to adduce insights available from one further source, namely, classic Christian texts, particularly those of the Christian mystics.<sup>2</sup>

Something of what Christianity has added to humanity's understanding of freedom is noted already in Professor McLean's contribution to the present volume. A complementary point was made some thirty years ago by Georges Gusdorf in his study of the human significance of freedom, where he observed that Christianity, in contrast to the pagan philosophies of Epicureanism and Stoicism, gave the human person a capital importance in the overall scheme of truth, inasmuch as truth itself took personal form. This brought about a radical change of perspective: Christianity affirms the primacy of anthropology. The essential values—salvation, faith, charity—are human values, tied to the spiritual history of such and such a person, whether Messiah, prophet, apostle, or one of the simple faithful.<sup>3</sup>

This is not to say that the Church has regularly been in the forefront of movements aiming to promote personal and democratic values. At times this has not been the case at all. But it *is* to suggest that such scriptural texts as those that proclaim that "the truth will make you free" and that "where the Spirit of the Lord is, there is freedom," have in fact tended to make Christians sensitive to the value of human freedom and suspicious of doctrines and movements which would curtail or

eliminate such freedom. Obviously, the present paper cannot survey the entire development of Christian teaching on freedom or even look in great depth or breadth at what some Christian mystics have written on this subject. But something relevant to the overall theme of this volume may nevertheless be gained by looking at the teaching of some important figures from three major periods of Church history: the patristic, the medieval, and the contemporary.

### **The Patristic Era: Gregory of Nyssa**

From the patristic period, an important and generally representative author is St. Gregory of Nyssa (c. 335-c.395), one of the three so-called Cappadocian Fathers and a figure often characterized as the father of Christian mysticism. Like so many of his contemporaries, Gregory found the starting point for his theological anthropology in the text from the first chapter of the Book of Genesis where God says, "Let us make man according to our image and likeness" (Gen. 1:26). However one interprets the plural "Let us" in this text (whether as a regal "we," or as a reference to Yahweh's taking counsel with his court of heavenly advisors, or, as some of the Fathers took it, as a prefiguration of the Christian doctrine of the Trinity), the passage clearly implies a free decision on God's part and not some necessary way of acting. As Gregory writes in his *Great Catechetical Oration*, God "has been shown by inference to be the Maker of man, not urged to creating him by any necessity, but in the superabundance of love operating the production of such a creature" (ch. 5). The freedom with which we were created is in addition something in which we, once created, participate, since "He who made man for the participation of His own peculiar good . . . would never have deprived him of that most excellent and precious of all goods, I mean the gift implied in being his own master and having a free will" (ibid.).

To be sure, such freedom can be misused. For Gregory, this is possible because we live in a situation of change and mutation, and so can ourselves become either better or worse. In becoming worse through sin, humanity is said by Gregory to have fallen into a state of bondage. From there, "the captive sought a ransom, the fettered prisoner for someone to take his part," and since "love of humanity is a special characteristic of the divine nature, . . . here is the cause of the presence of God among men" (ibid., ch. 15). Gregory's contemporary, St. Augustine, the greatest of the Latin Fathers, often makes the same point in his voluminous writings, sometimes with special reference to the liberating work of Jesus Christ, at other times with reference to the Holy Spirit as continuing the work of Christ in the era after Pentecost. Thus, in his treatise *On the Spirit and the Letter*, Augustine writes that it is through "this Spirit of God, by whose gift we are justified, that it comes to pass that we delight not to sin—in which is liberty; even as, when we are without this Spirit, we delight to sin—in which is slavery" (ch. 28).

For both of these patristic writers, genuine Christian freedom is, therefore, not the ability to choose "this or that" in some arbitrary way, but rather the grace of being drawn in a Godward direction so that one will ultimately not even be able to sin. As Augustine writes in the well-known words of the final chapter of *The City of God*, "free will was, at first, a mere possibility of avoiding sin [*posse non peccare*]," but for the blessed in heaven (i.e., those who are truly free) this becomes "an utter inability to sin [*non posse peccare*]."

### **The Medieval Era: Jan Van Ruusbroec**

In turning from the patristic to the medieval period, a choice must again be made as to which author(s) will be examined. A reasonable selection is the fourteenth-century Flemish mystic Jan



van Ruusbroec (1293-1381), both because he was influenced by both the Greek and the Latin Fathers and because he does in fact have much to say on the theme of freedom. His longest treatise, *The Spiritual Tabernacle*, provides a convenient framework for analyzing his thought on this subject, for throughout this work the language of freedom (i.e., *vriheit* [freedom], *vrijen* [to free], and *vrilec* [free, freely]) appears very frequently.<sup>4</sup> Our focus will be the mystic's understanding of God's freely going out to us in love and our free response to God.

For Ruusbroec, as for the entire Christian tradition, God's freedom is utterly transcendent. He writes, for example, of "the immovable freedom of God" (88:4), out of which God created all things in a perfect love that should evoke a corresponding love on our part: "He made all things out of his free, outflowing goodness. And so if we, with a free, outflowing love, would bring ourselves and all things back to him, then we would find blessedness in him and the true reason for our own life and that of all creatures" (319:28-32). God's love has been equally evident in redemption, whether in freeing the chosen people from slavery in Egypt or in sending the Beloved Son to redeem the human race from sin. Ruusbroec often emphasizes the freedom with which Christ Jesus wrought our redemption and, once more, the claim which that makes on our own free response: "His free will handed him over in a loving way to do, forgo, and suffer all that God foreknew and willed for him from all eternity. And we should have the same attitude" (138:2-5).

As one would expect in a mystical treatise such as the *Tabernacle*, the ultimate aim and effect of our response to God's creative and redeeming love is union with God. We are all to live "in one will and in one love and in one freedom in Christ Jesus" (218:27-28) and thereby come to "live eternally in a single embrace of love" (137:16-17). Although this is the way to eternal blessedness, in this life it is made possible only through following Christ along the way of the cross and of self-denial: "The greatest offering which we can make to God and which Christ can make to his heavenly Father on our behalf is the death of our own will into God's will" (230:15-18). From a purely natural point of view, such self-denial in obedience to another might appear to be a form of slavery, but Ruusbroec argues that the criteria are altogether different when it is a matter of living according to the Gospel. What in the former case would mean slavery in the latter case means genuine freedom:

The same points that make a spiritual life noble and free make a natural life ignoble and unfree. For every person who is a slave, born of a slavewoman, belongs not to himself but to his master. . . . But every good person who, through love, denies himself and gives over his own will into God's free will and the will of his ecclesiastical superior for the glory of God enters into concert with God and with all the saints, and his life and works are begotten of the Spirit of God; he is thus noble and free and master of all things. (230:32—231:12)

One of the preconditions for living freely according to God's will is what Ruusbroec calls "the natural freedom of the [human] spirit" (70:29), given us by God in our very creation. The ground (*grond*) of this freedom lies deep within us, where it "remains always empty in itself and untouched by the images of all virtuous works" (54:17-18). It is only out of this ground that our various powers, especially the understanding and will, are able to act freely: "In it they are [themselves] free, for without freedom no meritorious work can be accomplished" (44:3-4).

This is, however, not the whole picture. However essential this foundational freedom might be, Ruusbroec is quite insistent that of itself "our natural freedom cannot make us firm. Therefore we must follow God's interior working. In this way we are raised above nature and united to God in the immovable freedom of his very self" (105:24-27). Another term for this interior working is,

of course, "grace," a word which Ruusbroec does in fact also use: "In grace, we live in between the influence of God's graciousness and the influence of our free will, which concurs with God and through this concurrence draws God's Spirit inward" (91:21-24). In this passage, it might seem as though the mystic is placing God's grace and the human person's natural freedom on the same level and merely requiring concurrence on the part of each. Elsewhere, however, it is altogether clear that God's grace is first both in sequence and in importance: "His [God's] giving precedes our giving—eternally and of his free goodness. . . . His giving and our giving are thus voluntary and free, but his giving is first [*principael*], and therefore we can do nothing good without God's free help" (83:27-33).

When thus informed and moved by God's grace, the freedom that is ours through our creation comes to the full realization of what it was meant to be. Only now can a person truly be called "free," for such a person

always has habitually within himself a freely willed inclination to God and to all virtue. And in this free inclination the entirety of the human person is encompassed. . . . [It] is caused and attained in the same moment that the person takes full possession of himself and freely determines to serve God with all that he himself is and all that he might ever do. This is what we mean by a free decision. (72:8-17)

Although Ruusbroec does not engage in the kind of theological speculation about the relationship between God's grace and human freedom that provoked so much dispute several centuries later between the followers of Baez and Molina, he does in his own way address the question of how these two factors are mediated. His answer, fully in accord with the rest of his mystical doctrine, is that the mediating principle is love: "A living, active love will always mediate between us and God and will transform in a unifying way God's free interior working and our free response" (89:26-28). His point is that our proper response to God's prior working is basically one of love and that it is such "oneness" love, originating in a God who is eternal Love, that effects a union between the divine initiative and our response: "In every free decision we are to embrace with our essential love all of God's working within us. That is, our love is to be so oneness . . . that in every free decision it might thoroughly penetrate all of our activity and God's working within us and all God's gifts" (88:13-19).

A final point to be made in this brief examination of what the Flemish mystic teaches about freedom is that it has both an active and a passive aspect. Inasmuch as Ruusbroec was, throughout his entire ministry, very intent on combating quietistic strains in the spirituality of his day, there is much emphasis in his work on the active cultivation of the Christian virtues. We are called to "take up and choose to exercise all the virtues" (15:1-2). But with equal insistence, Ruusbroec notes the more passive element, namely, the Christian's call freely to accept and embrace whatever sufferings God permits to enter one's life. We are to "deliver ourselves entirely to God's free will, so that whatever he has decided from all eternity to do with us will be our greatest joy, and thus we may suffer without suffering. For whatever we might suffer in our human nature . . . will be a joy for our spirit, provided it has given itself wholly to God" (74:21-27).

Ideally, we will reach the point where both the exercise of virtuous activity and the joyful acceptance of unavoidable suffering will occur without effort on our part. Just as a shadow necessarily follows a person in every way that he or she moves, so too will the free, loving spirit follow God. There is, indeed, a kind of necessity involved here, but it is a blessed necessity that actually represents the highest kind of freedom. Perhaps Ruusbroec's most explicit statement on

this point is the following sentence, so reminiscent of Augustine's *non posse peccare* as signifying the apex of true freedom: "When God's love becomes so powerful in us that it is able to kill all self-centeredness of our will, so that we cannot [*niet . . . en connen*] intend or desire or will anything other than what God wills, then is our slain will united to the finger of God, that is, to the Spirit of our Lord" (230:2-7).

It should only be noted in this respect that, in this life, such "necessity" is never absolute. Not only are minor infidelities always possible, but "if it reaches the point that this disease entirely overmasters our free concurrence with God, then we cease being touched [by God] in a spiritual way and at that very moment we become dead in sin" (93:11-14). No one, therefore, should consider himself or herself immune from falling. To be sure, our lives should be characterized by a deep confidence in God's love and forgiveness, but this does not blind Ruusbroec to the complementary truth that our salvation is at the same time to be worked out in fear and trembling. The balance he exhibits on this point reflects the overall balance of his teaching, which has led to his being generally regarded as one of the most reliable of all mystical writers within the Christian tradition.

### **The Twentieth Century: Karl Rahner**

Persons familiar only with some of the more technical writings of this very important German theologian, who died in 1984 at the age of eighty, might be surprised to find him treated here as a mystical author. At the very least, the inclusion of Rahner is defensible because he often and explicitly spoke of the writings of the patristic, medieval, and modern mystics as important sources for all theology. For example, on the occasion of St. Teresa of Avila's being named a doctor of the church, he wrote: "Teresa is proclaimed as a teacher of mysticism. This means first of all that a person who teaches something about mysticism is doing theology, is speaking in the light of revelation, saying something to the Church as such."<sup>5</sup> He also several times proclaimed that for his own theological development the spirituality of St. Ignatius of Loyola (the founder of the Society of Jesus, to which Rahner belonged) was more significant than any of the philosophy or theology that he had studied either within or outside that religious order. But perhaps the most significant point is that for Rahner the entire orientation of the human person is toward that "holy mystery" which we call God. This theme is prominent already in the early volumes of his *Theological Investigations* (which will eventually come to at least twenty-two volumes in English translation) and is concisely summed up in his late work entitled *Foundations of Christian Faith* (1984; German original 1976).

A fundamental principle of all Rahner's theology is that our knowledge and freedom always reach out beyond (or "transcend") the individual objects of inner and outer experience and that the goal toward which such transcendence tends is the boundless mystery which Christians call God. (Rahner does not precisely try to prove that this is the goal of our transcendent dynamism, but rather presupposes personal Christian faith in its normal ecclesial form and tries to reach an "idea" of it, to show that living according to such faith is an honest and responsible decision.) The transcendent experience of this goal in everyday life is normally unthematic and unreflective (i.e., one does not consciously advert to it), but there are also more intensive realizations which force this experience of transcendence more clearly on the reflective consciousness as well. One way in which this might occur is when the individual objects of daily life clearly and intensely indicate the inconceivable mystery of our existence which always surrounds us. Rahner does not go into great detail about this possibility, but he seems to be referring to those kinds of unitive experience

reported copiously in a work like William James' *Varieties of Religious Experience* (1902) or even to those kinds of nonconceptual experience of transcendence without imagery described by the sixteenth-century Carmelite mystic St. John of the Cross at several points in his classic texts (see, e.g., *The Ascent of Mount Carmel*, bk. 2, ch. 26).

However, Rahner also considers another possibility, which would likewise be genuinely mystical, though in the broader sense of what he calls "everyday mysticism." Among other occasions, this may at times be provoked when "the graspable contours of our everyday realities break and dissolve; when . . . the question becomes inescapable whether the night surrounding us is the absurd void of death engulfing us, or the blessed holy night which is already illumined from within and gives promise of everlasting day."<sup>6</sup> If a person holds fast in such a situation, trying to love God even though no response seems to come from the divine silence, seeking to love others even though no echo of gratefulness is heard in return, bearing the freely accepted burdens of responsibility even when this offers no apparent promise of earthly success, then, says Rahner, "*there* is God and his liberating grace. . . . There is the mysticism of everyday life, the discovery of God in all things; there is the sober intoxication of the Spirit, of which the Fathers and the liturgy speak [and] which we cannot reject or despise, because it is real."<sup>7</sup>

As regards the way in which this understanding of mysticism relates to Rahner's understanding of human freedom, the main point to be noted is that for Rahner such freedom is not a particular faculty by which a person can do "this or that" through arbitrary choices, but rather the capacity of a person "to decide about himself in his single totality," such that "ultimately he does not do *something*, but does *himself*."<sup>8</sup> Even if the empirical sciences cannot, by their very nature, discover such freedom, since their procedure is always and everywhere to relate one empirical phenomenon to another, the very challenge of the acting person to take a stand vis-à-vis such studies is an inalienable sign of that core freedom, whose primary invitation is to say "yes" to God in all those ways that constitute "everyday mysticism" as described above. That is why Rahner, like Augustine and Ruusbroec before him, would say that the most truly free persons are the saints, since freedom "is not the capacity to do something which is always able to be revised, but the capacity to do something final and definitive. It is the capacity of a subject who by this freedom is to achieve his final and irrevocable self,"<sup>9</sup> and such subjects in the fullest sense are precisely the saints, those irrevocably gifted with Augustine's *non posse peccare* (to which one might add, in a more positive vein, *semper posse amare*).

## **Mysticism and Democracy**

In treating any individual topic within the broader subject of "Freedom and Choice in a Democracy," one faces the temptation to exaggerate the importance of the narrower topic. This temptation will here be forthrightly resisted. However much one might profit from reading mystics like Gregory of Nyssa or Jan van Ruusbroec, it must be admitted that they say nothing explicit about democracy, while Rahner says relatively little about forms of societal life. The reading of Gregory's sermons on the Song of Songs and Rahner's reflections on the concept of mystery in Christian theology certainly cannot replace the study of *The Federalist Papers* or the United States Constitution for those who want to delve deeply into issues of freedom and choice in a democracy. It should not even be inferred from the foregoing that it is the Christian mystics alone who have anything relevant to say about human and divine freedom from a religious perspective. One of the great and welcome changes of recent decades is the growth of an ecumenical spirit that not only embraces the various denominations within Christianity but also seeks a fuller understanding of

the other great world religions and the mystical voices emanating from them. With these qualifications, one might nevertheless proceed with some confidence to the claim that Christian mystics like those discussed in this paper do have something important to contribute to the general subject under consideration in this volume. In his opening paper, Professor McLean writes that in our day, as peoples react to the limitations of materialism as a context for human life and to the formal laws of a dialectic as interpreted by the Party or state, "it is not enough to say that they can automatically become free if they but decree these universal laws for themselves. Instead, there is need for a spiritual sense of reality, which will provide at once for the dignity of the person, individual creativity, and social cohesion." President Vaclav Havel of the Czech and Slovak Republic made the same point in his widely admired New Year's Day address of 1990, when he said that "man is never merely a product of the world around him; he is always capable of striving for something higher, no matter how systematically this ability is ground down by the world around him." This "spiritual sense of reality" is perhaps nowhere proclaimed so forcefully as in the writings of the mystics. Moreover, the greatest among them were precisely those who drew the connections between this sense of reality and its implications for the way we live with one another. In the most sublime part of her major treatise, *The Interior Castle*, Teresa of Avila states very clearly that the entire purpose of the "spiritual marriage" which is the culmination of mystical union with God is simply one thing: "the birth always of good works, good works" (*Interior Castle*, 7.4.6). Chief among these good works is the practice of love toward those with whom we live. Teresa, writing primarily for enclosed Carmelite nuns, may not have had the breadth of social vision found in Dorothy Day or Teresa of Calcutta or such recent popes as John XXIII, Paul VI, and John Paul II, but the principles of concern and respect for others that she enunciated have never been surpassed: "We should go forward with special care and attention, observing how we are proceeding in the practice of virtue: whether we are getting better or worse in some areas, especially in love for one another" (*ibid.*, 5.4.9). Likewise, Ruusbroec writes that the highest point in the mystical life occurs when someone raised to the most intimate union with God is then "sent down by God from these heights into the world," where, "full of truth and rich in all the virtues," he or she will "always flow forth to all in need, for the living spring of the Holy Spirit is so rich that it can never be drained dry" (*The Sparkling Stone*, conclusion). To the extent that this is truly the attitude we have toward one another as brothers and sisters under one God, a solid foundation will have been laid for the kind of trans-European democracy that Gyula Horn envisioned in his speech at Aachen.

## Notes

1. Gyula Horn, "A Historic Decision," *Scala: A Periodical from the Federal Republic of Germany* (5 August 1990), 16.

2. As regards what is meant in this paper by a "mystic," the following points should be noted: The word "mystical" is of Greek origin and referred originally to that which is in some sense "hidden" or "secret." Both in the New Testament and in early Christian authors like Origen and Gregory of Nyssa, the terms "mystery" and "mystical" refer above all to God's plan of salvation, hidden "before all ages" and made known "in these latter days" in and through the life and teaching of Jesus Christ. Thus, when Origen or Gregory sought the "mystical sense" of Scripture, they were interpreting it (including the books of the Hebrew Bible) in a Christocentric sense, not obvious to someone reading the same text only on the "narrative" level. The Christian sacraments were understood to be "mystical" in the same sense: Christ is truly present in baptism, the Eucharist,

etc., even though in a "hidden" way. Someone approaching Scripture and the sacraments with this kind of faith will, not surprisingly, often be filled with a deep, personal sense of Christ's presence, and it is this which explains the connotation of intense awareness of union with God which usually predominates in modern understandings of mysticism. This also explains why, as Friedrich von Hegel emphasized in *The Mystical Element of Religion* (1908), there is a mystical dimension to the life of every religious person. If it is perhaps going too far to say, as some have, that "a mystic is not a special kind of person, but every person is a special kind of mystic," it is surely correct to say that there is a definite continuum in religious experience and that "the mystical" is part of this continuum. As Thomas Merton once wrote, "To reach a true awareness of him [God] as well as ourselves, we have to renounce our selfish and limited self and enter into a whole new kind of existence, discovering an inner center of motivation and love which makes us see ourselves and everything else in an entirely new light. Call it faith, call it (at a more advanced stage) contemplative illumination, call it the sense of God or even mystical union: all these are different aspects and levels of the same kind of realization: the awakening to a new awareness of ourselves in Christ, created in Him, redeemed by Him, to be transformed and glorified in and with Him" (*Contemplation in a World of Action* [Garden City, N.Y.: Doubleday, Image Books, 1973], pp. 175-76).

3. Georges Gusdorf, *Signification humaine de la liberté* (Paris, 1962), p. 80.

4. This treatise has not yet been published in English translation, though a critical edition (which will include such a translation on facing pages) is underway. References to the treatise in this article will be to the text edited by D.-A. Stracke, S.J.: Jan van Ruusbroec, *Werken*, vol. 2, *Van den gheesteliken tabernakel* (2nd ed.; Tiel: Lannoo, 1946). Citations will be given in the body of the article by page and line number(s) in the following format: 163:7-12. The English translations are my own.

5. Karl Rahner, "Teresa of Avila: Doctor of the Church," in his *Opportunities for Faith* (New York: Seabury, 1974), p. 123.

6. Karl Rahner, *The Practice of Faith: A Handbook of Contemporary Spirituality*, ed. Karl Lehmann and Albert Raffelt (New York: Crossroad, 1984), p. 81.

7. *Ibid.*, p. 84.

8. Rahner, *Foundations of Christian Faith* (New York: Crossroad, 1984), p. 94.

9. *Ibid.*, pp. 95-96.

## Chapter IV Community and Freedom: The Constraints of Civility

*Charles R. Dechert*

In some sense the western world over the past 500 years has been working out the dialectic of personal freedom in community implicit in the personalism characteristic of western Christian thought. Salvation is personal. By one man sin came into the world and by the redemptive act of one man sin is overcome. One by one men are conceived and born and work out their destinies by a sequence of individual choices—and are individually judged, then numbered among the elect or the lost.

This acute sense of the individual and personal is clearly manifest in Christian Europe's sense of the greatness and world-significance of individuals: saints like Bernard of Clairvaux, Francis of Assisi, Dominic, Catherine of Siena; scholars like Abelard, Thomas, Bonaventure, Scotus and Roger Bacon; statesmen like Gallia Placidia, Louis IX, Frederic II and Barbarossa; pontiffs of the worth and significant personal commitment of Hildebrand and Innocent III; military figures whose catalytic employment of force shifted the axis of history, Alexander, Caesar, Cortez.

Late medieval mystics emphasized the individual and the Protestant Reformation hallowed the unmediated personal relation with God. Descartes philosophized on the existential "I" whose *cogito* lay at the basis of demonstration. The secular social contract of Hobbes was based on the calculus of a timorous ego whose life might be "nasty, brutish and short." Locke hallowed inalienable *personal* rights to life, liberty and property. The Faustian ego was probing well beyond the normative limits imposed by Christianity. Marlowe's *Doctor Faustus* recapitulates the esoteric researches of Doctor Dee and anticipates those of Fludd and the Rosicrucians—northern counterparts of the hermetic philosophers resurgent in the Italian Renaissance. In the thought of Machiavelli and his disciples to our own time, power is personal and directed at self-gratification: the manipulation of symbols and of others' psychological and moral weaknesses, rational ends-means thinking in the realm of interpersonal and institutional relations—herein lay the new post-Christian mind of the West. Faustian probes of men's moral envelope found their counterpart in the uninhibited Promethean reduction of nature to human service. Gunpowder and the force of wind and water, coal and iron, spindle and shuttle—the practical arts of the artisan and engineer increasingly rationalized and systematized by an emerging group of true scientists. University trained, ordered and ordering minds capable of modeling reality in a manner that rendered nature the servant of human will. Knowledge is power. The savant was now supported by the new national state's capacity to mobilize resources and/or the emerging modern economy's capacity to mobilize through banking and credit vast resources to be controlled and expended by corporate enterprise in pursuit of the profits attendant on the exploitation and transport of resources, goods and persons—and in the production of new products, inventions, instruments to extend and refine man's perceptual and action capabilities.

The systematizer of the empirically oriented Prometheans, Francis Bacon, recognized the constraints of nature: the external given assured a practical limit on will and creative imagination. Man might propose but the eventual disposition, the realization of a humanly induced chain of causality, rested in externally given laws, norms of physical and psychic interaction inherent in the created universe. By the 19th century the universe itself had become for some a projection of the human, God a usurper who limited and reduced the newly divinized self, personal or social: God

is dead! Long live this divinized humanity. A philosopher like Hegel could create and project a symbolic structure, an evolving deity whose latest progressive realization was the Protestant Prussian state. DeQuincy could experiment with his central nervous system under opiates; the literary projections of Coleridge, Beckford, Mary Shelley dealt with an unreal world. Aldous Huxley traces back to the Marquis de Sade "the revolution which lies beyond politics and economics, and which aims at a total subversion of the individual's psychology and physiology." The theme reappears later in the century in Rimbaud and Huysman. The visual arts cease to be representational and become purely expressive of an inner I.

Religion as myth and symbol replaced historical Christianity. The hard unwavering vision of the *Übermensch* brought man to a new level of self-realization. The creative psyche might explore the limits of personality, permitting not only drugs and the strongest emotions their play but accepting and even welcoming the *spirochete pallida* to enter and modify, sensitize and "enrich" the individual's internal and expressive life. Thomas Mann's creative genius, Adrian Leverkuehn in *Dr. Faustus*, produces his masterpiece under the demonic influence of a pathogenic bacterium. Modernity begins in egoistic individualism and ends in madness.

Harking back to an earlier tradition, we can say human freedom is limited inherently by the very nature of man, a finite creature, inhabiting and externally conditioned by the specific, concrete, limited and limiting reality of his earthly surroundings. A material, living creature, man is open to and dependent on the matter/energy and information in an environment to which he must continuously adjust and adapt. Each man encompasses a limited ever-changing bundle of matter-energy characterized by a dynamic, innate, enormously complex information pattern internally programmed to operate stably and to develop over time, maturing as an organism, and further informed by the multitudinous patterns borne by the senses from the physical, human and social environments into the very core of the self-aware human person.

Every action, every perception, every choice both forms and delimits, defines and further specifies the individual ego. Even the unconscious movements of the person are formative, and by the very realization of one of an indefinitely large number of action possibilities each action defines and specifies and is pregnant with the future.

In his conscious, willed actions every man creates himself and his future as a moral entity. To the internal constraints imposed by his very nature and the constraints of his physical environment must be added the even greater moral constraints inherent in his sociality—for man is by nature a social and political animal. Borne by a mother and born into a community (minimally the family) without which the individual cannot survive, developing physically and culturally, becoming self-aware as an individual in that community, destined like his progenitors and successors to growth, maturation, decline and death, the human person cannot escape society, and a network of relationships, obligations, constraints, conditions that both limit freedom and make human freedom possible. *Human* freedom is freedom under constraint; not only the constraints of nature but the constraints created by being a concrete person in a specific time and place, participating willy-nilly in a given community and culture. A formed person is a constrained person; his available action-options are limited by time and locale, mobility and knowledge, culture and the very defined institutions, folkway and *mores*, laws and customs and conventions that make life possible.

Human freedom is perforce a constrained freedom: constrained by nature and constrained by convention, by the norms inevitably attendant on the ordered network of human relations, by symbolic structures, language, tradition, the family and folk memory, the conscience and consciousness of the collectivity and, perhaps, a collective unconscious as well.



The socially normative, then, would appear to have some foundation in the nature of man. To the extent that the notion of "the good" as "the desirable" is not tautological it would appear, as it has historically, that the human good as praxis involves willing and acting in accordance with nature. St. Thomas Aquinas characterizes self-destructive behaviors as "sins against nature," positing persistence in existence as a primary good. Interestingly enough a group of contemporary American social theorists have examined the preconditions of social survival in an effort to determine the functional prerequisites of a society. In an essay-collection with such a title,<sup>1</sup> Aberle, Cohen, Davis, Levy and Sutton examine "the things that must get done in any society if it is to continue as a going concern."

They begin by indicating the four conditions terminating the existence of a society:

- 1) The biological extinction or dispersion of its members—a function of fertility, mortality and migration rates.
- 2) Apathy of its members—physical extinction as an extreme consequence of the cessation of motivation.
- 3) The war of all against all—in which members of a social aggregate pursue ends by means selected only on the basis of instrumental efficiency. A society based solely on force (or fraud) is a contradiction in terms.<sup>2</sup>
- 4) Absorption into another society—resulting from a loss of social identity and coherent patterns of cultural interaction in which single persons and/or small groups survive in another matrix, cultural and/or social-interactive.

### **The Functional Prerequisites of Society**

In traditional Christian thought about 'natural law', the move from the general injunction "Do good and avoid evil" was often conceived as something approximating the Hebraic Ten Commandments, injunctions to the recognition and appropriate worship of a transcendent God, to familial piety, to the avoidance of interpersonal violence, disordered sexual relations, theft, lying and conspiracy—*quod semper et ubique et ab omnibus*. The criminal law globally and perennially has essentially been an elaboration of these categories, with some variant interpretations in relatively small, closed communities (to the delight of cultural anthropologists and values-free social scientists) and in the experiments in moral anarchy characterizing some contemporary American cities where the levels of insecurity and interpersonal violence approximate those of wartime combat zones.

Aberle, Cohen, et al., suggest that such normative structures are tied to the very nature of the community as a viable system of interaction (one step in abstraction removed from the concrete community of interacting persons and groups).

(1) The community must provide for an adequate relation to its environment, often by the functional specialization of individuals and groups in the provision of food, clothing, shelter, health care, transport, etc. Such differentiation appears to be in part conventional and in part "natural," that is based on differences in sensory acuity, associative and decision-making and communications skills ("intelligence"), physical strength and motor skills—all as associated with genetic and social inheritance, age and sex.

(2) The community as perpetual (surviving its mortal members) must make provision for recruitment, normally by ordering sexual relations for the conception, birth, nurture and education

of the young. The family based on the mutual benevolence and beneficence (love) of its members over time forms both a paradigmatic community (as Aristotle points out) and, historically, *the* proven and universal basis for successful societies at higher levels, polities and civilizations.

Some communities, normally based on religion, survive without internal sexual recruitment as functionally specific elements of, or inclusions in, other larger communities. Roman Catholic religious orders, Buddhist monasteries, the American Shakers, persist through many generations while their members remain celibate. They attract adherents from a larger community and survive only as long as their charismatic attraction appeals to the cultural values-commitment of the broader community. Contemporary America is applying a considerable part of its social surplus in the experimental effort to replace traditional family functions with tax-subsidized state interventions for "single-parent families," subsidies for couples adopting foundlings, and even efforts to encourage the adoption of children by homosexual and lesbian couples incorporated into a new definition of families as relatively stable and enduring interpersonal relations based upon "love." It remains to be seen how long the larger political community will accept the levels of taxation and social disorganization thus far associated with these experiments. The Soviet Union was constrained by the mid 1930s to reverse similar social policies introduced in the 1920s; but the U.S.S.R. was much poorer and less productive than contemporary America. Aldous Huxley's *Brave New World* (1932) suggests the possibility of a stable community abolishing the family and employing now proven (1991) reproductive and "educational" technologies to assure the community's perpetuity. The costs of such a technological "fix" probable make it impracticable in the presence of competitive traditional family-based communities. On the other hand, the resources available to today's great powers make possible very improbable social situations, for example the unprecedented, continuing levels of criminal violence in cities like Washington, D.C., or The Peoples Republic of China's fairly successful effort to compel (through criminal penalties, abortion, and infanticide) families to restrict themselves to one or two children in a traditionally family-centered culture.

(3) There must be mechanisms for role differentiation and assignment, a systematic and stable division of activities—a role structure that provides for a continuity in the provision of all socially necessary activities. Aberle, Cohen, et al., suggest that "the universal problems of scarcity and order are insoluble without legitimized allocation of property rights and authority. . . ." The "socialization" of property through universal expropriation or nationalization simply creates a "new class" of users/beneficiaries whose claims become institutionalized. Soviet *perestroika* foundered on the entrenched interests of a new class, founded on the Communist Party's power monopoly but entirely willing to repudiate the Party to serve its continued interest in perpetuating privileged access to the social capital stock of housing, etc. and to the social product. The competitive inefficiency of the socialist mode of allocating roles and claims politically through the monopoly of force has resulted in the emergence of the United States as *the* superpower and of Western Europe and Japan as viable and productive second echelon powers objectively equivalent to the U.S.S.R. as world powers.

(4) Every society requires shared, learned, symbolic modes of communication: language, symbols, rituals to maintain a common-value structure, a shared perception of the universe and protective sanctions against the egoistic and purely instrumental short-term exploitation of advantage in a war of all against all. The perception-decision-action cycle characteristic of all living-beings, including social groups, relies on the existence of signals and communication channels to permit continuing adjustment and adaptation to both interior and exterior environments.

(5) Shared cognitive orientations are essential to shared perceptions and evaluations, and hence to cooperative action in relating to environmental challenge. Without such a shared structure the individual is subject to psychological disorganization, and idiosyncratic and self-destructive behavior.

(6) Shared, articulated goals provide a consensual base to activity and rationally relate the functionally differentiated roles of the members of a community. It implies also some normative regulation [see #7 which follows].

(7) Normative regulation of means limiting the instrumentalities employed for the achievement of both private and public objectives in such a way that neither violence nor excessive dissonance results from many persons employing frequently scarce means for the achievement of inter-related ends. The traditional notion of the "common good" or "common welfare" seems relevant here. This implies a conscious or unconscious yet institutionalized orchestration of semi-independent lines of action and causality in terms of some social "optimization" criteria: the well-ordered and harmonious (though not necessarily friction-free) operation of the community in adequate relation to its physical and social surroundings.

(8) The regulation of affective expression is required for the orderly, meaningful and appropriate communication of emotion. Some emotions, particularly strong or violent or potentially disruptive emotions must be suppressed, some curbed or channeled into expressive forms that are consonant with the welfare of the community, Love, hate, competition, conflict, threats to status or image must be managed, constrained. This extends from the most obvious to the most subtle linguistic behavior, posture, facial expression, action or gesture. These, in turn, often carry overtones of class or subgroup appurtenance.

In the 1970s in America many of the restraints on affective expression were consciously abandoned under the rubric of sensitivity- training, confrontation, or "letting it all hang out." The consequences in divorce, exacerbated antipathies and the breakdown of community solidarity were considerable.

(9) New members of the community must learn and accept its norms and structure, a process of *socialization*. This involves not only entry into the general community culture, acceptance of its normative structure and perceptual emphases, but also a socialization into the more specific institutions characterizing a given sex, age, social status, role and function. Even these may subtly vary with time and place, neighborhood and even position in the family.

(10) Not least, every community must exercise effective control of disruptive forms of behavior, pre-eminently the control of violence and fraud. Scarcity, frustration, dissatisfaction, inadequacy, excessive challenge, defeat, physical or psychological pain, etc, may all provide temptations to emotional expression or actions that are or are deemed to be socially disruptive: criminal violence, personal disorder, destructive egoistic gratifications, the exploitation of others emotionally or financially, behaviors that disrupt and break down the bonds of community, that create fear and distrust and ultimately erode the possibility of common consensus and action on behalf of the community as a whole.

In these functional prerequisites of a society may be found, both explicitly and implicitly, some of the constraints on freedom and equality inherent not only in the social nature of man, but in the nature of the community itself as an interactive whole. The functional advantage of democratic, that is participative social, political and economic institutions, is that they incorporate the individual person into the community as a meaningful contributor in however limited, or comprehensive and significant, a role. "No man is an island." He achieves his full humanity only

in community. Yet his very self-realization carries with it the constraints attendant on his social nature.

## **Toward a Global Society**

Konstantin Doxiadis notes that the increasing size of social aggregates has actually produced a diminution in the number of meaningful social relations and significant social interactions. Certainly the mass media are characteristically one-way; they talk to their mass audience and help form it but they cannot listen and rely for feedback, at best, on sampling techniques and those organized cliques that can mobilize letters and telephone calls or enunciate their reactions and demands in other media (the newspapers, perhaps) or other *fora* like the state and national legislatures or the universities.

For Doxiadis, the emerging "Ecumenopolis," the linked corridors of high population density, need not and should not be dehumanizing, reducing men to lonely, isolated individuals lost in the human mass. From their very beginnings cities have consisted of communities, geographic and functional, most basically familial. It is surely not to be ignored that the early histories of Athens and of Rome find their citizens united in clans or tribes, that newer arrivals may be assigned an ascriptive blood relationship to these family-based communities. Even the Roman imperial succession found adoption a useful legitimating device.

In vital communities the bond of geographic proximity, over time, tends to become a bond of blood through intermarriage and the bonds of friendship, respect, mutual support and forbearance based on the elaborate ties of kinship. These linkages transcend any short term, egocentric, instrumental rationality; the role and status, prestige and reputation, life opportunity and income of one's grandchildren depend in no small degree on one's own behavior *now*. In the German tradition the term *Heimat* is applied to such local communities: the ties of blood and soil are real and give meaning to life. These ties were so ruthlessly exploited by the Prussians and later the National Socialists for political and military aggrandizement that Germany's greatest strength was squandered, resulting in the sordid hedonism, consumerism and loss of the will-to-survive in a Germany that can no longer reproduce itself and must be re-invigorated by the very Turks whose military encroachments the Reich successfully resisted four centuries ago.

Doxiadis suggests that a coherent, ordered, truly civilized Ecumenopolis can and must consist of millions of such little communities, each numbering its several hundreds or several thousands, perhaps approximating in size the Greek *polis* or medieval commune, large enough to permit the *good life*—the amenities of civilization, even the thrust towards excellence.

I suggest the greatest obstacle to the formation of such a vast and heterogeneous yet sophisticated and unified global society may lie in the pseudo-democratic lust for equality, leveling, enforced uniformity in the name of fairness or equal rights or non-discrimination or the "level playing field." The accumulated wealth or social discipline or refinement of language, manners, morals and taste in families or local communities, in clubs and academies, in schools and universities, in cities and nations can be squandered, the effort at their transmission frustrated, their actual transmission to future generations aborted by systematic public policies.

In America (and—I gather—in Eastern Europe, Russia, and Israel), refinement of taste, good manners, and delicacy of language are viewed as effete, snobbish and undemocratic. The Cultural Revolution in China of the 1960s publicly humiliated the nation's intellectuals and *literati*, modern scientists and classical scholars alike, whose discipline and achievements, now as always and everywhere, remain a standing rebuke to the sloppy, slipshod, ill-prepared, facile, pleasure-loving

and lazy. Something similar occurred in the United States' universities and those of France and Italy as standards dropped and academic and intellectual life was increasingly politicized. Impressionable students were mobilized as instruments of professional vendettas and of acquiring power over university administrations, appointments, curriculum and the ideological content not only of courses but entire academic disciplines. In France the University *canaille* sought to replace a government.

Such temptations to dominate the "high ground" of society are best thwarted by multiplying the heights, by encouraging a multiplicity of cultural, linguistic, ethnic (national), and regional communities, each a prospective "center of excellence" and "pole of cultural attraction." Modern politics in the name of democracy, freedom, equality and the citizen has assumed preponderant strength: it intrudes everywhere, attempting to regulate the minute details of life from the thickness of house insulation to the angle of ramps and staircases, from the appropriateness of renal transplants to the price of hypodermic needles. It assures uniformity, regularity, and the egalitarian monotony of the military graveyard. After every repeated, failed authoritarian political effort at social amelioration the rallying-cry should go out: 'Let us reproduce and diversify again; let us regenerate and flower again.'

Let a thousand, a million communities grow. Develop, or better, do not diminish or extinguish "a thousand points of light." America's colleges and universities, associational groups and productive business enterprises are widely dispersed, competitive, and productive of wealth and well-being. By and large they provide the concrete, interactive associational context of vital communities. Too often they are weighed down by the dead hand of parasitic government, from post-office to public schools, from the subtle purchase of electoral constituencies by public contracts to the judicious distribution of favors ranging from 'zoning' changes to expediting grandmother's social security check. In vital, responsive and responsible communities based on mutual communications and personal knowledge of people and issues a limited excellence can flourish. The great political capitals have too often been magnets attracting local talents from an entire nation and competitive sinks and drains wasting and dissipating many talents that might well have flourished locally.

It is in no sense invidious or pejorative to note that communities are organized hierarchically, that the smallest of communities, families, form neighborhoods and these merge into the city. The city becomes the metropolis or regional megalopolis—or simply serves as a focal point in a region, itself a community within the national community. Europe's national communities, while retaining their identity, form a peaceful and cooperative European Community—an organic growth that bids fair to provide an acceptable, popular and politically legitimate institutional heir to the multinational political empires of the past that were held together by military power and an entrenched bureaucracy. In the U.N.'s functional agencies and newly-demonstrated capacity to enforce international order by a peace-restoring coalition, there is the promise of a global community of communities united by the bonds of commerce, communication, an emerging university-based ecumenical culture, and the universal human aspiration for peace in freedom, diversity in order.

Just as the good order of personality depends on a life in accordance with man's nature, the good order of society requires institutions, norms and practices consonant with the nature of the communities (at every level) comprising the social universe. The hierarchical structure of society (communities composed of communities), implies certain conditions of order. One of these is a high degree of decisional autonomy, independence, freedom for each community at its own level and in terms of its own adjustment and adaptation to its physical and human environment.

Decision-makers at increasing high levels of society, more populous and of broader geographic extension, must concern themselves internally with the fruitful, orderly and equitable inter-relations among their component communities and functional groups (corporate enterprises, transport facilities, cultural and religious institutions, etc.). In terms of external relations, the decision-makers of a community deal with their opposite numbers in equivalent communities within the territorial confines of their super-ordinate community. Such communications and interactions may take place on a bilateral or multilateral basis as appropriate. Diplomatic representation or participation in an institution like the European Parliament or the European Community's Council of Ministers are examples of this at the level of interacting national communities.

A global order need not imply a deadly uniformity, nor the imposition of the tranquillity of order by persistent force and concentrated political authority. To survive, such an order must remain open-ended, permitting the flourishing of the effective, the well-adapted, the elegant and well-formed, permitting the demise of the dysfunctional, ill-adapted, disordered. Is it unrealistic to operate on the premise that cooperative, symbiotic social relations in peace and freedom are possible within the global community? By a realistic appraisal of human nature and of the action possibilities consonant with the nature and potential of the multiplicity of human communities, perhaps the constructive initiatives of the past generation can be carried into the coming century and produce a fruitful and well-ordered world where the life-enhancing freedom of persons and communities can be increasingly affirmed.

## Notes

1. *Ethics*, LX, n. 2 (January, 1950).

2. A society based on fraud, the systematic lie, brings up the question of nature as essence, the "whatness" of things, including social realities. What happens when reality catches up with the "systematic lie"? This dissonance would appear to be at the root of the failure of societies founded on utopian ideological premises. A misperception of the nature of man and society produces internal contradictions that destroy the social aggregate as in Fascism and Communism.

## Chapter V

# The Problem of Community and Participation

Gregory L. Froelich

"chè per quanti si dice più li `nostro`, tanto possiede più di ben ciascuno." *Purgatorio, canto 15.*

The philosophical question I intend to discuss in this essay is twofold: First, since the life of the community is participated in by many, how can it possibly be considered an integral element in a particular person's individual fulfillment? It seems contradictory to say that something held in common is an essential constituent of someone's own unique flourishing. At best therefore the community can be a good of use. The second question is related to the first. Since the life of the community is common, it seems less of a good for an individual than his own personal achievements. To put it another way, the common good does not seem to belong to an individual in his individuality. It belongs primarily to the whole multitude and only derivatively to the part. For this reason the common good appears almost not to be the individual's own, even though it is indispensable for his flourishing. To prefer it above his personal good would be enslavement.<sup>1</sup> Hence many have argued that the community serves only as a means to one's individual fulfillment. This seems to find confirmation in the well-honored remark that the city exists for man and not man for the city.<sup>2</sup>

The question is of course in no way new, having its original expressions in Plato's account in the *Republic* of Socrates conversation with Thrasymachus and Glaucon and in Aristotle's attempt in the *Politics* to determine whether the virtue of the citizen is the same as the virtue of the person. Its characteristically modern formulation is found in the political writings of Hobbes, Locke, and Nietzsche.

More recently, Karol Wojtyla has posed the question in terms of participation: "The question is whether a man belonging to a community of acting [such as a team of laborers digging a trench or a group of students attending a lecture] can in his communal acting perform real actions and fulfill himself in them; this performance and the fulfillment it brings are determined by participation."<sup>3</sup> By participation he means "that property of the person which enables him to exist and act 'together with others' and thus [*not thereby*] to reach his own fulfillment."<sup>4</sup> Wojtyla is very clear that by raising this question he is not doubting the fact that man is by nature a social animal (as understood in the natural law tradition). Rather he raises the question in order to understand how exactly the person in his subjectivity finds fulfillment in a life shared 'with others'. He wishes to know, in other words, how the person's flourishing is not (in this respect) something different from his participation in communal acting.<sup>5</sup>

I refer to Wojtyla's treatment of this question because it is a profound development of the answer his own tradition provided and thus serves as a reminder of those fundamental discussions in which the question was initially elaborated. Which tradition Wojtyla primarily is working within is obvious from his remarks about the common good as an "honest good" and as the very essence of the community, from his argument that the common good has greater value than the individual good, and from his criticisms of utilitarianism, totalitarianism, and social egoism.<sup>6</sup> Within this tradition one seminal work stands conspicuous both for its obvious relevance to the question at hand and for the systematic neglect it has received in modern times. I am thinking of Aristotle's examination of *philia* or friendship (to use the standard but less than apt translation) in

the *Nicomachean Ethics*.<sup>7</sup> Since the failure to appreciate its importance is largely the effect of distortions that modern moral and political philosophy have brought about, careful attention to it may help free us from constrictive prejudices and perhaps provide a viable alternative to the thin theories of recent times. This essay, however, is not the place for a comprehensive discussion of Aristotle's theory of *philia*. My concern here is to show how an element in that theory can provide a way to settling the question I raised at the beginning.<sup>8</sup>

## Community in Friendship

It is a commonplace among those who comment on Aristotle's conception of *philia* that the word embraces much more than our "friendship" (or the equivalents in most other modern languages). *Philia* refers not only nor even principally to the intimate relationship between a small number of people usually unrelated by family ties, which seems to be the focal meaning of the words used in translation. For Aristotle, *philia* includes every form of familial relationship (especially those between husband and wife, parents and children, and sibling and sibling), the bond between citizens of the same community, and even business partnerships. Much less commonly recognized, on the other hand, is Aristotle's insistence that the distinguishing mark of friendship in general is shared action or "*suzein*" [living together].<sup>9</sup> In fact Aristotle starkly identifies friendship with community in action.<sup>10</sup> To miss this is to miss much. For only by fulfilling their mutual benevolence in acting together, Aristotle argues, can one friend actually become a good for another, even apart from all utility. And only thus does it become evident how in acting "together with others," to use the words of Karol Wojtyla, each friend realizes his or her personal fulfillment.

## *Suzein*, Acting "Together with Others"

We must be clear on what is meant by "living together," since it is perhaps not what the phrase ordinarily conjures up for us. At the end of Book 9 of the *Nicomachean Ethics* Aristotle lists several examples of what he has in mind: drinking together, sharing in a game of dice, joining in exercise, and doing philosophy together.<sup>11</sup> Merely existing and going about one's work in the same place together is therefore not what we should have in mind. Even sworn enemies can live together in this way. On the contrary, the kind of unity in the actions of friends must be greater than a unity of predication only. Their actions must be so united as to be a single though complex action, not just a single kind of action. A philosophical discussion among friends, for example, involves two or more interlocutors engaged upon a particular topic. If it is a true discussion then there is a true unity, and not a mere passage of words, as when two or more simply ventilate their thoughts. This is like a pile, having no real unity. But a discussion involves an order: give-and-take, response, objection, comment--a coordination of speech. Therefore, like any other order, a discussion is something really one (*realis unio*<sup>12</sup>) and yet common to all the participants.<sup>13</sup> The same holds true for the other examples which Aristotle lists. Each is a complex activity in which one friend coordinates his actions with those of the other.

Each in fact is a common good. A fine play of chess together, an exhilarating basketball game, and an illuminating conversation are all common endeavors enjoyed for themselves. None of these could ever be considered the exclusive possession of one of the participants. Thus if someone attempts to make the common action his own and ordered to himself, for example, by monopolizing a conversation, it of course will suffer for it and degenerate into something else, a



soliloquy or perhaps a shouting match. But everyone desires to share with his friends the activities which he cherishes most and in which he thinks his whole life consists, because his good is thereby increased, indeed, perfected. There is no opposition here between the good of the individual and the common good. The individual's good is found in the common good.

Some activities cannot be performed without many taking part, but nevertheless someone could partake in one of these and still see it as primarily ordered to the furtherance of his own private interests. A basketball game, for example, might be played merely as a means to fame or physical prowess; a conversation joined merely as a means to academic promotion. This is not friendship, however, except of the useful kind, in which the common good is in fact a common means. But not every common activity is pursued as something merely useful. Compare someone studying with a professor to learn the tricks of the legal world to another studying with a professor to learn a noteworthy topic like Lobachevskian geometry. In both cases the students enter into a common and coordinated activity with their respective teachers. The teacher expounds upon the subject in a manner appropriate to the student, and the student follows him with attention. Their minds thus meet. The difference between the two cases, however, is that in the first there is often nothing more than a relationship of utility. The teacher, wanting to earn his living, and the student, wanting to prepare for a career, treat what goes on in the classroom and the agreements between them (e.g., so many lectures for so much tuition) as common means. But in the second case, even though it may involve elements of the first arrangement, the teacher and student enjoy the very act of teaching for its own sake. The professor of geometry likes to communicate his knowledge to others because he becomes a cause of their knowledge and, as it were, like the sun, not only shines but even illuminates.<sup>14</sup> The student for his part enjoys listening to the lecture because he thinks geometry an enjoyable subject of study. Each therefore finds his good in the common action of teaching and learning. Moreover, if there is goodwill between this pair, each enjoying the other's participation in the activity, then there is friendship of the self-fulfilling kind. Among friends of this kind the common good of collaboration is an intrinsically worthwhile activity.

There are at least four arguments that show in general how an individual advances his own good when he joins another in some common activity, even apart from the use he may gain from it. These are the same four arguments that Aristotle offers as proof that the happy man needs friends.<sup>15</sup> For in arguing that friendship is necessary for happiness, Aristotle demonstrates that a life in common with one's friends is an integral part of the full exercise of virtue, and not merely something useful or adventitious or superfluous. One needs the collaboration and common life found in friendship 1) to delight in those activities which are good and pleasant to oneself, 2) to perform these activities more continuously and easily, and 3) to achieve proficiency in the performance of such activities. The fourth argument proceeds along more natural lines to show that a virtuous friend is a kind of good without which someone would lack the sufficiency of goods required for happiness. The point of all these arguments is that friends become a good for one another precisely insofar as they share in the same life.

I want to examine the first two arguments in detail. Both depend upon the notion of human fulfillment as an activity, and not as some kind of possession which, once gained, makes action superfluous. To be happy is to live and act continuously, so far of course as it is humanly possible.

We may sketch out the first argument in this fashion:

- (1) The good person delights in performing good actions.
- (2) But one cannot delight in something unless one knows it.
- (3) We are able to observe others better than ourselves, and their actions better than ours.

(4) Therefore, the actions of good people are more accessible objects of delight to one who is oneself good and their friend.

(5) It follows then that the good person needs good friends since he needs to see the good actions of a good person whose actions are like his own.<sup>16</sup>

The crux of this argument is of course the third premise. It is precisely because a friend's actions are more easily seen and known than our own that friendship is an integral part of happiness. Now one reason why we are hindered from knowing ourselves could be that everyone is more likely to err in judging his own affairs because of his natural affection toward himself. This affection distorts the perception of oneself, as an extremely bitter taste lingering on the tongue can distort the taste of other things. This seems to assume something like an inordinate self-attachment which plagues human nature and from which one is freed only with the help of a friend. It takes but a moment's reflection to realize that Aristotle is accurately describing the human condition as it is:

We are not able to see what we are from ourselves. This is plain from the way in which we blame others without being aware that we do the same things ourselves; and this is the effect of favor or passion. There are many of us who are blinded by these things so that we judge not aright.<sup>17</sup>

So blinded, in fact, that we may blame those who are not at all deserving of blame. The vicious often think the virtuous are the vicious ones. Nevertheless this private affection mars our vision of ourselves more than of others, since sometimes we may be quite correct in our estimation of the faults of others, though blind to our own. Aristotle takes this as a sign that we may recognize and praise the goodness in others while failing to see, or at least see clearly, the goodness in ourselves. But when the other person is a friend, that is, someone bound to us by similarity of character--a second self--, his actions are, as it were, our very own.<sup>18</sup> Thus, in the company of a friend we delight in his actions as we would delight in our own, and praise them as we would, if it were not unseemly, praise our own. This is why we naturally seek the company of those who cherish the same things as we. Friends not only increase each other's pleasure in the activities which they share, but even bring that pleasure to perfection. For we see in our friends more clearly than in ourselves the goodness of those actions. The second argument proceeds along these lines:

(1) It is commonly acknowledged that the happy life must be a pleasant and delightful life.

(2) But the life of a solitary man is burdensome, for the pleasant activities which he can engage in are necessarily interrupted, and it is difficult for him to act continuously.

(3) But in the company of another there can be an exchange of activities, such that by delighting in one's own virtuous deeds and those of a friend one's life becomes continuously delightful.<sup>19</sup>

This second argument focuses on the limitations that nature imposes upon an individual in performing acts of virtue. But what is the character of these limitations? Since the individual under consideration is supposed to have a sufficiency of goods, it has already been assumed that he has no need of useful friends. Thus, he faces no constraints on the score of basic needs. Aristotle is arguing that even with an abundance of goods it is difficult for a solitary individual to act continuously. Wealth itself does not ensure that one can sustain an active and continuous life of virtue.

Perhaps the reason why someone cannot act continuously is in the very nature of an activity. An activity consists in a becoming and is not something that of itself endures.<sup>20</sup> To be sure, an activity as such is not something in a state of becoming, but only insofar as it is, or at least involves, an activity of a corporeal thing. Thus, the act of seeing is not a becoming strictly speaking, but rather the end and terminus of a becoming; but insofar as the act of seeing is brought about through a motion (the action of the visible upon the organ of sight), then it involves motion and hence work.<sup>21</sup> Even the operation of the intellect involves physical work, since it uses the actions of the senses, which are joined to bodily organs. But since a physical body is passible, the motion involved in a physical operation changes it from its original disposition to that particular operation. Weariness and lassitude set in. For this reason human activity is always in some way laborious and discontinuous.<sup>22</sup> However, there is no delight in work as such.

Friendship makes up for this deficiency of the body. For in living with another, so Aristotle argues, it becomes easy to act continuously. Among friends there is an exchange of actions, as when they do favors for each other, and especially when they live and act together. Those friends who like to do philosophy together, for example, usually spend their time discussing some topic of common interest. If it is a good discussion then there is a continuous, pleasant, and ordered succession of speech and thought. For by commenting, questioning, correcting, etc., each one in a discussion thinks for his neighbor, thus lightening what would otherwise be burdensome for one alone. By putting their heads together, they accomplish the same thing more easily and hence pleasantly than would the solitary individual. But because a friend is a second self, his actions are like one's own, and thus the common action between oneself and a friend is, as it were, one's own continuous action.<sup>23</sup>

We may draw several lessons from these two arguments.

1) Aristotle marshals these arguments to show that a friend is a good necessary for happiness. But as we have seen, friends become good for one another insofar as they share in the same life. So, to be more precise, what these arguments have proved is that a common life centered about authentic human good is an essential part of human happiness. One's own happiness, in other words, necessarily involves a common good. But are we not faced here again with the dilemma of a common good being an integral element of a purely personal good, namely, happiness? No, for notice that the arguments treat happiness not as an inner purely subjective quality of the individual, but as the fulfillment of such a quality in action. Thus, even though happiness as a quality of the person remains something proper to the individual and common only in abstraction, nevertheless as an activity, specifically, the activity of authentic friendship, happiness can be shared among many. For the action of two friends together is one, and for this reason, even though each friend is acting on his own, each individual action is unintelligible apart from the collaboration. Each individual action is a part of the complete action and not a whole in itself.

2) Therefore, a greater good is attained in friendship than could be attained by oneself. Perfection is found in being a part of a common action of virtue, in being a member of a society of good people. The human person is incomplete without the community of friends. Within it, however, he is called into action in many and various ways, extending himself, as it were, to heights insurmountable to himself alone.<sup>24</sup> It is only reasonable then that someone should prefer this kind of community to many of his private concerns. Even in a friendship of utility partners must order some of their own personal interests to the common good, which is in fact a common means, such as a business contract. The difference is that business partners expect to gain something mainly *through* their collaboration, whereas friends concerned mainly with an "honest"

good (*bonum honestum*) expect to gain something *in* their collaboration. The act itself of living together and sharing in the activities which each finds most pleasant and good, is worthwhile for its own sake.

3) Simply participating in a common action, however, is not sufficient for friendship. One must delight in the action of the other, the part which he has in the common endeavor, and in his enjoyment of the action. Even if two athletes enjoy what they do together for its own sake, as an art, that is, a physical and mental (in the sense of cunning) excellence, they may still not be friends. More is needed. As Aristotle says, a friend must desire not only that another share in the activity, but also that he delight in it as the other does. Here is a more precise sense of well-wishing: to wish another a good by wishing that he participate in this common good. Without this disposition there can be no friendship.

## **Beneficence**

Another characteristic mark of *philia* is beneficence. It presents perhaps an even more acute difficulty. Why does a friend wish to do good to another? How exactly does one act for one's own good in benefitting a friend, apart from repaying past kindnesses in gratitude, without considering whether or not one will receive anything in turn, or without desiring to keep the friend in debt and hence attached to oneself?

We can glean two answers in Aristotle's argument that the benefactor loves the beneficiary more than the beneficiary loves the benefactor.<sup>25</sup> Two of his four arguments bear on our question.

1) Every artisan is in some way affectively attached to the product of his own mind and hands. Poets are the best example of this, for they tend to prize their own poems without limit, just as parents love their children. One thinks of the opening lines of *Don Quixote* in which Cervantes expresses the kind of anxiety typical of a father expecting the birth of his child. Now this also holds true for the benefactor who loves those whom he has treated well, for the favor or service received by another, just so far as it has been received, is as it were the benefactor's handiwork.<sup>26</sup> This is perhaps most obvious in the case of the teacher, who values his students as those in whom he finds his livelihood. But Aristotle goes further and adds a more general reason. Everyone, he argues, loves and chooses his own existence. But human existence consists in activity, specifically in the activity of life and work (taken most generally). We are reminded of Aristotle's striking synecdoche: "For us, to exist is to live and act."<sup>27</sup> Thus each operation of life is pleasant and desirable. But since the operation or act of the mover and agent is in the moved and patient, every product of some work is lovable, as though the agent's existence is found in the product itself, an extension of himself. "Therefore artists, poets, and benefactors love their work, because they love their own existence."<sup>28</sup>

2) Beneficence is an act good in itself, intrinsically excellent. Hence the benefactor takes delight in the one he benefits as in one in whom he finds his own excellence. Why is it an act of excellence? The reason seems to be that there is an excellence in being able to help others as well as oneself. In general, it is a greater perfection to be able to perfect others as well as oneself, just as teaching is an excellence and a fulfillment of learning. And a good teacher teaches for the sake of the students, for the sake of the truth. In the same way in friendship one gives for the sake of the friend. Even the man of liberality gives without attending to himself, without blowing his trumpet, although it need not be benevolence that prompts him to be generous.<sup>29</sup>

By doing favors for one's friend one gains admittance into his friend's life, for he does for his friend what his friend would have or could have done for himself. Thus if one's friend lives a good life, to do good to him is to participate in a life intrinsically worth living, to perform in fact a virtuous deed. Beneficence in this regard is almost a kind of *suzein* or "acting together". Friends of this kind therefore desire to be useful to each other because thereby they participate in the other's life more intimately, knitting their common life even more strongly together.<sup>30</sup>

In the *Summa Theologiae* Thomas Aquinas makes it clear that the point of benefaction is to participate more closely in a common life with one's friend, not only in action but even in affection.<sup>31</sup> He argues that friends are present in each other's heart (*vis appetitiva* or *affectio*) when they wish and do something good for one another in the way that they would do it for themselves. For each considers the other, just so far as they are friends, to be the same as himself. Moreover, when one friend judges that the good or evil that befalls the other is like his own, and even that the will of his friend is like his own, he seems to suffer those same things in the person of his friend and in the same way. Thus friends naturally wish the same things and also sorrow and rejoice in the same. Insofar then that one judges that his friend's things are his own, one lives in the friend. Finally, this union of wills, which is essentially love itself, comes to its perfect fruition in the real union of lives, in living together, speaking together, and other such actions in which friends are joined.

This discussion of beneficence would be significantly lacking without a word on the greatest act of beneficence, namely self-sacrifice. It is first of all well to note that belief in an afterlife, in a reward after death for good deeds, is unnecessary to see the good in sacrificing one's own life for another's sake. Indeed, it is somewhat irrelevant, since being rewarded after death presupposes the goodness of the action. As it is, there have been those who, without the hope of a future life, have risked their lives for the sake of another. For by doing all they can for the sake of their friends or homeland, suffering the loss of material goods and perhaps even life itself, they have chosen for themselves a great good, to perform a perfect work of virtue. The reason why one who performs this kind of act achieves a form of excellence is that he becomes the cause of his friend's safety and, indeed, of his very life. Just as it is better and more virtuous that one is the cause of his friend's own virtuous action, than to do it oneself, for example, by conceding to him the opportunity to do some great work, so it is greater to save a friend's life than one's own.<sup>32</sup> Thus even though life is cut short, nonetheless in that single action in which they lay down their lives, they gain a greater good and live more excellently than they ever could in a long yet mediocre life. In choosing such a great good for themselves, it is manifest that they love themselves.

But even though it is a great good to preserve the life of a friend, the true friend will not seek to do it simply as his good. On the other hand, neither will he seek to do it simply as his friend's good. For in the first case the friend is treated as a mere occasion for oneself to achieve a splendid act, whereas in the second case one has become ordered to the friend as to an end. But no one is ordered to another as to an end, for this is slavery. In either case one would be seeking happiness in a strictly private good, which could never pertain principally to one's rational, transcendent nature. Rather, the true friend comes to the aid of his companion because their lives are so united that when one is delighted, pained, or even threatened, so is the other. Thus, he rushes to save his friend's life as though to save his own. What such friends desire to possess and promote most of all is a common life--a common good. Apart from this kind of analysis, one is hopelessly left attempting to explain these extreme situations in terms of a "shift of values" between the common good and the individual good in the particular community of action.<sup>33</sup>

What I have been arguing about the extreme situations applies just as well to ordinary situations in communal action. For consider first how men must depend upon each other for necessary provisions simply because, being material, they tire and require rest--a necessity of nature. In fact, a single man cannot possess the requisite skill or intellectual strength to be a farmer, carpenter, cobbler, tailor, doctor, and all the rest. This holds as well even for the nobler arts and other pursuits, such as music, painting, philosophy, and politics itself.<sup>34</sup> Only the union of many can make up for the limitations of each. But at the same time this union opens up for each person a range of activities proper and fitting to his rational nature. For example, in procuring all that he needs for himself and his family, each man perforce works for the good of others. The farmer must plow the field not only for himself; the doctor must treat others besides his own; the musician must have an audience. If man were entirely self-sufficient his sphere of influence and causality would, at least in this respect, be limited to himself. But since he is not, the fruit of his skill and labor extends to many. Those who have come together in a political community become, to various degrees, causes of one another's lives and, in different ways, indebted to one another. In a self-sufficient community, this kind of communion gives birth to "marvels of social virtue."<sup>35</sup>

### **Transcendence in Participation**

If community of action can be considered an integral element of individual fulfillment, can we not therefore begin to see how it may have a part in constituting individual identity? Certainly we must admit that most significant and concrete descriptions of ourselves as individuals involve references to communities of action and life. Husband, father, teacher, writer, citizen, believer, etc., define me in my concrete individuality, and yet they are relational, each indicating a different kind of *philia*. In fact these descriptions define who I am concretely *because* they are relational.<sup>36</sup> For, as I have argued, the goods that are most constitutive of human nature require their full realization in communion with others.<sup>37</sup> Apart from such relations not only does the concrete human person become like that "clanless, lawless, hearthless" man reviled by Homer,<sup>38</sup> more importantly he becomes unintelligible, "like an isolated piece at draughts."<sup>39</sup> He simply cannot be placed. Thus such a one may be said to be free, as a brick in a pile is free from the order of the building, whereas one living within ordered relationships may be said to be unfree. "The universe is like a household, in which the freemen are least at liberty to act arbitrarily but all or most things are ordered, whereas slaves and wild animals have little to do with the common good but for the most part are free to act arbitrarily."<sup>40</sup> In the political philosophy of one like Marx the fulfillment of the individual, since gained at the expense of natural society, can only be the most abject slavery. But within authentic human communities, as a participant in an ordered variety of friendships, the concrete individual is able to transcend the narrow limitations imposed upon him by nature. For the association of men is a good unique in plenitude and duration. "Human communities are the highest attainments of nature, for they are virtually unlimited with regard to diversity of perfections, and virtually immortal."<sup>41</sup> They are unlimited with regard to diversity because they are the union of many variously talented men and women. They are virtually immortal because they are continuously open to all who can participate in the manifold human activities they comprise. For this reason the common good has been called "greater and more divine than the private good."<sup>42</sup> It thus responds to that desire for totality, for complete and lasting goodness, which belongs to rational nature.

### **Notes**

1. Yves Simon has expressed well the fear that lurks behind the modern denial of the preeminence of the common good, *A General Theory of Authority* (Notre Dame: Univ. of Notre Dame, 1962), p. 27: "As soon as it is suggested that the purpose of human effort lies in an achievement placed beyond the individual's good, a suspicion arises that human substance may be ultimately dedicated to things as external to man as the pyramids of Egypt."
2. "Civitas homini, non homo civitati existit." Pope Pius XI, *Divini Redemptoris* (March 19, 1937), n. 29.
3. *The Acting Person*, tr. Andrzej Potocki (Dordrecht: D. Reidel, 1979) p. 336.
4. *Ibid.*, p. 333.
5. See Wojtyła's fuller exploration of this question in "The Person: Subject and Community," *The Review of Metaphysics* (1979, no.3) 273-308.
6. Cf. "The Person: Subject and Community, passim.
7. Parallel discussions are found in his *Eudemian Ethics*, book 7. One of the few recent accounts of Aristotle's treatment of friendship is John M. Cooper's "Aristotle on the Forms of Friendship", in *Essays on Aristotle's Ethics*, ed. A.O. Rorty (Berkeley, 1980).
8. A recent precedent for the method of my argument can be found in John Finnis's *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1984), pp. 134-160. See also Finnis, "Persons and Their Associations," *The Aristotelian Society* 63 (1989) 267-274.
9. *Nicomachean Ethics* 1157b20-25. Alasdair MacIntyre's discussion is one of the few that do recognize this: *After Virtue*, (Notre Dame: Notre Dame Press, 1984), pp. 155-158.
10. "philia gar koinônia": *Nicomachean Ethics* (hereafter *NE*) 1171b33.
11. *NE* 1172a3-6.
12. Cf. Plato, *Symposium* 191a, 192d; Aristotle, *Politics* 1262b11; Thomas Aquinas, *Summa Theologiae* IaIIae, q.28, a.1 ad 2.
13. For this sense of 'common', refer to Boethius, *In Isagoge* (PL 80:84-85) as well as *In Cat.* (PL 80:164-165). This is how even a biological species is common to its members.
14. Cf. Thomas Aquinas, *Summa Theologiae* IIaIIae, q.188, a.6: "Sicut enim maius est illuminare quam lucere solum, ita maius est contemplata aliis tradere quam solum contemplari."
15. *NE* 1169b3-1170b19.
16. *NE* 1170a14-1170b19.
17. *Magna Moralia* 1213a10-26.
18. *NE* 1170a1-4.
19. *Ibid.* 1170a4-11.
20. Thomas Aquinas, *In IX Ethicorum*, lect 10: "Manifestum est autem, quod operatio consistit in fieri, et non est quoddam existens ad modum rerum permanentium."
21. Cf. Albertus Magnus, *Super Ethica* (Aschendorff: Westfalorum, 1987) IX, lect.10, q.2.
22. Cf. *NE* 1175a2-5. Aristotle, *On Sleep and Waking* in *Parva Naturalia* (London: Heinemann, 1935), c.1, 454a24-b9: "adunaton gar aei energein."
23. Cf. Albertus Magnus, *Ethica* IX, tract.3, n.38, secunda ratio (p.589, Borgnet). For a similar account see Cooper, "Aristotle on Friendship," pp.324-330.
24. What C.S. Lewis says on this point is instructive: "Lamb says somewhere that if, of three friends (A, B, and C), A should die, then B loses not only A but 'A's part in C', while C loses not only A but 'A's part in B'. In each of my friends there is something that only some other friend can fully bring out. By myself I am not large enough to call the whole man into activity; I want other lights than my own to show all his facets. Now that Charles is dead, I shall never again see

Ronald's reaction to a specifically Caroline joke. Far from having more of Ronald, having him 'to myself' now that Charles is away, I have less of Ronald" (*The Four Loves* (New York: HBJ, 1960) p. 92).

25. NE 1167b17-1168a27.

26. Cf. NE 1167b34-1168a10.

27. Cf. NE 1170a35. For parallel passages of varying degrees of generality see Aristotle, *De anima* 415b14 and NE 1170a18-19, 1170b1. See also Charles DeKoninck, "L'être principal de l'homme est de penser," *Itinéraires*, 66 (Sept.-Oct. 1962) 163-67.

28. NE 1168a8. R.A. Gauthier and J.Y. Jolif have a significantly different understanding, *L'Éthique à Nicomaque* (Paris: Vrin, 1959) Part 2-2, p.742: "Or, l'oeuvre est d'une certaine manière l'agent en acte" (c'est l'interprétation de Michel d'Éphèse, suivi par saint Albert et saint Thomas, du Paraphraste, de Stewart, Burnet, Joachim, Ross et Dirlmeier); certes, c'est là une doctrine aristotélicienne (cf. *Phys.*, III, 3; *De l'âme*, III, 2, 426a4-5), mais elle n'a rien à faire ici, et pour l'y introduire, il faut méconnaître le rôle grammatical du mot *energeiai*, tel qu'il résulte avec évidence de la ligne 1168a6: nous sommes *par l'acte*; donc, *par l'acte*, celui qui a fait une oeuvre est."

Three difficulties arise with this: first, St. Thomas, for example, is not inconsistent with the way he takes *energeiai*; in both places (and later) he understands it as *in actu* (*In IX Ethicorum*, lect. 7). Second, their understanding of the Greek dative is not consonant with Aristotle's use of it elsewhere: *Physics* 201a10-20 (though here Aristotle uses *entele cheiai*); *ibid.*, 255a35. It is not dative of agency but rather one of manner/respect. Third, their argument is inconclusive: they can conclude only that the activity of making the work or product is lovable, and not that the work itself is. St. Thomas, et al., realized that the argument demands identifying, somehow (*pô*s), the agent with the product.

29. NE 1120b4-6: "It is most characteristic of a generous person also to go to excess in giving, so that he leaves too little for himself; for it is the nature of a such a one not to look to himself."

30. Consider Lily Dale's adjuration to her betrothed in Trollope's *The Small House at Allington* (London: Dent, 1964), p.140: "I pray God that [I] may...be of use to you,--to work for you,--to do something for you that may have in it some sober, earnest purport of usefulness;--that is what I want above all things. I want to be with you at once that I may be of service to you. Would that you and I were alone together, that I might do everything for you. I sometimes think that a very poor man's wife is the happiest, because she does do everything."

This passage is remarkable. Lily in no way sees her service as a burden or as a form of enslavement (after all, her betrothed was "her catch"). Her happiness, as she sees it, is found in being useful to her husband. To be useful is to be virtuous and good. How are we to understand this sublimation of utility? First, it must be said that it is only within the context of marriage that such an avowal could ever make sense. But to an extent this love of service is evident in every friendship based on virtue. For friends like to do favors for each other, to be of some use, though not necessarily to define their lives by service to each other. But in being useful to each other they participate in each other's lives more intimately.

31. IaIIae, q.28, a.2. Cf. Aristotle, NE 1165b27; *Rhetoric* 1381a3.

32. NE 1169a13-36.

33. Wojtyła, "The Person: Subject and Community," 301.

34. Cf. Yves Simon, *A General Theory of Authority*, (Notre Dame: Notre Dame Press, 1962), p. 28: "In fact, personalities developed excellently on more than a very few lines are extremely rare, and significant limitations can easily be found in Leonardo da Vinci and Goethe. The rule to



which all men are subjected in varying degree is one of specialization for the sake of proficiency. This rule entails heavy sacrifices even in the most gifted. A man highly successful in his calling accomplishes little in comparison with the ample virtualities of man. He has failed in a hundred respects."

35. Yves Simon, *Philosophy of Democratic Government*, (Chicago: Univ. of Chicago, 1951), p. 310: "Now there is normally, in the life of labor, a sentiment which, by transcending subjectivity, gives man a chance to enter into communication and communion with his fellowmen: it is the sense of service. Most of the time the worker works not for his own consumption but for that of another person; he is thus rendering a service which is balanced by a recompense (wage, salary, fee, etc.). When everything is in order, the balance of service and recompense brings about marvels of social virtue. Through smooth relations of service and recompense, justice is satisfied in countless daily actions under conditions of faithfulness reminiscent of regularity in the processes of physical nature."

36. Cf. Wojtyla, "The Person: Subject and Community," p. 299: "The constitution of the concrete 'I' in its personal subjectivity takes place in a distinctive manner through action and existence 'together with the others' in a social community, in the dimension of the different 'we's.'

37. Cf. Charles DeKoninck, *De la primauté du bien commun* (Quebec: Laval Univ., 1943), p. 55: "[Le bien commun] s'étend à Pierre, non pas d'abord en tant que Pierre est animal, ni même en tant qu'il est nature raisonnable seulement, mais en tant qu'il est 'cette' nature raisonnable: il est le bien de Pierre envisagé dans sa personnalité la plus propre. C'est pourquoi le bien commun est aussi le lien le plus intime des personnes entre elles et le plus noble."

38. *Iliad* ix, 63: "*aphreitor, athemistos, anestios*".

39. Aristotle, *Politics* 1253a7.

40. Aristotle, *Metaphysics* 1075a20-23.

41. Simon, *A General Theory of Authority*, p. 29.

42. Cf. Aristotle, *NE* 1094b7.



## Chapter VI

# Freedom and Pluralism: An Essay on the Human Condition

*Habib C. Malik*

Freedom is the vital ingredient, the necessary ontic glue, the central underlying assumption of the entire Judeo-Christian conception of man and existence. That God freely created free beings is a linchpin of the given. In the language of theodicy, God took "the risk of freedom," preferring to create beings with the ability to reject Him over the "safer" but less perfect and less loving alternative of creating automatons. Freedom is therefore a gift and an open avenue leading at the same time toward, and away from, the divine.

Freedom is the ineluctable substratum of the human condition. With freedom comes meaning, purpose, perfectibility, sanctification, and self-fulfillment through interaction with others, and with the Other. Freedom is the principal distinguishing hallmark of man who is the only free creature aside from the angels. When Dostoevski defined man as "a creature who walks on two legs and is ungrateful,"<sup>1</sup> it was a colorful way of saying that man is the only *free* biped, free even to be ungrateful for everything including the gift of freedom. In one sense freedom is more primary than reason as being unique to man, for man is free to be irrational as Dostoevski's *Underground Man* superbly illustrates.

Freedom is not groundless. It is not magical and fantastic. Freedom has a context, and one is totally free *within* that context. Every individual's personal-existential and historical limiting context—those inescapable elements that define the contours of his personhood such as gender, color, background, genetic composition, time and place of birth, mental and emotional state, set of unique circumstances and experiences, and finite abilities—is a granted situational premise. The human person is all these elements plus what he makes of them. He is also much more than that precisely because he manifests total freedom of operation and development within these inherent parameters. The capacity for boundless creative communion and for responding to transcendental beckonings delineates the freedom of self-actualization. It can be likened formally to the project of the Sartrean *pour-soi* but with the spiritual dimensions kept intact. Far from circumscribing freedom the necessary ingredients of personhood in fact serve to delimit the scope of determinism.

Nor is freedom a matter of pure self-indulgence leading to a liberation from meaning. Modern man's subjective entanglements and his narcissism have ultimately resulted in alienation and disorientation. He has systematically jettisoned the vital components of personality in the name of freedom. This is the freedom that Erich Fromm talks about, but it is a false freedom because it promises liberation only to end in diminution of the spiritual in man and to leave him with a terrible loneliness. Fromm castigates modern man for being scared of the freedom he finally attained when he shed all external authority:

Man had won his freedom from clerical and secular authorities, he stood alone with his reason and his conscience as his only judges, but he was afraid of the newly won freedom; he had achieved 'freedom from'—without yet achieving 'freedom to'—to be himself, to be productive, to be fully awake. Thus he tried to escape from freedom. His very achievement, the mastery over nature, opened up the avenues for his escape.<sup>2</sup>

In fact man was rightly recoiling from the abyss of anchorless drifting and the illusion of self-realization in the absence of guidance, direction, and loving concern. Man seeks freedom within meaning because he knows instinctively that the alternative would be to embrace nothingness and to self-destruct. The bravado that Fromm demands of modern man is actually a prescription for existential suicide.

The most essential feature of existence that defines both the scope of personality and the exercise of freedom is the given presence of others. It is with, in, and through others, or a specific another, that we as human beings find the greatest personal fulfillment. Ultimately the entire religious animus is oriented toward the supreme Other, or God. Karl Jaspers stated the case succinctly for existential interdependency when he wrote: "I should not suffer so deeply from lack of communication or find such unique pleasure in authentic communication if I for myself, in absolute solitude, could be certain of the truth. But I *am* only in conjunction with the Other, alone I am nothing."<sup>3</sup> In opposition to this of course stands Sartre's notorious utterance from his play *No Exit*: "Hell is other people."

Ever since the Cartesian subjective implosion and the rational self-sufficiency that goes hand in hand with it, modern philosophy has exhibited recurring discomfort with the external world of others as authentic and ontologically integral entities—as full-fledged persons. The independent other has either been annihilated altogether through varying degrees of solipsism (often bordering on the pathological, as with Sartre's category of "nausea"), or objectified reductively to the point of being dissolved in larger amorphous abstractions like class, process, idea, and urge (Marx, Hegel, and Freud), or aestheticized in the sense of being used as a mere occasion for egotistical artistic expression (all philosophies of art that begin and end with the subjective moods and feelings of the artist in isolation). The phenomenological revolt at the turn of the century and its inevitable marriage to strands of the existentialist tradition that preserve the wholeness and wholesomeness of the autonomous person represented a crucial corrective to the obliteration of personality and otherness. Eventually, however, subjectivism and reductionism crept back in, and the struggle goes on.

Absolute solitude does not exist. Indeed such a solitude, were it to exist, would be truly hell. To aspire to be utterly free from the presence of the meaningful other is to exhibit nothing less than a death wish. The cocooning and self-insulating tendency of radical subjectivism in the name of attaining some fictitious freedom borders on the type of hedonistic nihilism seen in the writings of Max Stirner (1806-1856), who had a decided influence on both Feuerbach and Nietzsche, and through them on modern atheism.<sup>4</sup> The freedom of lonely isolated pursuits does have legitimacy and creative value only if the final purpose down the road is an other-oriented teleology. This is not to imply that every free act ought to be altruistic, but it should at some point become at least interactive if it is to acquire authenticity.

And yet there is solitude "in the midst of others" when these others undergo abstraction and objectification, thereby losing the quality of autonomous integral personality. Nicholas Berdyaev best expressed this, both in his life and in his writings:

The Ego's solitude is experienced not so much within its own existence as in the midst of others, in the midst of an abstract world. . . . The most extreme and distressing form of solitude is that experienced in society, in the objective world.<sup>5</sup>

Berdyaev experienced the anguish of solitude throughout the major portion of his life, particularly during the latter third of it as an uprooted Russian emigré in Paris. In his autobiography

Berdyayev declares: "My sense of uprootedness and disestablishment in the world, which later I came to express philosophically as objectification, is at the heart of my whole world outlook."<sup>6</sup>

Perhaps the reason for Berdyayev's attraction to mysticism was his quest for release from the crushing weight of solitude and the accompanying scourge of objectification. He embraced the mysticism (and eventually the pantheism) of the German theosophist Jacob Boehme and adopted his idea of the *Ungrund* as the metaphysical source of all freedom including that of God. The *Ungrund* is essentially a kind of abysmal will without a basis (hence groundless); it is an infinite Nothingness and an absolute free will. By positing the *Ungrund* with Boehme, Berdyayev maintained the primacy of freedom over being, since it precedes all creation. With this Berdyayev was hoping to remove from God any responsibility for evil, which he thought would have been the case if, as the traditional theological position states, God had granted freedom to man.<sup>7</sup>

Others mean diversity. And since sameness and cloning are not the order of existence, we are talking about pluralism. Authentic pluralism can be defined philosophically as the coexistence and interaction of integral non-objectified others. In modern political philosophy the contractual theories of civil society and government beginning with Hobbes, and certainly since Locke, assume diversity and aim at an accommodation of a plurality of outlooks. For pluralism to function and flourish within an overall unifying political framework, certain universals have to be accepted across the board by all. A minimum set of shared values needs to be retained and arranged hierarchically. Put differently, authentic pluralism demands encompassing axiological priorities to serve as ground rules. Beyond this each person or group is entitled to the full autonomy of opinion and the practice of lifestyle as he/they choose.

To speak about freedom in this context is to invoke the category of what is usually termed "outer" freedom, namely the freedom to which one is entitled as a citizen of the pluralist society. Here the whole natural rights tradition comes into play and outer freedom means that freedom whose exercise stops where another's fundamental rights begin. This outer or responsible freedom governs the relations between persons as citizens, between groups as majorities and minorities, and between both persons and groups on the one hand and government on the other.

Problems raised by the practice of outer freedom in pluralist societies have for a long time preoccupied political scientists. Central to these is the dialectic of autonomy versus control which has been investigated, among others, by Robert Dahl. According to Dahl, freedom in a pluralist democracy entails the exercise of both political autonomy and control. But such an exercise for the individual citizen cannot be unlimited in order for him to be maximally free.<sup>8</sup> There is a paradox here: limits on the exercise of freedom ensure its maximality. The same, argues Dahl, holds true for institutions and organizations which form the focus of his study. Once again, even on the external level of political and social conduct, we are faced with the inherent limits set by the sheer presence of a plurality of integral others, be they individuals, groups, or institutions. Such limits, as we have seen, are a part of the givenness of the world and of the human condition. Achieving maximum interaction through maximum freedom while respecting limits and preserving integrity becomes the challenge of pluralist democracy. Interaction implies interdependence which in turn points to the limits of freedom, or to freedom within limits.

Not all pluralist systems are democratic, says Dahl, and not all democracies are necessarily pluralist.<sup>9</sup> The issues of majority-minority relations become quite complex depending on the situation. Pluralist systems that are not democratic present definite dangers to minority groups that can experience oppression. On the other hand, more or less homogeneous democracies, or democracies with a permanent overwhelming majority, usually provide a better climate for free

expression and interaction among their citizens than democratic countries where minorities frequently dissent and consensus is rare.<sup>10</sup>

That may be so, but to address these and similar questions by confining the discussion to political rights and the mechanics of democracy (the vote and majority rule) rather than elevating it to a consideration of human rights and the substance of democracy (freedoms and minority rights), is to opt for truncated solutions.<sup>11</sup> Regrettably, the tapestry of freedom does not always coincide with the political systems that we value as the most desirable. Tocqueville, drawing on his astute observations of the American scene and on *Federalist 10*, spoke in chilling terms of the "tyranny of the majority."

When an individual or a party is wronged in the United States, to whom can he apply for redress? If to public opinion, public opinion constitutes the majority; if to the legislature, it represents the majority, and implicitly obeys its injunctions; if to the executive power, it is appointed by the majority, and remains a passive tool in its hands; the public troops consist of the majority under arms; the jury is the majority invested with the right of hearing judicial cases; and in certain States even the judges are elected by the majority. However iniquitous or absurd the evil of which you complain may be, you must submit to it as well as you can.<sup>12</sup>

If this Kafkaesque description is applicable to America, how much more so is it to other far less developed pluralist democracies elsewhere in the world (not to mention non-democratic states)?

The convoluted paradoxes of freedom do not stop there. It is perfectly possible, for instance, to have a reasonably homogeneous non-democratic—even theocratic--state displaying strong nationalist sentiments and in which all citizens enjoy a considerable amount of freedom, provided there is nothing in the ideology of the prevailing majority that renders the authenticity of that majority dependent upon singling out a minority, or minorities, for abuse. The kind of Russia envisaged by Solzhenitsyn as a replacement for the Soviet Union could be an example of a state where genuine freedom for all exists and is allowed to grow. There need be nothing in the national ideology of such a future Russian state that necessitates pogroms or other forms of persecution of minorities in the name of the self-rehabilitation of national identity. Unfortunately, the contemporary aversion to all absolutes, exemplified by Fromm, and the resulting relativism in outlook, stem primarily from the experience in the recent past of the false absolutes of Fascism, Nazism, and Stalinism. Such an aversion undermines the genuine search for truth, hierarchy, and positive absolutes.

Genuine pluralism does not lead to political particularism or to social exclusivism. At the same time such pluralism retains and celebrates particularity and uniqueness on the personal or distinctive group levels. This means that the discovery of self-identity and a fundamental openness to others are not incompatible or mutually exclusive projects. Alongside and inextricably intertwined with outer freedom of association and citizenship there is always to be found inner personal freedom—the freedom to be fully oneself and simultaneously to be open to the other who is fully himself and reciprocating in openness. The two movements inward and outward are so interconnected that personality as a whole remains incomplete without both. At the core of personality therefore lurks an openness to others. Personality is not a matter of Leibnizian monads—windowless and self-enclosed with a rational condescension to "pre-established harmony." Personality is in the first instance relational in character. This is perhaps best exemplified by the Christian doctrine of the Trinity which conceives of the Godhead as triune with three Persons in constant communion sharing an eternal relationship of love. The primary and supreme being who is God is thus communal in His very essence. The human family is a direct

reflection of the trinitarian God and is created in His image. The carefree abandon with which such closely knit persons freely interact while retaining their individual distinctiveness is the best model for a free pluralist society of integral others.

Martin Buber made the relational the centerpiece of his entire philosophy. Borrowing the "I-Thou" motif from Feuerbach, and drawing on his own rich Jewish heritage where the greatest example of meaningful encounter is to be found in God's choice of the people of Israel as His instrument of salvation, Buber constructed a philosophy of meeting and dialogue that salvages personality from subjectivism and egoism. It is through the seminal thoughts of Buber that the deeper features of freedom within pluralism come to light.

The antithesis of solitude is communion, and communion is achieved between personalities. Buber writes: "Egos appear by setting themselves apart from egos. Persons appear by entering into relation with other persons."<sup>13</sup> In a genuine plural society true communion occurs between sovereign persons often with unique outlooks. These persons do not attain full personhood except through authentic dialogical communion. All other forms of interaction are mere communication or, as Berdyaev would have it, the objectified—hence degraded—form of interaction that is never able to overcome solitude. In the bustle of everyday mundane transactions the objectified individual remains incomplete and terribly alone. For he is a mere object dealing with other objects. The constant conflict between the Ego and the object (or the "it", *Es* in German) can be alleviated only when the object is transformed into an other and a "Thou" or a true personality, and when the Ego is also transformed into an "I" capable of entering into a relation with this other and viewing it as a Thou. According the Thou full respect not only for his views and outlooks even if they are radically different from one's own, but for his otherness and his whole and irreplaceable human personality represents the crux of the pluralist enterprise and is impossible apart from the inner dimension of freedom of both the I and the Thou engaged in dialogue.

Every actual relationship to another being in the world is exclusive. Its You is freed and steps forth to confront us in its uniqueness. It fills the firmament—not as if there were nothing else, but everything else lives in *its* light. As long as the presence of the relationship endures, this world-wideness cannot be infringed. But as soon as a You becomes an It, the world-wideness of the relationship appears as an injustice against the world and its exclusiveness as an exclusion of the universe.<sup>14</sup>

At the summit of the meaningful dialogical encounter stands the relation between I the human person and God the ultimate Thou. This is the absolute relationship, as Buber calls it, and is the one where we are utterly dependent on God. "In the relation to God, unconditional exclusiveness and unconditional inclusiveness are one. For those who enter into the absolute relationship, nothing particular retains any importance—neither things nor beings, neither earth nor heaven—but everything is included in the relationship."<sup>15</sup> Is this some form of latter-day mysticism Buber is advocating? Not in the ontologically blurred fashion of Boehme and the earlier medieval German mystics. Buber is careful to preserve the ontological integrity of both I and Thou even at the height of their coming together. For him mysticism is "unity within duality."<sup>16</sup> God remains wholly other at the moment of closest proximity. "Of course, God is 'the wholly other'; but he is also the wholly same: the wholly present. Of course, he is the *mysterium tremendum* that appears and overwhelms; but he is also the mystery of the obvious that is closer to me than my own I."<sup>17</sup> And a little further on pantheism is unequivocally denied: "God embraces but is not the universe; just so, God embraces but is not my self....For the sake of this there are I and You, there is dialogue, there is language, and spirit whose primal deed language is, and there is, in eternity, the word."<sup>18</sup>

Such an incredible vista of creative freedom unfolds through Buber's dialogical concept of personhood and entails nothing less than a call to us to be active participants in the act of creation. "Creation—happens to us, burns into us, changes us, we tremble and swoon, we submit. Creation—we participate in it, we encounter the creator, offer ourselves to him, helpers and companions."<sup>19</sup> Among ourselves we become unique partakers and shapers of one another and of the world. In our diversity we complete each other, and through our ongoing encounter the world is completed. Whitehead spoke about the "creative advance into novelty" as part of his process cosmology: "...life in its essence is the gain of intensity through freedom."<sup>20</sup> It is almost inconceivable to talk about creativity without freedom, and it is equally absurd to talk about freedom without meaningful encounter. To "be free" must therefore involve continuity over time; it is an existential state, not a one-time event. Otherwise, it becomes spontaneity which is an expression of creative freedom that is neither necessary nor repetitive nor continuous; rather it is a sudden surge of free creative energy in a particular direction decided by the active agent. The freedom to chisel self-identity and shape personal destiny occurs through continuous active agency and interactive engagement.

Creativity requires both the conditions of external liberties (outer freedom) and the internal environment of well-being made available by inner freedom. It also presupposes awareness of, and interaction with, the past in anticipation of the future. All this cannot happen in isolation from authentic community, which is the prerequisite for a healthy pluralism. Here again Buber is relevant. In his critical treatment of Kierkegaard's category of the "Single One," Buber launches a frontal assault on the kind of rugged and lonely individualism (at once very Nordic, and very Protestant) so pervasive in the Dane's philosophy, and rehabilitates community. He transposes his I-Thou dialogical relation to the sphere of the body politic which, he argues, is not identical to Kierkegaard's derogatory "crowd" as "untruth."

The Single One' is not the man who has to do with God essentially, and only unessentially with others, who is unconditionally concerned with God and conditionally with the body politic. The Single One is the man for whom the reality of relation with God as an exclusive relation includes and encompasses the possibility of relation with all otherness, and for whom the whole body politic, the reservoir of otherness, offers just enough otherness for him to pass his life with it.<sup>21</sup>

Kierkegaard, charges Buber, confuses public existence with the crowd, and while he may accord the body politic some respectability, it remains essentially devoid of significance for the individual's religious relation.<sup>22</sup> The most Kierkegaard will do is to "lift out of the crowd" a single other to be his "companion"; and even here the attempt was deliberately aborted when he faced the prospect of a permanent bond (Kierkegaard's broken engagement to Regine Olsen). What the solitary person like Kierkegaard—the Single One—ought to do, says Buber, is face the challenge and "change the crowd into Single Ones."<sup>23</sup>

Buber's emphasis on authentic communion points to the need for the meaningful "We." This "We" is at once diverse yet cohesive; interactive yet integral; free yet creatively interdependent. Buber's concept of community shares basic characteristics with Berdyaev's notion of *sobornost*, which Berdyaev borrows from the nineteenth century Russian religious thinker and Slavophile Alexis Khomyakov, and with the Roman Catholic/Eastern Orthodox conception of *Ecclesia*.<sup>24</sup> And community for Buber is quite distinct from collectivity:

Collectivity is not a binding but a bundling together: individuals packed together, armed and equipped in common, with only as much life from man to man as will inflame the marching step. But community, growing community (which is all we have known so far) is the being no longer



side by side but *with* one another of a multitude of persons. And this multitude, though it also moves towards one goal, yet experiences everywhere a turning to, a dynamic facing of, the other, a flowing from *I* to *Thou*. Community is where community happens. Collectivity is based on an organized atrophy of personal existence, community on its increase and confirmation in life lived towards one other. The modern zeal for collectivity is a flight from community's testing and consecration of the person, a flight from the vital dialogic, demanding and staking of the self, which is in the heart of the world.<sup>25</sup>

It would be understating the case to say that Buber has been a highly influential figure in Christian, particularly Catholic, circles. His twin concepts of community and the dialogical have had a profound and lasting impact.

What about being in the unavoidable presence of the antagonistic other? Is all of freedom *robbed*, as it would appear from a cursory survey of repressive societies where hostile majorities, or minorities controlling the power structure, degrade those outside their group? Paradoxically it is precisely in such situations that freedom of the inner personal kind has often flourished in great joy and creativity. The countless instances in history of heroic free acts of self-giving and self-sacrifice under oppression are a testimony to this wonderful paradox of freedom. Saints, martyrs, and an endless train of silent sufferers resisting through the power of inner peace adorn the pages of national folklore everywhere that communities have experienced injustice. Christians have a name for this: the theology of the Cross. The paradox becomes complete when we come across situations in "free" non-repressive societies where inner creative freedom is in a state of sclerosis and sterility. Repression by itself, no matter how severe and dehumanizing, can never invade and completely conquer the inner sanctuary of freedom. Indeed the overwhelming evidence of the abundance of this inner supply of freedom is truly humbling.

Authentic pluralism is far richer and more complex than the mere peaceful coexistence of a diversity of individuals and groups. This begins to become apparent when the question of freedom is raised on the deepest level, namely the level of the meaningful encounter with the other. Once again Buber:

This person is other, essentially other than myself, and this otherness of his is what I mean, because I wish his particular being to exist. That is...the right and the legitimacy of otherness and (the) vital acknowledgement of many-faced otherness—even in the contradiction and conflict with it—from which dealings with the body politic receive their religious ethos. That the men with whom I am bound up in the body politic and with whom I have directly or indirectly to do, are essentially other than myself, that this one or that one does not have merely a different mind, or way of thinking or feeling, or a different conviction or attitude, but has also a different perception of the world, a different recognition and order of meaning, a different touch from the regions of existence, a different faith, a different soil: to affirm all this, to affirm it in the way of a creature, in the midst of the hard situations of conflict, without relaxing their real seriousness, is the way by which we may officiate as helpers in this wide realm entrusted to us as well, and from which alone we are from time to time permitted to touch in our doubts, in humility and upright investigation, on the other's 'truth' or 'untruth', 'justice' or 'injustice'.<sup>26</sup>

## Notes

1. Fyodor Dostoevski, *Notes From the Underground*, translated by David Magershack, in *Great Short Works of Fyodor Dostoevski*, with an introduction by Ronald Hingley (New York: Harper and Row, 1968), p. 287.
2. Erich Fromm, *The Sane Society* (New York: Holt, Rinehart & Winston, 1955), p. 355.
3. Karl Jaspers, *Way to Wisdom: An Introduction to Philosophy*, translated by Ralph Manheim (New Haven: Yale University Press, 1954), p. 25.
4. See Max Stirner, *The Ego and His Own*, selected and introduced by John Carroll and translated by Steven T. Byington, in the series "Roots of the Right: Readings in Fascist, Racist and Elitist Ideology," general editor: George Steiner (New York: Harper Torchbooks, 1971), 266 pages.
5. Nicholas Berdyaev, *Solitude and Society*, translated by George Reavey (London: The Centenary Press, 1938), pp. 93-94. In the same place Berdyaev admits that man is never absolutely alone except in hell (p. 93).
6. Berdyaev, *Dream and Reality: An Essay in Autobiography*, translated by Katherine Lampert (New York: Macmillan, 1951), p. 33. The work was published posthumously.
7. See Berdyaev's introductory essay entitled "Unground and Freedom" to Jacob Boehme, *Six Theosophic Points and Other Writings*, translated by John Rolleston Earle (Ann Arbor: University of Michigan Press, 1958), pp. v-xxxvii.
8. Robert A. Dahl, *Dilemmas of Pluralist Democracy: Autonomy vs. Control* (New Haven: Yale University Press, 1982), p. 20.
9. *Ibid.*, p. 29.
10. *Ibid.*, p. 88.
11. I have attempted a treatment of the problem of majority-minorities interaction in cases where there is a clash of opposing world views, in my paper "Democracy, Minorities, and the Plurality of World Views," presented at the seminar on Democracy, Culture and Values held at Catholic University in Washington under the auspices the Council for Research in Values and Philosophy, in the fall of 1990.
12. Alexis de Tocqueville, *Democracy in America*, translated by Henry Reeve (London: Oxford University Press, 1947), vol. I, chapter XIV, p. 162. In democracies some form of autonomy must be granted to minorities in the event of continuous heavy-handedness by the majority. Dahl writes: "Whenever, as a consequence of democratic procedures, a minority of citizens is persistently deprived by a majority of a fundamental right, freedom, or opportunity, the minority must be granted a degree of autonomy, including independence if need be, sufficient to preserve that right, freedom, or opportunity." *op. cit.*, p. 90.
13. Martin Buber, *I and Thou*, translated by Walter Kaufmann (New York: Charles Scribner's Sons, 1970), p. 112.
14. *Ibid.*, pp. 126-127. Although Kaufmann translates the title of the book *Ich und Du* into *I and Thou*, he prefers to use "You" in place of "Thou" in the body of the text.
15. *Ibid.*, p. 127.
16. *Ibid.*, p. 134.
17. *Ibid.*, p. 127.
18. *Ibid.*, p. 143.
19. *Ibid.*, p. 130.
20. Alfred North Whitehead, *Process and Reality: An Essay in Cosmology*, corrected edition edited by David Ray Griffin and Donald W. Sherburne (New York: Free Press, 1978), p. 35, p. 128, and p. 107.

21. Martin Buber, "The Question to the Single One," in his *Between Man and Man*, translated by Ronald Gregor Smith (New York: Macmillan, 1975), p. 65.

22. *Ibid.*, p. 63.

23. *Ibid.*, pp. 64-65.

24. *Sobornost* is one of those problematic words, like *aufheben* in German, which are very difficult to translate. Some of the translations I have come across are "the fellowship of personalities," "community," "intercommunality," "togetherness," "the authentic spirit of community," and there are others.

25. Buber, *Between Man and Man*, pp. 31-32.

26. *Ibid.*, pp. 61-62.



## Chapter VII

# Freedom's Paradoxes in Search of Their Roots and Fruits

*Aleksandr Dobrynin*

Freedom pertains to a range of human values which have critical meaning for the existence and survival of civilization. The history of Western culture provides many splendid descriptions and explanations of the nature of freedom and of the goals towards which it should be directed. In the Vth century, B.C., a great citizen of Athens, Pericles, in his famous funeral oration, formulated the principle of a democratic *polis* as the place where every single citizen, "in all the manifold aspects of life, is able to show himself to be the rightful lord and owner of his own person, and to do this, moreover, with exceptional grace and exceptional versatility." There, all know that "happiness depends on being free, and that freedom depends on being courageous."<sup>1</sup> Some ten years later another great citizen of Athens—Plato, who somehow was a political antagonist of Pericles—reconstructed as a dialogue the image of Socrates, the sage who in his last words before his death appealed to his friends: deck the soul "not with a borrowed beauty but with its own—with self-control, and goodness, and courage, and liberality, and truth."<sup>2</sup> Only a soul so endowed can "collect and concentrate itself by itself" and trust nothing but "its own independent judgment upon objects considered in themselves." Only such a soul will attribute "no truth to anything which it views indirectly as being subject to variation"<sup>3</sup> and actually will be liberated from the fetters of the material world.

So in the very beginning of Western civilization one finds two closely related definitions of freedom. The first, which could be termed political or institutional, concerns decisions, action and self-realization in social life. This description of freedom concerns the essence of a democratic society understood not only as a process of choosing or decision-making, but as the more general guarantee of the realization of natural human rights. The second definition is rationalistic and rather individualistic. It focuses on the self-affirmation of the thinking human being, affirms the validity of unrestricted yet critical intellectual research, and proclaims the significance of truth in human life.

The resemblance between these two definitions is clearly that both are founded in the "self" as the principle of every intentional state, social or mental, in which freedom exists. Both definitions illustrate what later was discovered by Schelling, namely, that the being of freedom is "being-in-oneself."

But besides this striking similarity there is an essential difference between these two paradigms of the Western philosophical tradition. The difference consists not in the thematic aspects of the two approaches—external and social vs inner and individual—but in their very mode of representing freedom. On the one hand, freedom means the possibility of free concrete acts by limited human beings living in a society of similarly limited human beings. On the other hand, the ability to be free is considered to be without limitation for by its very nature personal intellectual freedom cannot depend on something that limits the mind. In the first case the freedom of one is dependent upon the freedom of the many; in the second case one's freedom depends only upon oneself and supposes an unrestricted ability to search for truth.

These "outer" and "inner" aspects of freedom, their resemblance and difference, are, of course, enduring features of human intellectual history. At the same time, however, they are the source of great difficulties in understanding the metaphysical substance and social attributes of freedom.

From its ancient context of Greek culture Western civilization inherits its great questions. One of these can be formulated in the following terms: how can unrestricted freedom be realized in the restricted conditions of the actual social order? Certainly this paper is not able to solve the problem of coherence between these "inner" and "outer" aspects of freedom. The goal of the present discussion is more modest, namely: to sketch the metaphysical contour of the problem, and to illustrate it with some examples which, I believe, will help to recognize the danger of ignoring this problem.

### **Can Unlimited Reason Be Free?**

As has been seen, the Western philosophical tradition relates the notion of freedom to the spontaneity of the human intellect. Classically this was expressed in the Cartesian position regarding the "cogito." According to Descartes, spontaneous human thinking is critical self-reflection which in the act of thought affirms its subject or the one who is doing the thinking. Besides this affirmation of the subject's existence, what is more interesting here is the very ability to direct the act of thinking to itself. The nature of this reflection was grasped by St. Augustine in his famous words "si fallor sum," which historically preceded the Cartesian "cogito ergo sum." From this point of view the act of thinking as doubting appears as the decisive element in the self-affirmation of the subject as "res cogitans."

The process of doubting is not similar to a dog's chasing its own tail; rather it presupposes distance between the subject and the object to be doubted. In order to negate my mind, I must exit my being-in-thought, i.e., I must recognize the otherness or non-being of thought. Or to put this the other way around, when I *reject doubt* about myself as a subject of thinking, I indeed affirm myself as a thinking subject: but when I *have doubt* about my own thinking, then by the very fact of doubting I affirm my existence before and outside of thinking. In other words, by doubt I affirm an "I" which cannot be the object of thinking, for in relation to the "cogito" it is nonbeing or other.

Everyone can verify this mental fact by attempting to localize or "to catch" his own "I" in his thinking. Just as an eye cannot see itself, so an "I" cannot think itself. Perhaps the existentialists were correct in denying the correctness of "cogito ergo sum" because this reflective act does not express the completeness of human existence. But at the same time one can agree that critical thinking or doubting affirms reflexively the existence of the "I," though it does so indirectly and without concrete specification.

In discussing above the uncovering of the existence of the "I," we had to speak rather in negative terms for such an understanding does not imply the existence of sensible objects or of objects of thought. Kant suggested describing the grasp of such existence by the term "apperception," that is, a non-thinking re-presentation (*Vor-stellung*): this is an act of spontaneity<sup>4</sup> in which the proper content of thinking consists. In other words, the synthetic activity of the "I" which gathers the manifold + of sense data into the unity of judgment stands before or re-pre-sents that unity. Between "I am" and "I am thinking" there is a "split" or space in which our thinking originates.

What does this re-presentation" mean? This fact of non-identity between "I am" and "I am thinking" has been treated in the philosophical tradition in the form of conceptions about "free will." According to this conception, besides intellect, the intelligible human soul has another, higher faculty, namely will, which governs all human acts including thinking. But the conception of "free will" or the "will to choose" can add nothing to the problem of "re-presentation" because of the close interrelation between the will and the intellect. In a classic description of this Thomas

Aquinas wrote the intellect "moves the will, because the good understood is object of the will" and the will "moves the intellect, and all the powers of the soul."<sup>5</sup> So the act of willing is intellectualized and what is called "free will" is really intellectual will. Because the spontaneity of willing and of thinking are in the same field there is no need to suppose that one precedes the other: though intellect and will have different content their source is the same. Between "I am" and "I am willing" there is the same split as in the case discussed above.

Nevertheless, the term "free will," though it does not help in discussing the re-presentation of the "I" to oneself in the act of self-consciousness, can help make this problem more precise. First, critical doubt and choice belong to the same level of our existence and presuppose the ability of going out of the present state (in order to re-present). This choice, whether or not intellectual, requires some distinction of what is chosen from what is present. Second, in the philosophical tradition this choice is usually determined as "free" in a negative sense, i.e., as the possibility of falling away from the given order of things. Third, the traditional context in which the problem of "free will" has been discussed points to the field of religious philosophy, where the problem of "re-presenting" takes on great interest and has been the subject of a vast amount of reflection and writing.

How will the problem of the re-presentation of the human "I" appear in the context of the Christian image of the human being as a created, finite and free person? This image does not contradict the critical philosophical tradition where it is precisely the "I am thinking" (or *cogito*) which is the focus of Kant's attention. He wrote: "An understanding in which through self-consciousness all the manifold would *eo ipso* be given, would be *intuitive*; our understanding can only *think*, and for intuition must look to the senses."<sup>6</sup> The usual interpretation of this statement notes that human understanding consists of two different levels: sensible intuition and rational thinking. But another interpretation in the Christian tradition would see the intuitive re-presenting of the manifold through self-consciousness as reflecting God's absolute knowledge which actually is His creative act. God's "thinking"—or in Kantian terms "intuition"—includes His "act of being": God's affirmative self-consciousness of His "I" is formulated in the proposition "I am, Who am." Finite or created beings do not possess the act of being in their very essence or nature, and in this sense originally or spontaneously: for them the act of being is distinct from their essence. Thus, when the human being reflects his essence in terms of his "*cogito*", he cannot simply and from himself affirm his existence.

Furthermore, as Kant's interpretation of "I" was limited by the context of a synthetic unity of given data, the later philosophical tradition perceived in the re-presentative apperception of "I" an earthly likeness of divine activity in His creative intuition of the objective world. In the context of this tradition the spontaneity of the "I" expressed in its re-presentative thinking is an affirmation of the creative activity of the subject and an expression of its freedom.

In this sense the spontaneity of my "I" has its source in the act "I am," which refers me to the Divine affirmation "I am Who am." In other words, a person's freedom is a Divine gift and my freedom, which precedes any re-presentation, any choice, by definition is the very same creative act as the Divine creative act. The difference between them is only in possessing the act of being: where God's creation presents objects, man's creation re-presents objects.

But in the same sense the latter is nonetheless also a creation from nothing. The human world consists in thoughts and deeds, meaning and values created from nothing, for the whole human world as a representation requires space where there is no presentation. In this sense human freedom transcends the corporeal world not only because it is analogous to the act of being, but by the very fact that it always has to overcome the givenness of this world.

This could be a way of understanding some philosophers who affirm that freedom precedes being. Discovering one's freedom in one's re-presentation or construction of the human world, the person discovers that Being is hidden in the elusiveness of the free "I" as the source of all one's intentional presentations.

This transcendent dimension of freedom does not allow any restriction or limitation of its creative or re-presentative aspects, but only its manifestations in the human world such as thinking or willing. Indeed man can freely construct his own world mediated by meanings, though each person not only re-presents the living world, but also is present in it as a finite corporeal being. Kant had this very fact in mind, when he proposed that freedom as source of reason at the same time limits pure reason to its manifestation in the corporeal world.

In other words, this limitation is possible only with regard to the objective authenticity of what is comprehended in the field of experience, but not as regards the subjective authenticity which becomes the object of belief. It is the latter which is the common principle for comprehending the manifestations of freedom in the world of finite beings. The absolute spontaneity of my "I" is restricted only by itself. But if it does not depend on the condition of the intelligible world, it does depend on the condition of the world of finite corporal beings. Man's belonging to the corporeal world, his bodyness, does not allow him to merge with the source of his freedom, to merge with the Divine free will (*Willkür*). When one forgets human limits, one protests against the Creator. This implies an intention to usurp its ontological place, to substitute "I am, Who am" with the dull "I am thinking" or "I am willing". This is actually a rejection of God's being and of the divine gift of freedom.

This is a paradox: being free we do not possess our freedom but only its manifestations in the world. The effort of Kant's practical reason to find its foundation in belief in freedom, in the soul's immortality and in the being of God demonstrates the meaningfulness of this subjective evidence. But reason based on belief and on God as the source of freedom can say nothing about how concrete freedom must be expressed in the world. It says only that this realization of freedom must take into account the existence of other free people, who also are realizing their purpose as free persons. This is not only a result of philosophical meditations, but a fact of our life as free persons. Hence, as freedom is an unsolved mystery for human reason, mystery directs us throughout our life. Its intelligible sector extends to the limits of intelligibility, but crossing this limit is not possible without non-intellectual belief. This requires belief as faith, which is not postulated by reason but given as grace "ut intelligam," i.e., for the understanding of self and the realization of the gift of freedom.

It would seem that at this point philosophical thought must stop and give way to theological investigations, but there is another philosophical aspect of this problem. Believing could be taken as a non-intellectual act of soul which opens the space of the noumenal world. But when in this noumenal world we begin to discuss the correspondence between God and person, we must speak rather about faith than belief. Further, we must note that this faith is not only a personal reality but is institutionalized to a degree which must not be ignored. This institutionalization, or more precisely institutionalized tradition, mediates between the free person and the ultimate ground of one's freedom. In the Christian tradition this institution, situated between the transcendent God and individual interiority, is called the Church. One should not be surprised then that in the Western tradition the realization of freedom depends upon the institutionalization of Christianity in this time and place.

There are many examples—theoretical and practical—of ignoring this institutional aspect of freedom. The Platonic concept of freedom mentioned above is a striking example. Plato was



concerned that philosophical freedom does not correspond to social freedom. Democracy presupposes some rationalization of action, free discussion, competition, or *agon*, but in this do the wisest prevail? Socrates was the wisest and, in terms of the definition of a philosopher, the freest man of Greece. Nevertheless, the *demos* saw in his intellectual freedom a danger to their political democratic order, and for this reason sentenced him to death. The freedom of the many had denied the freedom of the one!

Plato agreed with the proposition that the state could be free and intelligent, but at the same time affirms that in this state freedom must be "limited with measure".<sup>7</sup> What this "measure" means for Plato can be seen from his *Republic*, where the strict rationalistic regulation of social life has nothing in common with the Athenian ideals of democracy. The *Republic* described a situation where the intellectual freedom of one or a few denies the freedom of many. It is not surprising that in the XXth century some philosophers have seen the "Gulag Archipelago" as a realization of a Platonic social construct, image or *eidōs*. Certainly, Plato would never have intended a *gulag*: as he said, his *Republic* was only *u-topos*, i.e., a place that never exists. But obviously he overlooked the mediating tradition in which freedom must be realized. Plato believed that the Spartan lifestyle best agreed with free philosophical reason, but seems never to have asked whether this tradition could tolerate philosophers as free people.

Another more practical example can be found more proximately in the political process of liberalization. From the Romantic epoch in Western culture there is the image of the hero who is able to sacrifice himself for the sake of freedom. This desire for freedom, exactly described by Nietzsche, suggests that freedom is some sort of absolute willing, self-willing. For him every institutionalization of the realization of freedom implied treason against freedom. In this mode of thinking in freedom its function of "going out of the present state" is absolutized and for this reason it appears as a fully destructive and negative force, having nothing in common with the critical and constructive (re-presentative) thought described above. For Nietzsche freedom was only one aspect of his famous unrestricted desire to power (*Wille zur Macht*).

What will happen when the romantic hero who wills by power to institute freedom finds himself in prosaic, nondemocratic conditions which offer him very limited means to realize his goal? Actually, one can expect a fantastic metamorphosis of the individualistic revolutionary desire for power into something non-individual, common and static. To realize freedom by power requires an institutionalization of power whose main function is to achieve, hold and reproduce it. This institution provides the conditions for the individual to realize his "will to power" on each level of the social hierarchy. In return, however, it uses all human values such as intelligence, morality, etc., as mere means which must serve the main goal, namely, power.

The misfortune of all revolutionaries and the absurdness of all revolutions consists in this very fact that, though driven by the romantic idea of liberating people with help of power, they do not take into account the dehumanized function of usurped power. In states where power is the main concern (V. Lenin) and principle of social life all revolutionaries become but screws in the enormous mechanism of power.

One can be an adroit tactician of street battles or political intrigue that lead to an usurpation of power and rarely can one combine tactical with strategic talent in order to hold power for some period. But when the question of power is raised "seriously and forever," then there is no need of the resources of intellect and will which spring from the source of freedom. These factors only prevent the realization of power that is dictated not by the possibly ingenious will of the tyrant, but by the forms of human society and culture which sometimes have been deformed by past power. Present rulers can only adapt their knowledge, skills and instincts to these traditional

cultural forms of regenerating power. Their choice in this case is not to restore or to prevent the old order, or to attempt with some risk to change the surface patterns of power without changing its very structure. This world gives birth to reforms, modernization or *perestroikas*, but it becomes manifest that the revolutionaries of power become subject to power: every Julius Caesar has his own Octavius Augustus.

This leads to the conclusion that the appeal to unrestricted freedom's manifestation from "inside" leads to contradictions with freedom for "outside", that such "freedom" in fact denies itself. "Free" thinking or "free" willing, which do not recognize their ontological limits and storm the metaphysical heaven of the act of being always risk sharing the lot of Lucifer: the unlimited reason of finite being through unrestricted thoughts and willful deeds falling into the hell of nonfreedom.

### **What Spirit Do We Believe?**

As noted above, free reason being critical requires believing and at the same time an institutionalized tradition of belief in order truly to be free. But, on the other hand, does the understanding of a meaningful institutionalization of belief inevitably secure freedom from "outside," or social freedom? Let us attempt to consider this problem in the more concrete and illustrative context which will be called "open society and national ideology."

It seems unnecessary to examine so well-known and well-described a context. Enough analyses seriously conclude that today liberalism has no serious competition, that fascism and communism have receded into the past, and that such problems of the contemporary world as nationalism or religious fundamentalism will be solved almost automatically in a liberated, free society.<sup>8</sup> But what would such analyses conclude in the case where liberalism is not fully realized or where it does not exist at all? What is one to do, when for most members of post-totalitarian society the ideas of liberalism mean no more than a non-comprehensive concept of that communism which has just been buried? Then one must recognize that the problems of nationalism or fundamentalism are truly open, and, in particular, that the national idea requires not a lack of reflection, but careful examination.

First, there is need to describe what is meant by the terms "national ideology" and "open society." If an ideology is an ideal form of world re-presented in human minds which specifies the criteria of what is "suitable" or "unsuitable" according to the interests of some social groups or strata, then the term "national" will mean this special ideological "re-presentation" of world by the group called "nation." This "re-presentation" requires the fulfillment of two conditions: first, that the "nation" recognize its own identity as differentiated from other groups and interests, and second that it possess some measure by which the social events and processes could be marked as "just" or "unjust" depending on the correspondence of these events and processes to national goals. It is clear enough, that national interests have been declared to be of main importance, subordinating to itself all the interests of other social groups.

While this definition of "national ideology" has been constructed in terms of the "critical" Marx, the expression "open society" ought to be defined from the philosophical context of its critique by Karl Popper who created this term in contrast to "closed society." In Popper's definition, "the closed society is characterized by the belief in magical taboos, while the open society is one in which men have learned to be to some extent critical of taboos, and base decisions on the authority of their own intelligence (after discussion)".<sup>9</sup> Thus, open society requires the fulfillment of two conditions: first, that this society consist of independent or free-thinking

persons; second, that the social life of such a society be founded upon critical discussion. In other words the open society allows the individual to realize the main features of his "inner" freedom: thought that is based on itself (being-in-oneself) and critical doubt. In such a society, higher interests could consist only in the search for truth by the individual. In that case clearly all interests of groups must be subordinated to the interest of the individual.

An open society thus understood does not accept any ideology including one that is national by the very fact that in an open society every social interest cannot be collectively represented, but must be reduced by rational procedures to the private interest of the thinking being: only on this basis does it have a right to exist. On this basis an open society is not compatible with a national ideology, and all discussion is closed. But these definitions and principles exist only in theory: in practice there are only approximate constructions of this open society. Moreover, many existing "open societies" arose as national states, i.e., as societies under the domination of some kind of national self-concept. Therefore, instead of rejecting national ideology as something contradictory to the idea of an open society it would be better to discuss its sources and forms.

It would be naive to suppose that a national ideology arose by itself, from a nation's natural needs and self-consciousness of its place and fate in history. Certainly, concrete historical conditions—victory in war or humiliating oppression, the search of prosperity or the desire to partition off disruptive neighbors—influence the tempo and manner in which the national idea is formed. But in spite of these historical conditions and representative forms of national ideology, the later has its own metaphysical foundation which suggests that it is not only a unique experience of social life, but an expression of some global process.

The Russian philosopher Berdyaev noticed right away after the Bolshevik revolution that Russian messianism had been an essential element of Russian communism. Later, Popper attempted to show that both Marxism and a nationalism were based upon the doctrine of a "chosen people." This interpretation concludes that the role of the "chosen people" from the Old Testament is reflected both in the notion of an "advanced" revolutionary class whose rule is prophesied in the sacred laws of the historical progress, and in the notion of a chosen nation whose historical and political pretensions are strengthened by a mystical experience of "blood and soil." In both cases blind belief in the magic taboo of historical "laws" or in sacred tradition are sure signs of a closed society, which by Popper's definition would be called a tribal society.

At first sight it could be seen that nationalism is closer to tribal society than Marxist communism. One can imagine a nation as a large family, where relations must be deeply felt, with a cult of the deceased and respect for the elders through a guaranteed ritual unity and deep response to one's home and land. It is not surprising that the national idea acquires authority in a context in which all speak of man's alienation, of an earlier romantic "golden age" with morality, brotherhood and enthusiasm for the common life.

But these tendencies are well known in communistic ideology as well. Marx spoke of this as follows: "In fact, the proposition that man's species nature is estranged from him means that one man is estranged from the other, as each of them is from man's essential nature."<sup>10</sup> According to Marx, communism is intended as a way to overcome man's estrangement and alienation. In fact it restores to man his "species nature" and at the same time his tribal society.

The difference between a communistic ideology and a national one lies only in their respective means of returning to tribal society. Whereas a national ideology recalls one to his "native roots." to restore the good old traditions and pureness of race, communistic ideology insists on the "worker's liberation" from "the oppression of capital," on rejecting classes and private property, which according to Marxism is the economic and juridic basis, in Hegel's terminology, of the

individual's "unhappy" consciousness. When today one seriously supposes that nationalistic ideology is an effective weapon in the struggle against totalitarian structures produced by communistic ideology and practice, one does not take into account either the metaphysical similarities of these types of ideology, or elementary lessons of history. But still in 1939, concerning fascism as the extreme form of national ideology, P. Drucker wrote: "Not that communism and fascism are essentially the same. Fascism is the stage reached after communism has proved an illusion, and it has proved as much an illusion in Stalinist Russia as in pre-Hitler Germany."<sup>11</sup> Only one thing needs to be corrected here, namely, that communism and fascism specifically as political phenomena are not the same: essentially, however, they are the same in their intention to realize a closed tribal society and to go the way of serfdom.

Though communistic and nationalistic ideologies declare different ideas and values they concur in the principles of movement toward their goals. The interests of nation or class are proclaimed as total: they control the choice and measure the responsibility of individuals. Society creates a cult of heroes who carry the best traits of nation or class. The ideologists of the closed society produce a program of ideological education, preceding all fields of culture, beginning with national education or *cultprosvet* (cultural education for the proletariat in bolshevist Russia) and finishing with the restoration or recreation of old and new rituals. Finally, in society charismatic persons are promoted—fathers of nations and leaders of revolutionary masses who have led the people to the promised land, to the "light," to the tribal, closed society, where everybody *must be* happy. Individuals who have no wish to join this "joyful" movement are proclaimed traitors of national or class interests: they are subject to ostracism or simply destroyed.

There are many explanations of this amazing similarity between communism and nationalism, but in the context of the examination of the problem of freedom let us return to the Popperian illustration of this phenomenon in terms of a "chosen people." In this light this phenomenon could be described in terms of heresy. In the traditional context of European culture, one can speak about a chosen people and their society founded upon belief only with regard to the Christian Church. The Christian's "chosenness" has not only an earthly level but a mystic one. This means not only belonging to the Church in a formal sense, but asserting the equality of human beings as free persons and bearing metaphysical responsibility for their free choice, without denying any "physical" or earthly conditions. When this "chosenness" is interpreted in an earthly context, it means not simply returning to the Old Testament, but also destroying the New Testament. The same act destroys the Divine ground of human personality. Arguments that only the nation or class, with their institutionalization of belief in their taboos and rituals, can be the real measure of the free deeds of individuals, i.e., they can be the source of morality, point to usurpation of the ontological ground which in fact can never be achieved by finite beings.

As if in view of these latest difficulties, Kant suggested distinguishing the juridical community based on "outer" law ("legality") from the ethical one based on "inner" obligation ("morality"). In the first case the majority united in community has to be presented as legislator of its own constitutive law. But in the second case the common will of legislator cannot be thrust upon individuals as moral obligation without infringing upon their freedom. The source of moral legislation must be the same as the source of freedom, namely, God. Therefore, according to Kant, "an ethical commonwealth can be thought of only as people under divine commands, i.e., as a *people of God*, and indeed *under laws of virtue*"<sup>12</sup>: furthermore, the idea of a *people of God* can be realized in traditional institutionalization only in the form of Church.

One ought not to be surprised that nationalism, like communism, in search of a collectivistic justice, and in advancing national or class morals, gravitates, first to anti-Christianity in its pagan

or atheistic form, and second, to a eudaimonistic or utilitarian ethic whose moral maxim could be expressed in the sentence: "all that gives joy and is useful to nation or class are moral and truly good." There is but one step from this to the initiation of propaganda for racial or class discrimination and the justification of all deeds done in the name of group interests. In this situation personal responsibility does not exist, but only collectivist "responsibility" which controls the correctness of individual actions. In other words personal responsibility is substituted by collectivistic irresponsibility.

Unfortunately, for people from post-totalitarian societies this theory is known practically as a rule only from the side of communistic ideology. That national ideology is a kindred sister of communism is not grasped seriously. In societies which publicly declare a break with totalitarian practice one finds an enthusiastic proposal of the idea that only a nation firmly believing its historical fate and preserving the legacy of its past has a right to its own state as the highest form of its historical being. Only such state can have the form of an ethical commonwealth.

In reality many members of this society must with some disillusionment accept the idea that the state is not the highest form of a nation's being, but rather is derived from private interests expressed in the general form of law. This nomocratic notion of state leads to quite another vision than the one to which they are accustomed because it leads from a closed, tribal community to an open, juridical one. Then as noted by J. Ortega Y Gasset,—race, blood, geographical position, social class—all these take secondary place. It is not the community of the past which is traditional, immemorial—in a word, fatal and unchangeable—which confers a title to this political fellowship but the community of the future with a definite plan of action. Not what we were yesterday, but what we are going to be tomorrow, joins us together in the state."<sup>13</sup>

But, perhaps, this mode of political thinking has to await its own time. Probably the post-totalitarian state will pass through a stage of national (or similar) ideology as the successor to communistic ideology. The point here is not an historical parallel or determination, but the spiritual situation which these societies inherit from their communistic past. Thesis popular in the West regarding God's "death" and the nonexistence of a moral society could be applied more fundamentally to the post-communistic East. One has to know that the social, economic, political and spiritual structure of these societies is that of collectively organized societies. Communistic ideology can return with an absolutely different image, but in the same structure which it had created.

The danger of the present situation consists in the moral indifference of societies in their intellectual decay, and in their rejection of constructive critique. The communistic regime has destroyed many virtues and spread instincts of the flock, hate of people who are not part of the mass and a mystical belief in the authority of leaders. Post-totalitarian societies can generate a new ideology which will excuse their members' irresponsibility and unwillingness to carry the heavy load of freedom, and lead again to a closed collectivistic society. No one can say if there is a critical mass of free persons in post-totalitarian society, who "do not believe every spirit but test the spirits to see whether they are of God" (1 John 4:1). They would turn society in another direction—into the way toward freedom. But could they do so?

## **Conclusion**

Strictly speaking there are no conclusions, no results which one could use as a technology for the realization of freedom in the world. The "inner" aspect of freedom has shown that the road to the discovery of freedom through critical thinking manifests not an equality between them, but

rather the ontological dependence of the second on the first. If one wishes to defend freedom one has to limit reason by belief in the pure givenness of the sources of freedom. But from the point of view of the "outer" aspect of freedom it has been shown that not every belief institutionalized in society preserves freedom: indeed, society cannot be free without some institutionalization of the tradition of critical discussion.

This is not merely a dull dialectical game, but an attempt to discover the mode of institutionalization which paradigmatically joins the "inner" and "outer" aspects of freedom. In this context the intent of the turn to the Christian tradition was not theological but metaphysical, namely, to identify the principle of the correspondence of the freedom of the one with that of the many. In this sense the notion of the Christian Church has nothing in common with any concrete institutionalized form of Church, but is the principle which must be realized in the life-world. Moreover, only by this principle can concrete traditional institutionalization be open, whereas forgetting this principle closes all.

Therefore, what has been said above in section II does not mean that the national idea as such is depraved and leads automatically to totalitarianism. Its positive character appears not only in its well-known confrontation with the mechanistic communist ideology, but in the fact that the word "freedom," as with any word "from God," is pronounced in one's native language. All societies and their members must be able to choose their own national way to an open society. Nevertheless, when the principles of freedom are formulated in terms of a cultural tradition one must not forget that in this case the national ideals are only the means, not the goal, of the process of realizing a free society.

To conclude, I would emphasize once again that the sources of freedom must be found within the transcendent in order for its fruits to emerge in earthly life. Sometimes it is thought that in choosing its fruits one finds freedom. That is not correct: on the contrary one reaps these fruits only by choosing freedom. Perhaps, this is the greatest paradox of freedom, that of our transcendent yet immanent life.

## Notes

1. Thucydides, *History of the Peloponnesian War*, trans. R. Warner (London: Penguin, 1972), pp. 147-150.

2. Plato, *Phaedo*, 114e-115a, trans. H. Tredeanick, in *The Collected Dialogues of Plato*, ed. E. Hamilton and H. Cairns (New York: Pantheon, 1971), p. 95.

3. *Ibid.* 83a-c, p. 66.

4. See *Immanuel Kant's Critique of Pure Reason*, trans. N.K. Smith (New York: St. Martin's Press, 1969), p.153.

5. Thomas Aquinas, *The 'Summa Theologica' of St. Thomas Aquinas*, I, q. 32, a. 4, trans. Fathers of the English Dominican Province, D.J Sullivan (London: Encyclopedia Britannica, 1952), Vol. I, p. 434.

6. *Critique of Pure Reason*, p. 155.

7. Plato, *The Law*, 701e-702a, trans. Th. L. Pangle (Chicago: The Univ. of Chicago Press, 1988), p. 87.

8. See for example: Fr. Fukuyama, "The End of History," *The National Interest*, n. 16 (Summer, 1989).

9. K.R. Popper, *The Open Society and Its Enemies* (London: Routledge & Kegan Paul, 1986), I, p. 202.

10. K. Marx, *Economic and Philosophic Manuscripts of 1844*, trans. M. Milligan (New York: International Publishers, 1964), p. 114.
11. Fr. A. Hayek, *The Road to Serfdom* (Chicago: Univ. of Chicago Press, 1956), p. 29.
12. Immanuel Kant, *Religion Within the Limits of Reason Alone*, trans. Th. M. Greene and H.H. Hudson (New York: Harper, 1960), p. 91.
13. J. Ortega y Gasset, *The Revolt of the Masses* (New York: W.W. Norton, 1932), pp. 184-85.





## Chapter VIII

# Freedom and Choice in American Constitutional Theory

*Raymond B. Marcin*

The source of the power behind the United States Constitution—the source of its "lawness", if you will—was not, as some today still popularly believe, the erstwhile sovereign powers of the constituent states; it was, as the words of the instrument themselves indicate, the people. By its own terms, the Constitution of the United States of America was ordained and established by "We, the people of the United States . . . for ourselves and our posterity." If the people, not the states, are the source of the power behind the Constitution, they may also be the source of its meaning, at least indirectly, for the Constitution speaks to understandings of human nature. It is a document of and about people— about how they view themselves and how they have chosen to govern themselves. In a more academic sense, it is an instrument reflecting the political and social nature of a people.

Is there, in the Constitution, a basic underlying social or political theory of human nature? One wants immediately to respond with familiar words like "democracy" or "representative democracy," but those terms and others like them do not really plumb the depths of understandings of human nature. The more basic task is to locate those ideological terms in understandings of human nature—those understandings that informed the drafting of the Constitution, as well as those understandings that today inform its interpretation. It was, after all, human nature that ordained and established the Constitution for the governance and for the benefit of human nature and its posterity. How was "human nature" understood and interpreted at the time of the writing of the Constitution?

### **Early Constitutional Theory**

It will not be a surprise to learn that there was no one basic, agreed-upon theory of human nature that informed the drafting of the Constitution. Ideological pluralism was rampant in the colonies and a cornerstone of their heritage. There do, however, seem to have been two basic "categories" of understandings of human nature, and in a sense the Constitution itself may have created a third. The two basic categories were what might be referred to in today's vocabulary as classical liberalism and classical communitarianism. They may also, quite accurately, be grouped under the headings of pluralism and republicanism.

Pluralism is represented in the classical liberal or libertarian view that the value of individual autonomy reigns very nearly supreme, and society's prime motivating force is self-interest. At the social level, the self-interest of the pluralists translates into "factionalism," or like-minded self interests joined together. Today, of course, we still use the term "faction," but more often, at least in American political contexts, we use a term like "interest group". The terms are synonymous.

In the classical republican view, the value of community or commonwealth looms quite large. The classical republican stressed a value which he referred to as "civic virtue," the willingness of citizens to subordinate their interests to the common good or common weal. The classical republican view is well articulated today in the oft-heard quote from John F. Kennedy's presidential inauguration speech: "Ask not what your country can do for you; ask what you can do for your country".

Each of the two viewpoints leads to a very different idea of the role of government vis-a-vis the governed. For the pluralist, the government's role was as a distributor of wealth or opportunities, and the government was a system in which more or less well-organized factions or interests would vie for government favors and benefits. They adhered to a version of the utilitarian "greatest good" principle and believed that that government functions well which distributes the most benefits to the most factions and serves the most interests. For distribution-of-benefits purposes a centralized government structure was preferred over a decentralized structure. For the classical republican, on the other hand, the government's role was as a teacher or inculcator of "civic virtue" to the end that the decisions that they would make under self-rule would be more likely to be deliberative and in the interest of all. The republicans espoused a concept of participatory self-rule, government by more than the consent of the governed, indeed by the governed, directly at the local levels and indirectly but participatorily nonetheless at the more regional levels. Steeped in communitarian values, republicans did not see self-interest as a legitimate ingredient in self-rule. Self-rule, to the republicans was a process of selecting, through participatory dialogue, the values that ought to control public and private life. Among their philosophical progenitors was Rousseau, with his social contractarian ideas and his notions about the fundamental goodness of human nature.

The classical republicans at times took their sense of values to extremes. For example, they tended to view commerce as socially counterproductive, as fostering self-interest, ambition, and avarice, and hence as being destructive of civic virtue. Since one of the main reasons for replacing the old Articles of Confederation with the new Constitution was to foster interstate commerce and the development of a national economy, the republicans opposed the Constitution. Despite that fact, however, much of their thinking influenced constitutional theory (Thomas Jefferson was a classical republican).

The Constitution itself actually reflects the theoretical bases of both the classical liberals and the classical republicans in the structure given it by James Madison, its principal author or drafter. Madison accepted the premise of the pluralists or classical liberals that the engine of humankind is driven by self-interest, but not their conclusion, i.e., that that is the way things ought to be. In Madison's mind, self-interest and factionalism were inherent in human nature, but they were also evils— things to be avoided. Madison saw his task, as Constitution drafter, to somehow create a scheme of things in which the government would not be controlled by factions but would work "deliberatively," i.e., in the common interest. Madison's wisdom, in other words, was to recognize the realism inherent in the viewpoint of the pluralists, while accepting the idealism inherent in the viewpoint of the classical republicans. The two viewpoints were, of course, logically inconsistent, and recognition and acceptance of both could, it seemed, only lead to paradox. But the acceptance of paradox is often the necessary precursor of insight, and it was that in Madison's case.

Madison conceived the scheme that has come to be known as "checks and balances." The scheme, having its origin in the concept of separation of powers in a sovereignty, was not original with Madison, of course. Montesquieu, among others, preceded Madison with the idea.<sup>1</sup> Madison's insight, however, was to use the separation-of-powers apparatus as a means of putting the energy of self-interest and factionalism in the service of the goal of deliberation towards the public good and the common weal. Montesquieu's use of the apparatus was more limited, less positive in scope—as a check by power on power. Building on Montesquieu's ideas, Madison worked out a constitutional structure in which faction would be compelled to work against faction, and interest against interest, but also in which faction would be inclined to work with opposing faction and interest with opposing interest in a cooperative enterprise if anything were ever to get

done. The sovereignty was divided into three relatively independent branches with differing functions and goals (again, building on Montesquieu). The law-making branch of the sovereignty was further divided into two sub-branches, each with a different likely constituency.

The intuition about human nature upon which the Constitution seems to be founded is thus based in a paradox, the reality that humankind is something like a rational self-interested utility maximizer<sup>2</sup> combined with the "ideality" that self government by human beings ought not to be based on that fact, but rather on something else, something a bit nobler. There are, in other words, an "isness" and an "oughtness" that were sought to be reconciled in the American Constitution. The old pluralists, perhaps, had the better of the argument on the level of "isness"; human beings really are the way the pluralists pictured them. We act against that assumption only at our peril. The old republicans, on the other hand, voiced the nobler ideal on the level of "oughtness"; human beings really ought to be the way the republicans pictured them. And we act against that assumption, similarly, only at our peril.

The philosophers among us will recognize that distinction between "isness" and "oughtness" as a skirmish in the grand age-old war between positivism and natural law theory. Indeed it is a skirmish that broke out quite early in American jurisprudence, one that was won fairly early and surprisingly easily by the positivists, but that still breaks out occasionally today with the naturalists relegated somewhat to guerilla activity, and the positivists in tenuous control. Indeed the echoes of the original debate between the classical liberals and the classical republicans are still reverberating in the great American jurisprudential movements of today.

It may not be inaccurate to suggest that the constitutional descendants of the old pluralists of Madison's day are the "public choice" theorists and pluralists of today, i.e., the constitutional-theory wing of the larger law and economics movement, and that the constitutional descendants of the old republicans of Madison's day largely find themselves in several contemporary jurisprudential movements with communitarian or dialogic ideals, such as the critical legal studies and new legal process movements. There is even a contemporary movement which, with perhaps uncharacteristic clarity, refers to itself as "republican" or "civic republican."

## **Public Choice Theory**

The term "Public Choice" is, paradoxically, both obfuscatory and elucidative. It is taken from the discipline of economics, the science of "private choice." Just as self-interest and private choice dominate market theories in the discipline of economics, so too, according to the public choice theorists, do self-interest and private choice dominate the public sector. As market economics is private-choice theory, governmental jurisprudence is public-choice theory. Public choice theorists, in fact, use economics principles in describing and analyzing government structures and processes. Laws are not primarily reasoned deliberations about what is best for society. They are primarily transactions—deals struck by and among interest groups, with the legislators as the suppliers and the interest groups or factions as demanders.

In the economic or public choice model, all substantive values or ends are regarded as strictly private and subjective. [Legislative] intercourse is not public spirited but self-interested. Legislators do not deliberate toward goals, they bicker towards terms.<sup>3</sup>

The public choice theorists' conception of the lawmaking process builds both upon the economic analogy of the business transaction and upon the concept of self-interest. Legislators, in the mind-set of the public choice theorist, are motivated primarily by the wish to be reelected. They are the suppliers, the sellers, if you will, and the interest groups are the demanders, or buyers.

Negotiations take place, deals are made, and a statute is the result. It is very easy to treat the public choice model of the legislative process as a caricature. It seems to eschew any hint of idealism or concern for the common weal. Indeed, it is very easy for someone possessed of an idealistic temperament to dismiss the public choice model out of hand. The trouble with doing so, however, is that it is, to a larger extent than many of us would like to admit, descriptively valid. Moreover, to a larger extent than many of us would like to admit, it is also normatively valid, at least in a conditional sense. Those who wish to accomplish a change in the law—even those who might fairly describe themselves as altruistically motivated—must approach the lawmaking process in the manner described by the public choice theorists if they hope to be effective and successful.

Most public choice theorists would suggest that all that is as it should be. Government's role is a limited one. The government is simply a supplier, a distributor of satisfactions, and that is all that it should be. Public choice theorists tend to be governmental minimalists—we need just enough government to keep us from each other's throats, no more. Self-interests, not government plans and programs, are the engine that drives society. To some, that picture may seem bleak and barren. To the classical public choice theorist, however, it is simply realistic—and not necessarily bleak. One recalls the "invisible hand" concept suggested by Adam Smith, the idea that self-interests pressing for realization in the marketplace that is society somehow produce what is best for society in the long run.

[E]very individual necessarily labours to render the annual revenue of society as great as he can. He generally, indeed, neither intends to promote the publick interest, nor knows how much he is promoting it. . . . [H]e intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.<sup>4</sup>

Public choice theory countenances a large measure of freedom, of course. Built as it is on the free-market system of economics, it banks as it were on the freedom to pursue self-interests, theorizes that the public interest is nothing more than an accumulation of freely pursued private interests, and basks in the descriptive and normative validity of its model of society.

### **Civic Republican Theory**

The minimalist-government ideas of the public choice theorists, however, have come into question in the twentieth century with the rise of the administrative or welfare state with its pervasive and, to public choice theorists, intrusive bureaucracies. It is quite accurate to say that the public choice model possesses both descriptive and normative validity, but that is not the whole story. The ghost of Madison's checks-and-balances system is still with us. Perhaps learning a lesson or two from the early twentieth-century era of minimalist interference with employment relations and consumer interests, Congress, the state legislatures, and the courts have constructed and sustained what some have thought of as a "fourth" branch of government, the regulatory agencies. The activities of the regulatory agencies—with their contemporary involvements in commerce, employment, health, education, housing, welfare, public power, transportation, and other facets of American life—are difficult to defend using the public choice model, and for quite some time there was no adequate theoretical model by which to assess them.

In recent years there has occurred a renaissance in civic republican scholarship, as well as what might be fairly called a republicanist movement. If there is a prime characteristic that distinguishes the civic republican from the public choice theorist it may lie in the differing

conceptions of freedom espoused by each. The public choice theorist would stress individual self-determination in his or her definition of freedom, whereas the civic republican would stress a kind of collective self-determination. Freedom, to the public choice theorist, is very much an individual experience. To the civic republican, however, it is a shared or cooperative experience. Americans are quite accustomed to thinking of freedom in libertarian, individualistic terms, and perhaps somewhat unaccustomed to thinking of freedom as a collective experience. Criticalist constitutional scholar Mark Tushnet is correct when he asserts that the classical liberal (or pluralist) viewpoint won out very early on in American history,<sup>5</sup> and it has dominated both social and constitutional thought in America up until the quite recent revival of interest in republicanism.

Constitutional scholar Cass Sunstein has identified four central "commitments" shared by the republican theorists of today.<sup>6</sup> Sunstein refers to them as deliberation, political equality, universalism, and citizenship.

The civic republican concept of deliberation is somewhat complex, and in the minds of contemporary republican theorists, is not unconnected with critical thinking. For republican theorists, individual preferences (the self-interests which are the focal point of pluralist and public choice thought) are not simply "givens," i.e., they do not precede politics. To a large extent, they follow or at least are a function of politics. Politics, to some large extent, creates individual preferences. Hence, the legitimacy of a governmental recognition or sanctioning of individual preferences or choices is a function of the participatory deliberativeness of the recognition or the sanction. The antonym of deliberativeness, in republican thought, is imposition by power or influence alone. Laws are not political deals; they are the products of deliberative processes and public dialogues conducted not on the level of private preference, but of public need. According to Sunstein, republican deliberativeness is not a function of natural law theory:

[U]nderstandings that point to pre-political or natural rights are entirely foreign to republicanism. On the republican point of view, the existence of realms of private autonomy must be justified in public terms.<sup>7</sup>

This would identify republican thought as positivist, but not in an Austinean or Benthamite sense. Law is not "the gunman writ large" in republicanist positivism. Without a natural rights concept at its core, it seems to be something like the "process" writ large, or participatory statism. This feature may serve to differentiate contemporary republicanism from its classical ancestor. One easily recalls the classical republican's focus on "inalienable rights," i.e., rights which of necessity must be understood to precede politics.

Political equality, in contemporary republican thought, seems to presuppose economic equality. Not all contemporary republican theorists draw the connection, but the idea of participatory deliberation does seem to recommend it. One recalls Anatole France's poignant epigram on the connection between political and economic equality: "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."<sup>8</sup>

"Universalism" in the sense used by Sunstein is somewhat ideosyncratic:

The republican commitment to universalism amounts to a belief in the possibility of mediating different approaches to politics, or different conceptions of the public good through discussion and dialogue.<sup>9</sup>

The claim seems to be that republicanism is undogmatic, pragmatic in character. Sunstein writes of "a commitment to political empathy, embodied in a requirement that political actors attempt to assume the position of those who disagree."<sup>10</sup> One of course thinks of the Rawlsian veil-of-ignorance device.<sup>11</sup>

Sunstein's treatment of the republican commitment to citizenship values is interesting in that it may call into play an old device used by, of all people, Adam Smith:

[O]n the republican view, political participation is . . . a vehicle for the inculcation of such characteristics as empathy, virtue, and feelings of community (and this is so even if the motivation for participation is instrumental).<sup>12</sup>

Empathy, virtue, and feelings of community occur, as by an invisible hand, even when one is only resorting to the political system "instrumentally". One recalls that Adam Smith's invisible-hand device was not simply a wealth-maximization principle. Smith also used it in his earlier work, *The Theory of Moral Sentiments*.<sup>13</sup>

Republicanism, despite its communitarian cast, countenances a strong recognition of individual freedom. The individual, in the comparatively non-individualistic republican mindset, must have freedom of expression, freedom of conscience, and unfettered access to the ballot and other avenues to the political process. In those senses the republican concept of individual freedom is strong, but one must recall that, in republican thought it is not a preexisting freedom. It is part of the process of politics itself, and not simply something that it is the job of the process to secure. It can be lost.

Apart from civic republicanism's contemporary merits or demerits, the case for its constitutional historicity seems weaker than its advocates would pretend.<sup>14</sup> There is no doubt that republicanist ideals were alive and influential in the era in which the Constitution was framed. Jeffersonian thought concerning decentralized government and citizen participation is well-known. Those thoughts did not, however, find their way into the Constitution in a meaningful sense. Those republican ideals that did find their way into the Constitution, e.g., deliberativeness and civic virtue, were not the ideals of the civic republicans of today. The deliberativeness that found its way into the Constitution was the deliberativeness of the politically and economically elite, and the civic virtue that the constitutional structures were supposed to insure was more static and more individual than the conception supported by today's republican theorists. It is, in at least one sense, fair to say that the Constitution represented a rejection of republican thought, which, after all, was the thought of those who opposed and lobbied against the approval of the Constitution. The weakness of the case for republicanism's claim to constitutional historicity, however, is only an originalist's weakness. Much has occurred since 1789, both constitutionally and socially, to buttress republicanism's claim to be a valid, and indeed necessary, hermeneutic of the Constitution. Universal suffrage, the 12th amendment (providing for popular election of senators), the post-Civil War amendments, and the emergence of the "administrative state" in the Roosevelt era—all arguably republican developments—underlie republicanism's claim to legitimacy as a constitutional hermeneutic.

## **Analysis**

Classical republicanism presupposed a strong dependence on an ideologically communitarian mind-set. In an ideologically pluralistic nation, a communitarian mind-set would seem to be

unattainable on any large scale. Republican communities had to be small in order to be cohesive. Hence the ideal of small, localized, decentralized governmental power structures preferred by the Jeffersonians and other republicans led them to oppose the 1789 Constitution, with its national, centralized governmental structures.

Classical liberalism or pluralism, on the other hand, did not presuppose a dependence on an ideologically communitarian mind-set. For the pluralist, the question of social cohesiveness lay largely outside government and politics. Personal ideology "preceded" politics, as a pre-existing given, and the job of government in this context was simply to accommodate ideological differences by staying out of the way as much as possible. Since, for the pluralist, ideology was not a function of government, neither government nor politics depended upon ideological cohesion, and government had no special need to be small or decentralized. Since its functions were limited, a greater premium could be placed on efficiency and the advantages of centralization.

In the ideologically pluralistic society that the United States of America was in the late 18th century, classical liberalism won out. It was clear that the local, decentralized governmental structures demanded by republican theory would not work for the stronger union that was understood to be necessary in the wake of the failures of the Articles of Confederation. Moreover, the idea of applying republican principles of civic virtue on a centralized, national level was odious even to republicans themselves (one recalls Jefferson's authorship of the Virginia Statute of Religious Liberty).

The great discovery that has occurred within the contemporary revival of republican thought is a method of applying republican principles on a centralized, national level, and a way of understanding, or more accurately reinterpreting, the concept of civic virtue so as to operate on that exalted level without ideological imposition. The vehicle is the political dialogue. Civic republican scholar Frank Michelman refers to the dialogue as "the debate of the commonwealth" and regards it as "an inclusory, plurality-protecting conception of republican citizenship."<sup>15</sup> This political dialogue or debate of the commonwealth, besides representing a fusion of some classical liberal with some classical republican concepts, occupies the focal point in contemporary republican theory, and it may not be inaccurate to say that today's republican theorists regard the political dialogue as the generator which powers the process of evolving social and constitutional values. Michelman writes of "republican jurisgenesis":

Jurisgenerative political debate among a plurality of self-governing subjects involves the contested "re-collection" . . . of a fund of public normative references conceived as narratives, analogies, and other professions of commitment. Upon that fund those subjects draw both for identity and, by the same token, for moral and political freedom.<sup>16</sup>

In the grand debate or dialogue of the citizenry, ideology does not "precede" politics in the sense of an entitlement or interest that politics must respect and secure. It precedes politics only in the sense of a fund of "public normative references" on which the debate or dialogue can draw. Public ideology (the public version of the more personal "civic virtue" discussed by the classical republicans) is created in and is a function of the grand civic dialogue.

Classical republican thought focused heavily on civic virtue, and conceived of it as a very simple concept—something like love of one's country (presuming, of course, that one's country was a republic). It was, of course, recognized that there were preconditions for this civic virtue to come about. Montesquieu identified the preconditions as a spirit of equality and a spirit of frugality.<sup>17</sup> It was never quite clear, in classical republican thought, how the spirit of equality

would come about, or whether it was, perhaps, definitionally present in the human heart. Contemporary republican thought provides the vehicle for the realization of the spirit of equality in the concept of the political dialogue. However, it too seems to treat equality as a definitional given—a precondition for the dialogue—as well as something fostered and brought about by the dialogue. More than that, contemporary republican thought seems to treat equality as a substantive criterion of the legitimacy of the dialogue, and this may be the great contribution of contemporary republicanism.

If the great political dialogue contemplated by republican theory is a debate, one might expect that there would be winners and losers. Some of the diverse views brought to the debate might prove more persuasive than others. That was the presupposition of Madison's fusion of liberalism and republicanism—the assurance of wide input from all possible viewpoints, but then a deliberative decision adopting what was deemed to be the viewpoint or amalgam of viewpoints that best served the interests of the nation. Some viewpoints would lose. In contemporary republican theory, however, the only loser in the grand debate of the commonwealth seems to be any viewpoint or amalgam of viewpoints that implies a loser. Equality is a criterion of legitimacy.

An example might help illustrate the point (and, perhaps, might also illustrate one of the differences between classical and contemporary republicanism). A recent decision of the United States Supreme Court, *Bowers v. Hardwick*,<sup>18</sup> has upset and perhaps embarrassed some contemporary republican theorists. In *Bowers*, the Court upheld the constitutionality of Georgia's law prohibiting homosexual activity, even as applied to consenting adults in the privacy of a home. Classical republican theory might analyze the decision as unremarkable. The people of Georgia had defined "civic virtue" for themselves in such a way as to discount homosexual activity as inimical.<sup>19</sup> The spirit of equality (or inequality) does seem to be implicated in the decision, however, and contemporary republican theorists have criticized it on that score. Contemporary republicans seem to demand a form of equality in the results of the political dialogue, not simply equality of opportunity to influence the dialogue. Hence, to them, the result of the dialogue that presumably took place in Georgia was flawed.

There is a logic to the position of the contemporary republican theorists. If we rely on the political dialogue to generate social values and a communitarian ideology, and if the values and the ideologies derive their validity from the dialogic process, and not from some natural or pre-existing order, then any result which detracts from the principle of dialogue itself has to be regarded as flawed and therefore illegitimate in a republican sense. The one unassailable, inalienable constant is the political dialogue, and to be a proper republican political dialogue—in the contemporary republican sense at least—it has to be inclusive and accommodative of all diverse viewpoints, especially minority viewpoints:

[R]epublican constitutional thought is not indissolubly tied to any . . . static, parochial, or coercive communitarianism; . . . indeed, reconsideration of republicanism's deeper constitutional implications can remind us of how the renovation of political communities, by inclusion of those who have been excluded, enhances everyone's political freedom.<sup>20</sup>

Communitarianism, in contemporary republican thought, is defined by the dialogic process itself, and the dialogic process, consistent with republican ideals, is inclusive rather than exclusive, built as it is on the foundation of the thesis that political freedom presupposes political equality. Viewed under the microscope of contemporary republican theory, the *Bowers* result is flawed. The Georgia law, in effect, had expelled from the dialogic process those who would advocate for a recognition of the interest of consenting adults in engaging in private homosexual activity.



[B]oth the process and its law-like utterances must be such that everyone subject to those utterances can regard himself or herself as actually agreeing that those utterances, issuing from that process, warrant being promulgated as law.<sup>21</sup>

In other words, those who would advocate for a recognition of the interest of consenting adults in engaging in private homosexual activity have to agree that the Georgia prohibition warrants being promulgated as law, or else it is not valid law, in the republican sense.

One might worry that contemporary republicanism's dialogic process is so inclusive that it might result in over-tolerance of socially destructive, and not simply unpopular, viewpoints. That worry, which is not insignificant, might be handled definitionally. The only socially destructive viewpoint that needs to be worried about is the one that is destructive of the dialogic process itself, for example, bigotry or intolerance; and a viewpoint that is destructive of the dialogic process itself need not, indeed cannot, be accommodated if the process is to survive.

The end result? The end result of contemporary republicanism's constitutional theory seems to be the communitarian presumption of a humanistic social philosophy in a particularly permissive form. Indeed, the contemporary republican theorist's "community" is probably indistinguishable from the community that would be envisioned by the modern secular humanist. Whether coincidental byproduct or hidden agenda is left to the propensities of the reader.

## **Concluding Thoughts**

Individual freedoms in classical liberal, pluralist, and public choice theory, taking the form as they do of personal self-interested preferences, seem to war and clash and establish uneasy truces. To some, public choice theory may seem untidy, tolerant as it seems to be of factional manipulations, political power plays, and exertions of influence. To others, it may seem to be the quintessentially American solution to the self-government dilemma, as realistically faithful to American individualism as it is normatively valid in the partisanly political context of the American legislative system.

Individual freedom in communitarian or republican theory, taking the form as it does of a collective participatory interaction, seems tidier. Community seems to be a steadier base for public policy than individual preferences, but despite republicanism's disclaimers concerning the existence of "pre-political" values, it seems to presuppose some things in the American character and in the American economic system that may or may not be there. This is, perhaps, what has led some in the broadly communitarian movement to suggest a need and a function for "interpretive communities," more or less organized groups of professionals to guide society and the system into a set of values in which social justice can become a reality.<sup>22</sup>

One looks, at the moment in vain, for a contemporary meta-theory—one which, as Madison's did two centuries ago, comes to grips with the paradox of the dual conflicting theories of our day, accommodating the realism of the one without sacrificing the idealism of the other. If there is a direction in which to look for such a theory, it may be the direction of philosophical pragmatism.<sup>23</sup> Few have framed the inquiry in clearer terms than American Pragmatist William James:

Hands off: neither the whole of truth nor the whole of good is revealed to any observer, although each observer gains a partial superiority of insight from the particular position in which he stands. Even prisons and sick-rooms have their special revelations. It is enough to ask each of us that he

should be faithful to his own opportunities and make the most of his own blessings, without presuming to regulate the rest of the vast world.<sup>24</sup>

## Notes

1. See M. De Secondat, Baron De Montesquieu, *The Spirit of Laws*, Trans. T. Nugent (Cincinnati: Robert Clark & Co. 1873), Vol. 1, pp. 171-186.

2. See D. Mueller, *Public Choice* (1979), 1: "The basic behavioral postulate of public choice [a contemporary incarnation of pluralism; see *infra*], as for economics, is that man is an egoistic, rational, utility maximizer."

3. Michelman, "Political Markets and Community Self-Determination: Competing Judicial Models of Local Government Legitimacy," *Indiana Law Journal*, 53 (1977-78), 148.

4. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Liberty Classics edition (Indianapolis: Liberty Classics, 1976), vol. 1, p. 456. In *The Wealth of Nations*, Smith was, of course, applying this "invisible hand concept only in the context of wealth maximization. In his earlier work, *The Theory of Moral Sentiments*, however, he had already applied it to the distribution of the means of happiness in general. See Adam Smith, *The Theory of Moral Sentiments*, Liberty Classics edition (Indianapolis: Liberty Classics, 1976), p. 184.

5. Mark Tushnet, *Red, White, and Blue: A Critical Analysis of Constitutional Law* (Harvard University Press, 1988).

6. Cass R. Sunstein, "Beyond the Republican Revival," *Yale Law Journal*, 97 (1988) 1539, 1548. Sunstein draws parallels between classical liberal and republican thought. Other have seen the two traditions as contrasting with one another. See, e.g., Mark Tushnet, *Red, White, and Blue: A Critical Analysis of Constitutional Law* (Cambridge: Harvard University Press, 1988).

7. Sunstein, *id.* at 1551.

8. Anatole France, *Le Lys Rouge* (1894), ch. 7.

9. Sunstein, *supra* note 6, at 1554.

10. *Id.* at 1555.

11. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 136-142.

12. Sunstein, *supra* note 6, at 1556.

13. Adam Smith, *The Theory of Moral Sentiments*, Liberty Classics edition (Indianapolis: Oxford University Press 1976), p. 184. Historian Morton J. Horwitz has, indeed, made the argument that Adam Smith belongs "in the line of the great republican political sociologists from Montesquieu to Tocville." Morton J. Horwitz, "Republicanism and Liberalism in American Constitutional Thought," *William and Mary Law Review*, 29 (1987), 57, 65.

14. Contemporary republicanism's apologists, of course, take some pains to make a case for constitutional historicity. See, e.g., Cass R. Sunstein, *supra* note 6, at 1539; and Frank Michelman, "Law's Republic," *Yale Law Journal*, 97 (1988), 1493.

15. Michelman, *id.* at 1504.

16. *Id.* at 1513.

17. Montesquieu, *supra* note 1 at 46-48.

18. 478 U.S. 186 (1786).

19. Montesquieu had connected a republican love of country with "purity of morals." See Montesquieu, *supra* note 1, at 46.

20. Michelman, *supra* note 14, at 1495.

21. *Id.* at 1526.

22. See, e.g., Harold A. McDougall, "Social Movements, Law, and Implementation: A Clinical Dimension for the New Legal Process," *Cornell Law Review*, 75 (1989), 83.

23. Pragmatism seems to be drawing adherents from both camps. See, e.g., William N. Eskridge, Jr. & Philip P. Frickey, "Statutory Interpretation as Practical Reasoning," *Stanford Law Review*, 42 (1990) 321; and Richard A. Posner, *The Problems of Jurisprudence* (Cambridge: Harvard University Press, 1990). See generally Daniel A. Farber, "Legal Pragmatism and the Constitution," *Minnesota Law Review*, 72 (1988), 1331.

24. W. James, "On a Certain Blindness in Human Beings," in *On Some of Life's Ideals* (1912) 246; quoted in Rudolf Stammler, *The Theory of Justice* (New York: Augustus M. Kelley, 1969), p. 553.



## Chapter IX

# **Compulsory Education and the Problem of Freedom and Democratic Education: The Case of Home Schooling**

*Patricia Lines*<sup>1</sup>

When the law treats a reasonable, conscientious act as a crime it subverts its own power. It invites civil disobedience. It impairs the very habits which nourish and preserve the law. Judge Charles Wyzanski<sup>2</sup>

To maximize democracy and freedom, a people must enter a certain kind of social contract. They must agree on certain universals regulating the point at which the majority is to prevail, and the point at which a minority receives protection from the majority will. The need to maximize the freedom of others places restraints on the freedom of each individual to do as he pleases. To maximize freedom, one citizen must not gain freedom at the expense of others.<sup>3</sup> To continue this particular social contract from one generation to another, a people must, as a matter of course, ensure that each succeeding generation understands these universals. Predictably, then, free democratic governments take much care to foster education.

Thus, at the birth of the American nation, state legislatures began to debate and to promulgate laws with respect to education. They provided for public support of education, and imposed duties on parents to educate their children, and on children to be educated. This faith in education as the bedrock of a free democracy remains vigorous in the United States to this day. It is a compulsory requirement in every state, and has been for well over a century in most. Further, it has assumed ever greater compulsion. States have extended the age of compulsion upwards and downwards. Some states are considering claiming four-year old. Many are laying claim to children until eighteen. The states have extended the school year, and the school day. They have extended the compelled content of what the child must learn. The majority will with respect to education is clear. Here is a paradox: compulsion to produce a free citizen.

As this compulsion has increased, it has triggered several crises in American education. Most of these crises have been resolved by a renewed commitment to the idea of choice of private schools, usually private religious schools. Most recently, however, some Americans have responded in a most interesting way. People—a small number, to be sure, but a substantial and growing number nonetheless—have sought to escape the requirement of schooling altogether. These people are now resisting the idea that the state should have any authority in how they should educate their children. These protestors consist of a surprisingly diverse array of Americans: fundamentalist protestants who form "Christian schools," and an even more interesting group who decide to educate their children exclusively at home. The home schoolers include conservative protestants, but they also include seekers of a "New Age," charismatic Catholics, Jews, Black Muslims, followers of the late John Holt, secularists who want to live in secluded areas and raise goats. This flight from compulsory education first became evident in the United States, but it is also thriving in other English-speaking countries, and, to some extent other Western democracies.

Are these nonconformists pursuing a form of radical individualism that threatens the core of a free democratic society? Or are they asserting their rights under the social contract of a free democracy according to its original terms? This paper explores these questions in the context of the American constitutional tradition. The paper concludes that home schoolers are asserting their

historic individual rights so that they may form more meaningful bonds with family and community, and that by doing so, they are reaffirming the American social contract.

The problem of freedom and democratic education in America springs from the tensions built into the American social contract. This social contract has its most explicit expression in the constitutions of the nation, but it exists also in the traditions and spirit of a people. Both written and unwritten sources of the Constitution inform the analysis here. In both, those involved in shaping the early understanding of the American agreement saw a need to provide for authority through government and the desire to preserve freedom from the authority of government.

At the founding, those who attached more importance to the need to establish stronger authority in government generally were Federalists. Those who attached a more importance to the desire to preserve freedom were the Anti-federalists (bearing for all history a misleading name artfully attached to them by the Federalists as part of a campaign to secure ratification of the federal Constitution).<sup>4</sup> Both left the nation a rich legacy.

There are some important points of agreement, and some important differences between Federalists and Anti-federalists. The points of agreement help define the nature of the American social contract. The points of disagreement help identify the nature of the tension within that contract.

Both Federalists and Anti-federalists subscribed to Protestant notions about the necessity for each individual to pursue his or her own destiny for better or worse. Both thought man quite capable of better or worse. Both subscribed to the idea of original sin and saw a need to impose restraints on men and governments composed of men. Both desired "minimum sufficient government," government no stronger than necessary to provide for good order and the defense of liberty. Federalists tended to see a quasi-aristocratic tradition, law and the Constitution as providing the needed order. Anti-federalists were more likely to find the sources of legitimate restraint in religion, education for civic virtue, and to local, neighborly communities.

Both sought some form of democratic rule, yet both distrusted majority rule. This distrust of the majority induced Federalists to design a Constitution with numerous checks on the transitory or localized passions that often befuddle a majority. This distrust induced the Anti-federalists to press for protection in certain spheres against the tyranny of the majority. There was no debate over whether the Constitution should place hedges on majority rule; the debate was over how and where it should do so.

The framers of the federal Constitution feared an unrestrained majority rule would lead to anarchy, chaos, and tyranny. They sought to establish a republic, a term preferred by Madison to describe a government in which the views of the majority are refined and enlarged, "by passing them through the medium of a chosen body of citizens" who will can deliberate on the best course without coming under the influence of "temporary or partial considerations."<sup>5</sup> To assure this deliberation, the Constitution adopted modifications to majority rule at many points: ? through the election of senators by state legislators, not the people; through representation by state in the Senate, and not by population; through a Supreme Court appointed for life; through the maintenance of a federal system, in which a state government has a sovereignty that can at times challenge that of the federal, even when the federal government is clearly expressing the wishes of a national majority.

The Anti-federalists seemed to have more faith in local towns, in local congregations, in the lower classes. They were more suspicious of anything that resembled an inherited aristocracy. Thus, the Anti-federalists were more inclined to trust that government that was closest to home: state and local government. At this level, majoritarian rule was also more trustworthy. At the

founding, state constitutions, more than the federal, sought to establish majoritarian rule. In the days of the confederation, the more democratic states provided for limitations on terms, rotation in office, expansion of the franchise, and a weak executive. One state, Pennsylvania, chose a unicameral legislature, feeling that the upper house would be too removed from the people.

Greatly fearing the power of the new government, the Anti-federalists thought it absolutely essential to define an inner sphere where governmental authority could not intrude.

The Bill of Rights, much more than the Constitution itself, reflected a radical protestantism. But the Anti-federalists did not assume that this would lead to the unrestrained pursuit of rugged individualism, as is often supposed. Individual rights in the Constitution held out many possibilities. It could leave a human being free to live an isolated and antisocial life, or free to participate in the life of a cohesive community. The formal writings of a people often say nothing about the most essential part of their beliefs ? the things they take for granted. Family and community were the bedrock of American life. In the Anti-federalist view, strong individual rights meant a strong role for family and community.

Perhaps the most important difference between the Federalists and the Anti-federalists is the different priority each gave to the pursuit of good government versus the pursuit of individual rights. The Federalists were the proponents of good government. They had an important national agenda—regulation of commerce, banking, military protection of the states from foreign powers and the Indians, payment of debts, development of the infrastructure. The Anti-federalists cared intensely for individual liberty. They argued strenuously for a Bill of Rights, and secured from the Federalists a promise to add one to the Constitution as a condition to ratification.

To be sure, changes over time have altered the constitutional structure of American government. In one sense, it has become more democratic. Examples of this include the expansion of the franchise, the direct election of Senators, the practical modification of the electoral college, so that it has become a quaint and archaic method of tabulating the popular vote. In another sense, the Constitution has become less democratic, as government has become more distant, and as the balance of powers has shifted to the central government. Some observers also see a shift of power away from the legislative branch to either or both of the other branches. The founders gave the American people a Republic. They did not guarantee that they would keep it. In any case, these changes over the past two centuries make the Bill of Rights even more important as a safeguard against the tyranny of the majority.

The Anti-federalists assumed that these individual rights would secure the free association of individuals into communities bound by mutual caring and faith. Thus, the Bill of Rights is a statement of *individual* rights, but its purpose was to permit a *communal* life. A government that seeks to preserve inner freedom through individual rights avoids the problem of determining what kinds of groups legitimately deserve representation. An alternative is possible: consociation, the constitutional recognition of the role of groups. The Netherlands, for example, organized itself along the column, or a block of social organizations that encompass the entire range of group activity for different religions. The columnar arrangement worked for most, but not for those, such as the socialists, who did not wish to orient their public life around a religious hierarchy. The pressure from these citizens has led, over time, to modification of the more rigid aspects of this form of organization.<sup>6</sup>

Consociationism is no guarantee against repression of a minority. A tyrannical state can simply limit recognition to groups formed for politically trivial purposes. Rett Ludwиковsky provides an example from the Soviet Union. In 1989, the country's 300,000 stamp-collectors could

claim a seat in the Soviet Congress, as could book-lovers and cinema fans; certain independent political movements had no such claim, however.<sup>7</sup>

The Bill of Rights, with its focus on the rights of the individual, aims only to provide "outer freedom," or political freedom. This permits an individual to seek inner freedom—that freedom that rests on meaningful association with others. This is the same inner freedom Habib Malik describes, bringing with it "meaning, purpose, perfectibility, sanctification, and self-fulfillment . . ."8 On the other hand, outer freedom does not guarantee that the individual will seek and find this inner freedom. The state cannot force an individual to form bonds with family members and neighbors, and through them to find self-fulfillment. Nor can the state prevent it, because even the most powerful state has limits; it is neither omniscient nor omnipotent. Inner freedom, by definition, lies within the grasp of each individual. No government can change this fundamental condition of humankind. The most that the repressive state can do is drive a committed and contrary mature mind insane, and try to capture the minds of immature children.

At the outset of this discussion I spoke of the traditions and spirit of a people as a source of its constitutional bargain. This is a familiar idea to anyone who has examined the thinking of Cicero, or, for that matter, anyone familiar with the English system. In the United States, the written documents so often settle the matter that we forget that there is also an unwritten tradition supporting the social contract. The ninth and tenth amendment to the United States Constitution allude to this other tradition. In many ways, this other tradition is even more important, for it depends on the intuition of a people. If this intuition fails, then only the formal systems remain, and formal systems are expensive in terms of time, money, energy and other resources.

The unwritten rights—the unwritten Constitution that still lies beyond the written Constitution—is more difficult to ascertain. The Supreme Court has several times found some of its terms and identified them as fundamental rights. The Court has recognized as fundamental a right to vote in a state election,<sup>9</sup> the right to travel between states<sup>10</sup> and the right to privacy,<sup>11</sup> even though none of these find any precise expression in the federal Constitution. The Court has recognized a right of parents to raise their children as they see fit, although it has not clearly classified this right as "fundamental." Nonetheless, it seems a likely candidate for this special category of unwritten rights.

A right to associate with others in a relationship full of mutual commitments, to form a community, to form a family, is closely related to the right of privacy. The Court identified a right to privacy, because a constellation of other rights implied it. Although none of these other rights explicitly covered the right to privacy, the "penumbra" of all of them together did so. To date this right of privacy has primarily assured citizens a right not to procreate. It is absurd to refuse to extend it to those who choose to have children and to form family bonds that take priority over external, political affairs. The nation would come to a quick end if citizens chose always not to procreate, and failed to form strong families.

The advocates of the Federalist position—that is, the proponents of good government—pursued a public solution to the pressing necessity of educating new generations. The Anti-federalist contribution to the problem of education within a free democracy remained in reserve. So long as the proponents of good government did little to press upon the inner, private sphere, there was no need to assert those rights protecting it.

After the adoption of the Constitution the advocates of good government set about industriously organizing public schools, and compelling attendance. This took time. First, there had to be a sufficient supply of schools, but as soon as there was, states began to compel attendance. Massachusetts, always the leader in advancing public education, passed the first



compulsory attendance law in 1852. Other New England states rapidly followed. Southern states were the slowest to implement this notion, adopting such laws at the turn of the century. These laws typically required school attendance. They also became a vehicle for enforcing minimum standards for private schools. These laws forbid parents and children to seek education at any place other than a state-approved alternative. Many of these laws had (and still have) criminal sanctions.<sup>12</sup>

The first public schools were proselytizing and Protestant. They came into their own just as the nation was embracing a wave of Roman Catholic immigrants. Laws and institutions designed to enlighten poor Protestant immigrants were now aimed at poor Catholic immigrants. The newcomers understood the religious biases in the system. Thus, the New York Workingmen's Party, dominated by Catholic workers, opposed the establishment of public schools. Catholic churchmen tried a different strategy; they developed their own schools. Catholic leaders sought both to reform the public system, for the sake of Catholic children in that system, and to secure state aid for the new Catholic schools. In the long run, public educators chose to support the reform of the public system, and to resist the pressures for public aid to private schools.<sup>13</sup>

In the short run, the majoritarian response to the new Catholic schools was often one of suspicion and hostility. While the emergence of Catholic schools might have been seen as clear benefit to overcrowded public schools, hard put to accommodate the large numbers of new immigrants, Americans also saw them as a threat to the ability of the nation to transmit basic tenets of the American social contract.

The issue came to a head in the 1920s. Some states sought to impose restrictions on private schools, aimed at Catholic schools or other undesirable "foreign" influences.<sup>14</sup> The most infamous of these efforts occurred in 1922 in Oregon.

The state, using a popular form of majoritarian democratic law making, the state-wide initiative, passed a new type of compulsory education law. It compelled attendance at public schools, with no exceptions. The Ku Klux Klan was a major force behind this initiative. The Klan argued an urgent need to Americanize all children through the only vehicle capable of doing a proper job—the American public schools. The Klan exploited anti-Catholic and anti-German sentiments, fanned by popular reaction to the Great War. In another case litigated in the same decade, the state of Hawaii required certain private schools, among other things, to establish their commitment to the "ideals of democracy."

In a decision often hailed as a "bill of rights" for private schools, the Supreme Court struck down the Oregon law in *Pierce v. Society of Sisters*,<sup>15</sup> in 1925. The Court struck down the Hawaii law in 1927, observing that the Constitution did not permit a state to do indirectly through regulation that which *Pierce* forbade it to do directly.<sup>16</sup> The court reasoned, in effect, that death by regulation was as cold as death by firing squad. There followed a period of relatively peaceful coexistence between public and private educators.

Before and after these events, some public educators had been laboring for a different response to the question of how to accommodate inner freedom—freedom of conscience—within a framework of public schools. These public educators wished to make the public schools more receptive to all creeds. They hoped to replace the traditional Protestant values of public schools with nondenominationalism. As early as 1817, Thomas Jefferson submitted draft legislation to the General Assembly of Virginia providing that "no religious reading, instruction or exercise, shall be prescribed or practiced inconsistent with the tenets of any religious sect or denomination."<sup>17</sup> This would include Bible reading, without any sectarian gloss. Jefferson favored nondenominational religious observances for public schools, believing that there was a body of

religious principles "common to all sects" that could be taught.<sup>18</sup> Horace Mann soon picked up this same ideal, urging daily Bible readings in the belief that this would satisfy all sects.<sup>19</sup> Mann was, incidentally, a Unitarian, as were seven of the 10 members of his board, and his public position coincided with his private beliefs. As Lawrence Cremin has wryly observed,

Mann . . . came increasingly to believe that certain common principles could be culled from the several sectarian creeds and made the core of a body of religious doctrine on which all could agree. For Mann, these were the great principles of "natural religion"—those truths which had been given in the Bible and demonstrated in the course of history. The fact that this new corpus of knowledge closely resembled his own optimistic, humanistic Unitarianism did not seem to trouble him. Nor did questions about "which version of the Bible" from Catholic and Jewish citizens. If the Word of God—personified in the King James Bible—were taught without comment, how could that conceivably be sectarian? If the Fatherhood of God were taught as the foundation of the brotherhood of men, how could that be sectarian?<sup>20</sup>

Later, in 1899, John Dewey wrote the very influential *The School and Society*, elaborating on a concept of public education in which religion had little or no place.

As a constitutional matter, this issue came to a head in 1962, when the Supreme Court reviewed the state-mandated prayer used in an opening ceremony in all public schools in New York. This was nondenominational, although theistic: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings, upon us, our parents, our teachers and our Country." In *Engle v. Vitale*, the U.S. Supreme Court ruled that officially mandated prayer in the public schools was unconstitutional.<sup>21</sup> In the following year, the Court ruled that the Bible could not be read in school as a religious exercise, although it could be studied for its literary, historic and social value.<sup>22</sup>

The secularization of the public school program was officially complete. It took many years—perhaps more than a decade in small towns and rural areas<sup>23</sup>—before the nation's public schools heeded the Court's mandate, but today the public program is secular, with only a few lapses. The public schools were to be receptive to all, including Catholics.

In response to this development a new private school movement sprang up. Christian schools—the term these schools gave themselves—formed in every state. These schools were largely affiliated with conservative, "low-church" Protestant denominations. Most were fundamentalist, charismatic or evangelical. Typically these schools met in church basements, under the supervision of the church's pastor. Parents who sent their children to these schools felt that the public schools had grown too liberal and had failed to transmit moral values.

Despite their historical status as part of a majority, these Protestants see themselves now as a religious minority. Many of these new schools believe, as a matter of faith, that the state should have no authority over their operations. Some have refused even to provide information on themselves. This provoked an inevitable wave of litigation over the legal status of these schools. The courts responded in diverse ways. The Christian schools won some of these court battles, and lost others. In the end, however, they prevailed in another forum: they succeeded in obtaining favorable action in state legislatures or before state boards.

Just as the controversy over state regulation of Christian schools subsided, a new wave of conscientious objectors began challenging the compulsory schooling requirement. Increasing numbers of families began insisting on their right not to send a child to school at all. Some grounded their belief in religion; others felt it was a matter of conscience, or simply an intimate

family decision. A new wave of litigation over the status of home schools is now working its way through the court. As is the case with the litigation over Christian schools, the home schoolers have won some cases, and lost others. Courts rarely decide these cases on the core issue of whether parents have a constitutional right to educate their children at home.<sup>24</sup> Instead, the cases turn on whether the statute or regulation was properly drafted, or whether the program comes within the terms of the statute or regulation.<sup>25</sup> Any analysis of the fundamental right of home schoolers to escape the requirement of compulsory schooling laws must rest by analogy.

In certain types of cases concern for religious freedom has induced the United States Supreme Court to exempt individuals from the requirements of an otherwise valid law. In these cases of what might be called incidental or unintended burdens on religious exercise, the Court has not voided the law. The Court has required excusal if the law poses a serious barrier to free religious exercise *and* excusal would not seriously interfere with the legitimate goals of the law.<sup>26</sup> For example, the Supreme Court has required excusal from laws relating to jury duty<sup>27</sup> and certain work requirements in unemployment compensation programs.<sup>28</sup> The Court applied the same principles and determined not to require excusal in laws banning polygamy<sup>29</sup> and requiring vaccination from disease.<sup>30</sup>

One of these cases resulting in a judicially-mandated excusal involved a compulsory education law. In 1972 in *Wisconsin v. Yoder*,<sup>31</sup> the Court required Wisconsin to exempt from all further compulsory schooling requirements the older children of the Old Order Amish. This affected only children who had completed the eighth grade. Although the Amish families objected to the lack of Amish values in the public school program, they tolerated compulsory school attendance in lower grades, believing that the basic skills taught in these grades were useful. They saw no need for it, however, after grade eight. The Court held that *as applied* to these people, Wisconsin's compulsory attendance law was unconstitutional. This kind of holding does not affect state compulsory attendance laws generally, not even Wisconsin's.

The Court severely limited the scope of its holding in *Yoder*. The Court narrowly held that the state cannot compel the attendance of children in the face of strong religious objections where an evidentiary record revealed that the state's interest in the education of the child is adequately served in other ways. The Court made much of the history and tradition of the Amish, noting such characteristics as their self-sufficiency, their refusal to use state welfare programs, and their low crime rates. The Court was also careful to limit the case to religious objections to formal schooling, discouraging its extension to families with a philosophical objection to the requirement. Following *Yoder* many litigants tried to come within its terms. Few succeeded.<sup>32</sup>

If the narrowness of the Court's language in *Yoder* were not daunting enough, hope of extending it dims considerably in the light of a case decided last year, *Employment Division, Department of Human Resources of Oregon v. Smith*.<sup>33</sup> The case involved the state's denial of unemployment benefits. A private drug rehabilitation organization had fired two employees, Alfred Smith and Galen Black, because they had ingested peyote during a religious ceremony. The state agency denied them unemployment benefits, taking the position that the firing was for "misconduct." (State law did not allow unemployment benefits for those who lost their jobs due to misconduct.)

The case first went to the Oregon courts. The state high court saw serious issues of religious freedom in the case. It believed this required application of a set of rules that the Supreme Court had previously applied in cases such as *Yoder*. These rules require a balancing of the state's interest against the individual's interest in the free exercise of religion.<sup>34</sup> These rules required more than just an ordinary, reasonable state interest; states had to show a compelling need for the law. The

Oregon court decided that enforcement of the state's criminal laws did not motivate the unemployment benefit law; an interest in preserving the financial integrity of its compensation fund provided the animus. The court decided religious freedom weighed more heavily in the balance than this fiscal interest.

The state agency appealed to the United States Supreme Court. Chief Justice Scalia issued the opinion of a divided court.<sup>35</sup> The majority conceded that the First Amendment forbids "all 'governmental regulation of religious *beliefs* as such.'"<sup>36</sup> Thus, the Court held that it would violate the first amendment "to ban . . . acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display." As examples, the Court gratuitously noted that it would violate the first amendment to prohibit casting of religious statues or bowing before a golden calf.

The Court recognized the legitimacy of the balancing test—the balancing of individual liberty against state interest—and its use in prior cases (including *Yoder*). However, the Court found that this test did not apply in the *Smith* case. The test should be used, according to a majority, only when other constitutional protections combine with the interest in free exercise of religion to expand the sphere of protection. Laws against drug use are "concededly constitutional as applied to those who use the drug for other reasons." The court clearly feared claims for religious exemption from many ordinary and routine laws:

It is no more necessary to regard the collection of a general tax, for example, as "prohibiting the free exercise [of religion]" by those citizens who believe support of organized government to be sinful, than it is to regard the same tax as "abridging the freedom . . . of the press" of those publishing companies that must pay the tax as a condition of staying in business. It is a permissible reading of the text, in the one case as in the other, to say that if prohibiting the exercise of religion (or burdening the activity of printing) is not the object of the tax but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended.<sup>37</sup>

Following *Smith* lower courts have revised their holdings in a number of different cases.<sup>38</sup>

There are at least two ways to interpret the *Smith* holding. On the one hand, one might see it as creating a hierarchy of rights within the bill of rights, with the free exercise of religion getting low status. There is no basis in the language or history of the bill of rights for such a view. This interpretation is a favorite among law professors irate with the holding. On the other hand, one might view the Court as identifying an inner, private sphere, coming within the spirit of a constellation of rights. But the Court risks exceeding its power, especially the restraints it places on its power, if it goes too far in identifying unwritten rights in the Constitution. So it requires some combination of those written, external rights to come into play before it will recognize the right to inner freedom. Thus, the Bill of Rights does not protect the sacramental ingestion of peyote, because a prohibition against it does not dissolve the religious bonds of Native Americans to one another. The Bill of Rights, in contrast, does protect the choice some make to educate one's own child, for to interfere is to break apart the inner sphere of freedom encircling that family.

While it is tempting to argue that the Court is wrong in this matter, the practical possibilities of persuading the Court to extend *Yoder* or reverse *Smith* are minuscule. Were the Supreme Court the only refuge for a minority, the outlook would be dismal. However, the American constitutional scheme creates decentralized loci of power. The Court is not the only refuge from oppression by a majority.

Home schoolers present a very interesting test of this proposition. They are a tiny but highly visible minority—less than one percent of the population. They are an unpopular minority: a question on the Gallup poll reveals overwhelmingly disapproval (82%) for most home schools—those where the teaching parent has no teacher's certificate.<sup>39</sup> These families challenge a core assumption that a free democracy must itself see to the education of children, to perpetuate that system of government. In fact, however, home schoolers are patriotic citizens, with a well-developed sense of duty to their country and their fellow Americans.

These are people who are exercising their individual rights in order to form closer ties within their immediate community. Home schoolers are tremendously loyal as family members. They are suspicious of television and other external influences. They eat as a family, they socialize as a family, they attend church as a family, they become members of an extended religious community. In most cases, they also become members of an extended home schooling community. Many are reinventing the idea of school on their own terms. That is, many do bring their children together for a part of the time, to share in certain of the educational activities planned for their children. Although they have turned their backs on a widespread and hallowed practice of sending children to a school, they have not turned their backs on the broader social contract.

Fortunately, in the American constitutional system, the Court is not the only arbiter of the social contract. In a decentralized system, home schoolers can appeal to state high courts, state legislatures, and the tradition of the people. If any one of these recognizes protected minority rights in their appeal, they may find protection.

In fact, home schoolers have made such appeals in all of these forums. When the issue has gone to state courts, they have sometimes been successful, and at other times, have not. In contrast, appeals to state legislatures have almost always led to a change in state law that would further accommodate home schoolers.

In 1984, when state legislatures were first becoming aware of a home school movement, compulsory education laws reflected the sensibilities of an earlier era. At that time, 35 states expressly permitted home instruction or required simply that children be educated. (A Maryland court in 1984 held that such general statutory language includes home instruction.) In the face of an unpopular home schooling movement, none of these states have decided to bar home schooling. Meanwhile, in the 15 states with no provisions, three states through a court decision, an attorney general decision, or a state school board decision, all decided that a "home school" was a "school" within the terms of their school attendance laws.<sup>40</sup> All of the remaining states undertook modifications in their legislation to permit home schooling.

Today, the battle for home schoolers is against restrictive regulation. Only two states, Iowa and Michigan, are holding out. Both require the teacher at home to have a teacher's certificate. In both states, home schoolers simply go "underground," or "enroll" with a sympathetic private school willing to shelter the program. (Sometimes even a public school principal is willing to provide this shelter.) Michigan remains one of the more active home schooling states. Not a bad result for a loosely organized, unpopular minority.

Despite the unpopularity and general public condemnation of their choice, the American constitution, in the broadest sense of the word, extended protection to them. This came partly through state courts, partly through the decisions of public administrators and bureaucrats, partly through help from people in private schools, and chiefly through state legislatures. Moreover, these official and unofficial sources of help have also begun to influence majoritarian opinion on the issue. Gradually, the public image of home schoolers seems to be changing.<sup>41</sup> Eventually, the

public will say, of this reasonable conscientious choice, "It's not anything I would do, but you've got a right to do it."

## Notes

1. Visiting Associate Professor, Euphemia Haynes Chair in Education, Catholic University of America.

2. *United States v. Sisson*, 297 F. Supp. 902, 911 (D. Mass 1969), *appeal dismissed*, 399 U.S. 267 (1970) (selective service law cannot constitutionally be applied to require Sisson to enter combat against his conscience).

3. This point is elaborated in another paper in this *Faith and Choice in a Democracy* collection: see Habib Malik, "Freedom and Pluralism: An Essay on the Human Condition." See also Robert A. Dahl, *Dilemmas of Pluralist Democracy: Autonomy vs. Control* (New Haven: Yale University Press, 1982), p. 20.

4. The term "anti-federalist" was a "nice piece of misdirection by the Federalists." Jackson Turner Main, *The Anti-federalists: Critics of the Constitution, 1781-1788* (Chapel Hill: the University of North Carolina Press, 1961), p. iii. Anti-federalists were not opposed to a federal government and often tried to make this clear in their choice of pseudonyms. For example, Richard Henry Lee chose to write under the name of "A Federal Farmer," Main, p. ix.

5. *Federalist*, no. 10.

6. A. Stafford Clayton, *Religion and Schooling: A Comparative Study* (Waltham, Ma.: Blaisdell Pub. Co., 1960), pp. 100-176.

7. Rett Ludwikowsky, "A New Constitutional Model for East-Central Europe," this *Faith and Choice in a Democracy* collection.

8. Malik, p. 1.

9. Xxxx.

10. See, e.g., *Shapiro v. Thompson*, 394 U.S. 618 (1959) (because this right to travel was fundamental, the Court strictly scrutinized a welfare law requiring recipients to live in state for one year, and struck down the requirement).

11. *Griswold v. Connecticut*, 381 U.S. 479 (1965) (possession of contraceptives protected by right to privacy, derived from penumbra extending from first amendment and other explicit constitutional guarantees).

12. For discussion, see Patricia Lines, "Treatment of Religion in Public Schools and the Impact on Private Education," in Thomas James and Henry M. Levin, eds., *Comparing Public and Private Schools: Institutions and Organizations* (New York: Falmer Press, 1988), I, 67-94.

13. Greater detail is also found in Lines, *supra*.

14. Some were aimed at "foreign" elements, such as German-language and Japanese-language schools. *Meyer v. Nebraska*, 262 U.S. 390 (1923) (striking down state law forbidding instruction in foreign language); *Farrington v. Tokushige*, 273 U.S. 284 (1927) (striking down pervasive system of regulation that threatened existence of Japanese-language schools).

15. 268 U.S. 510 (1925).

16. The requirement of democratic commitment was only one of many. Numerous other requirements relating to fees, hours of operation, textbooks, and so forth created a regulatory scheme that the Court believed would destroy the schools. *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927).

17. Padover, ed., *The Complete Jefferson* 1064-69 (1943), xxx.

18. See Joseph F. Costanzo, Thomas Jefferson, Religious Education and Public Law, 8 J. of Public L. 81 (1961); R. Freedman Butts, "Say Nothing of My Religion," *School and Society*, vol. 81 (1955), p. 182.

19. As quoted in Lawrence Cremin, *The American Common School, An Historic Conception* (New York: Teachers College Press, 1951), at pp. 47, 198.

20. Cremin, *supra* at p. 13.

21. 370 U.S. 421, 423 (1962).

22. School District of Abington Township v. Schempp, 374 U.S. 203 (1963).

23. See Kenneth M. Dolbeare and Phillip E. Hammond, *The School Prayer Decisions* (Chicago: University of Chicago Press, 1971).

24. One exception seems to be an unpublished case in a lower Massachusetts jurisdiction. Perchemlides v. Frizzle, Mass. Superior Ct. Civ. No. 16641, Nov. 13, 1978.

25. [Citations to examples will be forthcoming], xxx.

26. See, e.g., Sherbert v. Verner, 374 U.S. 398 (1963); *In re Jenison*, 375 U.S. 14 (1963); Wisconsin v. Yoder, 406 U.S. 205 (1972).

27. *In re Jenison*, 375 U.S. 14 (1963). The Court vacated a conviction for contempt of court for refusing to serve on a jury because of religious scruples.

28. Sherbert v. Verner, 374 U.S. 398 (1963). The Court required South Carolina to pay unemployment benefits to claimants, although they had refused available work on grounds that it required them to violate the sabbath.

29. Reynolds v. United States, 98 U.S. 145 (1878) (upholding laws against polygamy despite interference with the free exercise of religion by Mormons). *Accord* Cleveland v. United States, 329 U.S. 14 (1946).

30. Jacobson v. Massachusetts, 197 U.S. 11 (1905); Wright v. DeWitt School Dist., 238 Ark. 906, 385 S.W.2d 644 (1965) (upholding vaccination requirements).

31. 49 Wis. 2d 430, 182 N.W.2d 539 (1972), *aff'd* 406 U.S. 205 (1972).

32. Those that were successful were either very similar to the Amish in their situation, e.g., *Nagle v. Olin*, 64 Ohio. St. 2d 341, 415 N.E.2d 279 (1980) (non-Amish parent sending child to unapproved Amish school) or seeking exemption from some lesser requirement, such as an administrative requirement that a teacher file certain papers, e.g., *State v. Nobel*, Nos. S 791-0114-A, S 791-0115-A (Mich. Dist. Ct., Allegan County, Jan. 9, 1980) (mother teaching child at home refused for religious reasons to obtain teacher's certificate although she actually possessed the attributes that would permit certification).

Perhaps the most celebrated recent case involving an effort to come within the terms of *Yoder* was made in *State v. Faith Baptist Church*, 107 Neb. 802, 301 N.W.2d 571 (1981), *appeal dismissed for want of a substantial federal question*, 102 S. Ct. 75 (1981). Faith Baptist Church would not request approval of its program, even though state board personally and informally said they would approve it. The school employed no certified teachers and refused to furnish local and state school officials with names and addresses of enrolled students, as required by state law. Citing *Yoder*, they argued that the state has no authority whatsoever over a religious school's operation. The defendants offered evidence, including passages from the Bible, supporting their view that religion must be integrated into teaching and that the public schools were inadequate to this task. Finally, the defendants asserted that public schools followed secular humanism as their basic philosophy. The Nebraska high court rejected these arguments and upheld the state regulations. The U.S. Supreme Court dismissed the school's appeal for want of a substantial federal question. To enforce court orders to close the school, a lower Nebraska court for a time

had the church door padlocked during school hours. The children transferred to an unapproved fundamentalist religious school in Iowa.

Members of Faith Baptist Church subsequently brought suit in federal court seeking to halt state enforcement efforts and to permit continuation of the school. The court dismissed the suit, relying primarily on the Supreme Court's decision to dismiss the appeal. *Prettyman v. Nebraska*, Civ. No. 82\_0\_154, D. Neb., Apr. 16, 1982.

33. 110 S. Ct. 1595 (1990).

34. The Oregon courts relied on *Sherbert v. Verner*, 374 U.S. 398 (1963), which developed this kind of balancing test.

35. Rehnquist, White, Stevens, Kennedy joined in the opinion. O'Connor concurred in the judgement, and Parts I and II. Brennan, Marshall, Blackmun joined in her opinion without concurring in the judgement. Blackmun prepared a dissenting opinion, and was joined by Brennan and Marshall.

36. Citing *Sherbert v. Verner*, 374 U.S. at 402, and other cases.

37. The Court citations are as follows: *Compare Citizens publishing Co. v. United States*, 394 U.S. 131, 139 (1969) (antitrust laws apply to the press) with *Grosjean v. American Press Co.*, 297 U.S. 233, 250- 51 (9136) (striking down license tax applied to newspapers with weekly circulation above a certain level). See also *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 581 (1983).

38. For example: Hmong refugees with a religious belief that autopsies prevent the spirit from being set free failed to prevent an autopsy on a man who died suddenly at age 23. Raymond J. Pettine, J. first held for family; reversed in fall (Oct. 1990), after *Smith*. In a similar case a federal court in Michigan ruled against a Jewish woman with religious objections to an autopsy on her son.

One week after *Smith* the Minnesota Supreme Court ruled that it violated the free exercise clause to require an Amish man to display a fluorescent orange triangle on his buggy. He considered it an improper worldly symbol, and he was willing to outline the buggy in reflective tape and to carry a lantern. On appeal, the United States Supreme Court instructed the Minnesota court to reconsider. They did, and they continued to rule for the Amish, but they based their decision strictly on the state constitution.

In March, 1991, the United States Supreme Court returned a decision to the Washington Supreme Court that had given a church a judge-made exemption from Seattle's historic preservation law. The Supreme Court ordered the Washington court to review its decision in light of *Smith*.

A federal appeals court in Chicago ordered a lower court to review a Muslim inmate's complaint about meals of pork, instructing that *Smith* "cut back, possibly to minute dimensions, the doctrine that requires government to accommodate, at some cost, minority religious preferences."

39. Few home schooling parents have teacher's certificates. In response to the question, "Do you think that the home-schools should or should not be required to meet the same teacher certification standards as the public schools," in both 1985 and 1988, 82 percent of those polled said "should." Only 12 percent said "should not," and 6 percent did not know. Alec M. Gallup & Stanley M. Elam, "The 20th Annual Gallup Poll of the Public's Attitudes Toward the Public Schools," *Phi Delta Kappan*, 70(1) (September, 1988), pp. 33-46, at 41; Alec M. Gallup, "The 17th Annual Gallup Poll of the Public's Attitudes Toward the Public Schools," *Phi Delta Kappan*, 67(1) (September, 1985), pp. 35-47, at 40.



40. These statistics are from the Table, in Lines, "Home Instruction: Law, Legislation and Practice," ECS Working Paper LEC 84 7 (Denver: Education Commission of the States, December 1984).

41. The 1985 and 1988 Gallup polls also asked whether the public thought the home school movement to be a "good thing." In 1985 16 percent thought so; in 1988, 28 percent thought so. The majoritarian view is still strongly against the concept, but this seems to indicate some softening of the condemnation. Interestingly, many Americans condemn the practice while recognizing a right to pursue it. The Gallup poll also asked "Do you think that parents should or should not have the legal right to education their children at home?" In 1988, 53% thought so (although they would require the parent to be a certified teacher).