

CATHOLICISM AND THE DECLARATION OF INDEPENDENCE: AN AMERICAN DILEMMA ABOUT NATURAL RIGHTS

Robert P. Kraynak

Roman Catholics have never been entirely “at home” in America. As we know from history, the first settlers were mainly Protestant Reformers and restless adventurers, along with a few Jesuit missionaries from neighboring colonies. The American Founding Fathers were mostly Protestant by background and often Deists or Masons by conviction; and the only truly American religion is probably Mormonism. The Catholic immigrants who arrived in the nineteenth century from Ireland, Germany, and Italy often faced intense anti-Catholicism and took several generations to become mainstream Americans; and they frequently paid the price of admission by diluting their faith and practice. Pope Leo XIII even referred to “Americanism” in a public letter of 1899 (*Testem Benevolentiae*) as the heretical tendency to trim the faith to fit modern culture—creating suspicions among Church officials about an Americanist heresy that was akin to suspicions about the modernist heresy in the early twentieth century.

Despite these tensions and suspicions, Roman Catholics in America have always had a genuine sense of gratitude for the religious liberty and economic opportunity of America and have been deeply patriotic. Very few returned to the “old country” in disillusionment. Yet, the positive experience of living and prospering in America leaves open the question of whether Catholics have accepted or can accept fully the principles of the American regime. Some think it is impossible, implying that the relation of Catholicism and Americanism is essentially a marriage of convenience or at best a prudent alliance between a medieval, hierarchical church and a modern, democratic, capitalistic society. Others argue that an inner affinity or principled harmony can be found, even if it was not always recognized by past generations. The case for finding a principled harmony between Catholicism and Americanism has been strengthened by the Second Vatican Council (1962-65), which specifically endorsed religious liberty, constitutional democracy, and a qualified version of human rights for the first time in the history of the Catholic Church. These

developments have created a complex relation between Catholicism and Americanism that is difficult to untangle.

In this paper, I will try to untangle the relation by sorting out areas of agreement and disagreement. I will begin by describing six sources from which the American political tradition is derived—namely, Protestant Christianity, English common law, classical republicanism, the natural rights theory of the Declaration of Independence (drawn mostly from John Locke), the ideal of gentleman statesmanship, and James Madison's modern republicanism. I will then argue that, of the six sources, the natural rights theory of the Declaration has become the predominant one, transforming and incorporating the others so that we now measure political legitimacy by the protection and expansion of natural rights.

After discussing the sources of the American political tradition, I will turn to the Catholic “connection” and suggest that the contribution of Catholicism to any of the sources has been minimal, and the Declaration of Independence in particular betrays no direct Catholic influence. Yet, Catholicism shares the Declaration's affirmation of natural law, which means, ironically, that Catholicism is closer to the Declaration than Protestantism (which has generally rejected natural law theory). Thus, Catholicism and Americanism have natural law in common, as John Courtney Murray pointed out. But Catholic natural law is traditionally derived from St. Thomas Aquinas who has a different version of natural law than the Declaration of Independence and John Locke. The Thomistic-Catholic version of natural law emphasizes the perfection of the rational creature through virtue and favors constitutional monarchy, while the Lockean-American version emphasizes inalienable natural rights and favors constitutional democracy or republicanism.

The new twist in the relation is the incorporation of natural rights into the Catholic natural law teaching over the last century. This development has been accompanied by the scholarly claim that natural rights actually began in the Middle Ages and were a discovery of Catholicism rather than of the Enlightenment. If this is so, then Catholicism anticipated natural rights and may now be seen as compatible with the Declaration, even though it did not contribute

historically to the Declaration and was often hostile to the rights of man in the eighteenth century. According to this revisionist view, Catholicism provides the authentic grounding of the natural rights principles proclaimed in the Declaration of Independence and may further imply, as John Courtney Murray was wont to argue, that only Catholic natural law could save America.¹

In judging these various claims, I will argue that the Catholic revisionists of the twentieth century have exaggerated the similarities between Catholicism and the Anglo-American natural rights tradition: Catholic natural law is not primarily about natural rights and government by consent of the people, but about the natural ends of man as a rational creature and the use of prudence to apply these ends to politics. The prudent application of natural law, however, does not automatically point to democracy and natural rights as the best regime, because the natural ends of man are often best realized in a mixed regime that includes hierarchical or undemocratic elements. From this perspective, constitutional monarchy is the first choice and constitutional democracy a second choice.

The conclusion I shall draw is that Catholics can endorse the American version of natural law expressed in the Declaration of Independence as a partial version of Thomistic natural law. They can also embrace the American constitutional order as a decent second choice compared to more hierarchical regimes and support it with a high degree of loyalty and patriotism. But prudence also counsels Catholics to be wary of the abstract rights flowing from the Declaration of Independence (especially the sweeping right to pursue happiness as one sees fit) and to nurture instead those strands of the American political tradition outside of natural rights principles which direct

¹ See the conclusion of John Courtney Murray's *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), pp. 334-36. A similar claim is now heard in France, where Jean-Marie Cardinal Lustiger recently argued that the principles of the French Revolution—the rights of man or liberty, equality, and fraternity—should now be seen as Christian in inspiration, even though they were used against the Church at the time of the Revolution. See Jean-Marie Cardinal Lustiger, “Liberty, Equality, and Fraternity,” *First Things*, No. 76 (October 1997): 38-45.

citizens to a notion of "ordered liberty" that contains the whole truth about God and man.

I Six Sources of the American Political Tradition

The American political tradition is a complex and somewhat disparate order that has evolved gradually over four centuries from a variety of sources. To understand the complex relation of Catholicism to the Declaration of Independence, it is necessary to begin with an enumeration of all the sources of the American political tradition with brief descriptions of their contribution to the American way of life.

One important source is Protestant Christianity, especially the radical brands of Puritanism and "free church" congregationalism inspired by John Calvin and Ulrich Zwingli that influenced many early American settlers. The political creed of the American Puritans (as Perry Miller has shown) was "covenantal theology"-a sort of Old Testament Christianity that saw the American Puritans as New Israelites whom God had chosen to build a godly nation in this new land that would be "a city upon a hill" or a New Jerusalem. Their polity was a theocracy governed by a spiritual elite of "visible Saints" who were bound by a covenant with God to implement His divine law and by a covenant with the people to respect their consent.² Other dissenting Protestants, such as Baptists, Quakers, and Mennonites, were not tolerated by the Puritans, but the dissenting sects have outlived the Puritans in later centuries because they have been less theocratic than the Puritans and more willing to accept religious liberty. Though the old Puritans are gone, a pale reflection of their original covenantal theology remains today in the vision of a divinely chosen Christian America among certain Protestants of the Christian Coalition (but rarely among Catholics, for whom America has never been a chosen land or New Jerusalem in the Biblical sense). Protestant Christianity has profoundly shaped American political culture, providing the inspiration for many social movements (including intense anti-Catholicism at times), and continues today in various diluted and embattled forms.

² Perry Miller, ed., *The American Puritans: Their Prose and Poetry* (New York: Columbia University Press, 1956), pp. 1-108.

A second source of the American political tradition is English common law. Unlike natural law or constitutional law, common law is loosely codified customary law—a compendium of practices, statutes, and judicial decisions that together make up the historic rights and privileges of Englishmen. Evolving over many centuries, it has produced protections for liberty against arbitrary power, as well as legal and customary constraints that helped to distinguish "ordered liberty" from license.

Americans inherited the common law from their English forebears, giving them a vivid sense of the rights of Englishmen going back to the Magna Carta. In a recent book, *The Theme is Freedom: Religion, Politics, and the American Tradition*, M. Stanton Evans argues that notions of freedom and consent in America owe more to common law and feudal contracts than to Enlightenment theories of individual rights. James R. Stoner also notes the influence of common law on America's "unwritten constitutionalism." Stoner argues that the long list of grievances in the central part of the Declaration of Independence (largely unread today) were taken from traditional English common law principles, such as trial by jury, opposition to the quartering of troops without consent, and opposition to taxation without consent. Robert L. Clinton also argues in *God and Man in the Law* that many provisions of the U. S. Constitution were specifically taken from English common law (such as, *habeas corpus*, due process, impeachment, bicameralism, the origination of revenue bills from the lower house, executive pardon, prosecuting treason, trial by jury, as well as prohibitions on bills of attainder, on *ex post facto* laws, on double jeopardy, and on cruel and unusual punishment).³ Broadly speaking, the American founders appealed both to the historic rights of Englishmen embodied in common law (a

³ M. Stanton Evans, *The Theme is Freedom: Religion, Politics, and the American Tradition* (Washington, D.C.: Regnery, 1994), pp. 149-247. See, also, James R. Stoner, "The Common Law Spirit of the American Revolution," in *Educating the Prince: Essays in Honor of Harvey Mansfield*, eds. Mark Blitz and William Kristol (Lanham, Maryland: Rowman and Littlefield, 2000), pp. 192- 204, and Robert L. Clinton, *God and Man in the Law: The Foundations of Anglo-American Constitutionalism* (Lawrence, Kansas: University Press of Kansas, 1997), pp. 96-97.

traditional, particularistic claim) and to the natural rights of all mankind (a rational, universalistic claim) in justifying their actions.

A third element of the American political tradition is also part of the English heritage, namely, an aristocratic notion of gentleman statesmanship. Some of the great Puritan leaders, such as John Winthrop, were gentleman rulers who appealed to social hierarchy as well as to covenant theology for their authority. Many leaders of the American Revolution, as well as many framers of the U. S. Constitution, were members of Virginia and Massachusetts dynasties of political families and social elites. Though not possessing hereditary titles or noble birth in the feudal sense, Washington, Adams, Jefferson, Madison, Monroe and others were not simply men of the people, either. They were gentlemen politicians—members of the social aristocracy (some possessing landed estates) who constituted an educated and cultivated elite enjoying the leisure to devote their lives to politics, manners, war, and scholarship.

The reference to “sacred honor” at the end of the Declaration of Independence is undoubtedly a reflection of the gentlemen’s code of honor—a pledge to dedicate their lives, fortunes, and honor to the cause of the Revolution. As Tocqueville noted, “When the American Revolution broke out... the famous men of that time... had a greatness all their own; [whose] renown brought honor to the nation, not vice versa.”⁴ For the first generation of the American republic, they stood as a quasi-aristocratic counterweight to the democratic revolution that they fostered; and even those among them who were completely self-made men, such as Benjamin Franklin, were molded by the manners of courts and aspired to some of the social distinctions of gentlemen. They were (somewhat inconsistently) gentlemen politicians dedicated to republican government.

A fourth source of the American political tradition is the classical republican tradition—the inheritance of Greece and Rome. The actual influence of this tradition in America is difficult to gauge and is hotly contested by historians. Certainly, there were considerable rhetorical

⁴ Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer (New York: Harper, 1969), I, 2.7, p. 257.

appeals to classical themes, especially to comparisons between the ancient Roman republic and the modern American republic. For example, the founders spoke repeatedly of republican virtue and classical moral virtues; George Washington was depicted in the image of Cincinnatus (the Roman farmer-general who served his country in war and returned to his farm); the anti-Federalists appealed to the small republic model for their idea of liberty and referred to themselves as Brutus and Cato; the authors of *The Federalist* called themselves Publius (after Publius Publicola, a Roman freedom fighter who helped to overthrow kingship and establish the Roman republic); and the architectural style of Washington, D.C. was modeled on classical Rome, with Capitol Hill named after Capitoline Hill and the Supreme Court building modeled on a pagan temple.

Having acknowledged these points, however, one must also recognize the fundamental difference between ancient and modern republicanism—the Roman republic was governed by a Senate made up of a hereditary aristocracy of patricians or "enrolled fathers" whose primary occupations were politics, war, and imperial conquest. The American republic drew its authority from the sovereign people and was intended to be a commercial republic rather than a military republic. The contrast with ancient Rome becomes even clearer when the fifth and sixth elements of the American tradition are described.

The fifth element is the natural rights-social contract theory, proclaimed in the Declaration of Independence as well as in other writings before and after the American Revolution. The basic idea of natural rights is that all men are created equal in the sense of being endowed by the Creator with equal rights to life, liberty, and the pursuit of happiness. These rights are natural and inalienable because they were put into human nature by God ("Nature's God") and cannot be taken away by other men or by states. Governments exist to secure those rights, and they do this best when they are based on the consent of the people. Revolution is justified when natural rights are violated by a series of abuses or when the consent of the governed is thwarted by serious usurpations of power. This is essentially Lockean social contract theory, and some of the language in the second paragraph of the Declaration referring to "a long train of abuses" is directly copied from

chapter nineteen of John Locke's *Second Treatise of Government*, "Of the Dissolution of Government."⁵

The reliance on Locke, of course, does not mean that the Declaration is exclusively Lockean. As Walter Nicgorski points out, there are non-Lockean features in the Declaration drawn from the classical and Christian traditions.⁶ Jefferson himself referred to a mixture of elements when he described the document as "an expression of the American mind" drawn from common ideas of the time as well as from "the elementary books of public right [by] Aristotle, Cicero, Locke, Sidney, etc." (Letter of Jefferson to Henry Lee, May 8, 1825). This mixture can be seen in the three main sections of the Declaration: I, The statement of general principles, based on the law of nature and nature's God; II, The statement of 27 grievances against the King and British Parliament; and III, The proclamation of freedom and independence from Great Britain.

In the famous first section, Locke's influence predominates in the general principles of God-given natural rights, government by consent, and the right to revolution that I summarized above. Some scholars have also detected the influence of Emer de Vattel's *The Law of Nations* in the opening lines, where the principles are applied to relations among nations ("when in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another..."). The suggestion is that the Declaration is primarily a document of international law, asserting the corporate right of one people or nation to self-determination like the other peoples and nations of the world. This insight, of course, does not

⁵ Compare Locke's *Second Treatise*, par. 225, "But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people ..." with the Declaration of Independence, par. 2, "But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism...". As one can see, the two sentences are virtually identical in phrasing and meaning, which means Jefferson was copying Locke on this point.

⁶ Walter Nicgorski, "The Significance of the Non-Lockean Heritage of the Declaration of Independence," *American Journal of Jurisprudence*, 21 (1976): 156-77.

negate the Lockean features of the document; it merely qualifies them by bringing out the concern for national self-determination or corporate self-government in addition to individual rights.

Locke's influence is also qualified in the central section of the Declaration where the grievances against the King and British Parliament are listed to justify the Revolution. As I count them, there are 27 grievances consisting of 16 violations of consent (a collective right of self-government) and 11 violations of property and personal rights (individual rights). Many of these grievances (as noted above) were based on the traditional rights and privileges of Englishmen derived from English common law, although many also overlap with Locke's list of legitimate grievances against tyrannical government found in chapter nineteen of *The Second Treatise of Government* (especially pars. 212-220, describing violations of consent by executives altering the legislature; and pars. 221-222, describing violations of property rights by oppressive legislatures). The list of grievances in the Declaration thus appears to be a blend of Lockean and English common law principles.

The third and last section of the Declaration insists on the necessity of the colonies to become free and independent states—to be self-governing peoples who legislate for themselves—despite the ties of kinship and blood ("consanguinity") between American colonists and Englishmen. This section of the Declaration ends with appeals to divine Providence and with pledges of honor to aid in the success of their revolutionary cause. Like other parts of the document, these sentiments also seem to be a blend of the English heritage, the Christian notion of a providential God, the gentlemen's code of honor, and classical republican ideas of patriotic duty to participate in politics and even to sacrifice one's life for one's country. The Declaration is thus a subtle and complex weaving of the Lockean and non-Lockean elements in the American political tradition.

The main omission in the Declaration of Independence is any reference to the new form of government that the Americans should adopt—the assumption being that it is a matter left open for deliberation and trial and error after the Revolution. As we know, this decision was settled a decade later when Americans adopted the U.S.

Constitution and became a Federal Republic or a "natural rights republic" (to use Michael Zuckert's apt phrase). As James Madison argued, the social basis of the American republic would be a multiplicity of interest groups arising in a large or extensive commercial society in which property rights would be protected from an overbearing majority. Madison also argued that the protections for liberty and the common good could not be based on the assumption that "enlightened statesmen will always be at the helm." While recognizing the need for virtue and patriotism, he specifically said that the surest protection for liberty would be a set of checks and balances that divided the powers of government into many competing centers. The separation of powers and a multiplicity of economic interest groups would thus be the main features of Madisonian constitutionalism, rather than reliance on the wisdom and patriotism of leaders and citizens.

In summary, the American political tradition arose from several elements mixed together over three or four centuries—Puritanism, English common law, classical republicanism, gentleman statesmanship, God-given natural rights, and the Madisonian constitutional republic. In large measure, the history of the American way of life consists in the playing out of these various traditions, with one or another predominating at different periods.

Over the long term, however, the natural rights principles of the Declaration of Independence have become the dominant tradition. Whether that predominance is for good or for ill is a matter of heated debate. While some scholars like Michael Zuckert and Thomas West think that it is a moral triumph, and others think it creates moral problems (I include myself in this latter group), one cannot deny the correctness of Zuckert's historical analysis demonstrating the dominance of natural rights over the other traditions, creating a hegemonic Natural Rights Republic. Zuckert's proof is simple, but powerful: All of the other traditions have absorbed natural rights

principles (often unaware) and have been transformed and overpowered by them.⁷

For example, the Puritans of colonial America, who began as staunch theocrats led by "visible Saints," gradually incorporated natural rights-social contract language and principles into their political theology. By 1744, a minister such as Elisha Williams could write a lengthy pamphlet on "The Essential Rights and Liberties of Protestants" in which he simply equates the Protestant idea of *sola scriptura* with Locke's right of conscience, affirming "a Christian's natural and unalienable right of private judgment in matters of religion."⁸ In similar fashion, William Blackstone's new codification of the English common law in his *Commentaries on the Laws of England*, which appeared in four volumes from 1765 and 1769, incorporated Lockean ideas into a common law framework. Blackstone defended traditional powers of king-in-parliament (the sovereign legislative power) and the protection of the "absolute rights" of individuals. Following along the same lines, the American founding fathers, who were quasi-aristocratic gentlemen politicians in their personal lives, dedicated themselves to regime principles based on natural rights and republicanism, rather than on aristocratic exclusivity ("the aristocrat as democrat" is how the American historian Richard Hofstadter describes Thomas Jefferson, with both accuracy and irony).⁹ Similarly, the opponents of the U.S. Constitution, the anti-Federalists, used the rhetoric of classical republicanism to state their case, appealing to the small, virtuous, participatory republics of the ancient world against the idea of the large, more centralized republic of the Federalists. Yet, the anti-Federalists finally settled on the promise of a Bill of Rights attached to the Constitution as the price of their support, indicating that their highest priority was the protection of rights.

⁷ For the following discussion, see chapters 4-7 of Michael Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame, Indiana: University of Notre Dame Press, 1996).

⁸ See Ellis Sandoz, ed., *Political Sermons of the American Founding Era, 1730-1805* (Indianapolis, Indiana: Liberty Press, 1991), pp. 85, 97-98.

⁹ Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (New York: Vintage, 1973), pp. 23-56.

One may therefore conclude that the Declaration of Independence and the U.S. Constitution together produced the natural rights republic; and this combination of ideas has predominated over the other strands of the American political tradition (although the Lockean conception of natural rights was transformed in the nineteenth and twentieth centuries by statesmen such as Abraham Lincoln and by modern, mainly German, philosophy into the neo-Kantian human rights of present-day America).

II Catholicism and Natural Rights

What has Catholicism to do with these six sources of the American political tradition and with developments in that tradition since the colonial and founding periods? Not a great deal, as far as I can tell. Of the six elements mentioned above, only English common law could be said to have a direct Catholic connection. In its origins, common law is part of the Christian "higher law" tradition; it arose sometime during the feudal period of Catholic England, as Stanton Evans shows in his book, *The Theme is Freedom*. But I doubt if one could say that English common law is Catholic *per se*, since it did not arise in other Catholic nations (although some scholars such as Kenneth Parrington argue that a *jus commune* or common law tradition, including certain protections for liberty, emerged in the late middle ages on the European continent as well).¹⁰ As for the other strands of the American tradition, one would be hard-pressed to find a direct Catholic connection to Puritanism, classical republicanism, Lockean natural rights, gentleman statesmanship, or Madisonian constitutionalism.

In other areas of America, one can find historical Catholic influences—for example, in colonial Maryland (under Lord Baltimore's Catholic proprietorship, until the end of the seventeenth century, with its brief experiment with religious liberty), in education (in the many distinguished Jesuit universities and parochial schools), in trade unionism and social work (endorsed by Pope Leo XIII and promoted by Dorothy Day's Catholic Workers Movement), in the ethnic-Catholic

¹⁰ See Kenneth Parrington, "Sovereignty and Rights in Medieval and Early Modern Jurisprudence: Law and Norms without a State," unpublished paper from the Catholic University of America Law School, Washington, D. C.

neighborhoods of urban America, in New Orleans' Mardi Gras, and in today's pro-life movement. One can also point out, as Michael Novak does in his book on religion at the American founding, *On Two Wings*, that some prominent American Catholic families such as the Carroll family of Maryland had members who were personal friends of George Washington, as well as signers of the Declaration of Independence and the Constitution.¹¹ And, of course, the remarkable Orestes Brownson converted to Catholicism in the nineteenth century and wrote *The American Republic*. But this is not the same thing as claiming that their Catholic thought directly influenced the colonial or founding periods, or the civil war period, or the great periods of Progressive reform in America.

The crucial questions, then, pertain to *indirect* connections between Catholicism and American principles. One question is whether Catholicism has its own natural rights tradition beginning in the Middle Ages and flowing from its canon law or natural law traditions. This is the claim of Brian Tierney, who maintains that natural rights emerged from the notion of "subjective right" in medieval canon law. A similar claim is made by John Finnis, who argues in his new book on Aquinas that human rights are implicit in Thomistic natural law and its conception of the dignity of the person.¹² A second and more general question is whether natural rights are implicit in the Christian idea of human dignity arising from the Biblical teaching that all human beings are made in the image and likeness of God and redeemed by Christ. Assuming the answers are "yes" to these questions, the third and final question is whether the Catholic conception of the rights and dignity of the person is the same as the God-given natural rights proclaimed in the Declaration of Independence. Let me approach these questions slowly by looking first at scholarly claims about a longstanding Catholic natural or human rights tradition.

¹¹ Michael Novak, *On Two Wings: Humble Faith and Common Sense at the American Founding* (San Francisco: Encounter Books, 2002), pp. 140-43.

¹² See Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150-1625* (Atlanta: Scholars Press, 1997), and John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), ch. 5: "Towards Human Rights."

At first glance, it would seem that Christianity in general and Catholicism in particular could not easily develop a conception of natural or human rights. There are several weighty reasons why it could not do so easily. In the first place, Christianity places duties to God and to neighbor before claims of rights and cannot accept the proposition that a right to pursue happiness as one sees fit takes precedence over duties to God and man. After all, the Bible uses the language of divine law rather than the language of rights to express morality and justice: It gives us the Ten Commandments rather than the Ten Bill of Rights, and the commands not to kill and not to steal do not necessarily mean that others have a right to life or to own property.¹³ Even the command to love one's neighbor as one's self is not necessarily the same as respecting the rights of others—if, for example, loving others means imposing on them for their own good (to save their souls or to steer them away from sin).

In the second place, Christianity's foundation on divine revelation implies a duty to accept transcendent truth; and Catholicism requires acceptance of authoritative pronouncements about truth by the hierarchical Church. This is crucial for Catholics, but even Protestants who allow individuals to interpret Scripture for themselves have developed means for promoting orthodoxy and suppressing heresy. It is not easy for any devout Christian to accept a blanket right of individual conscience, especially if it leads to a society indifferent to God or to a society in which bizarre New Age cults proliferate and the true faith is marginalized. While orthodoxy does not automatically imply theocracy or a confessional state, it is not easy to square with religious liberty, either.

Third, the Christian notion of original sin implies distrust of weak and fallible human beings to use their rights properly. Belief in original

¹³ For this reason, Germain Grisez says that "rights" do not even qualify as moral principles in the strict sense and must be derived from duties and human goods. He warns that Catholics should be "cautious in using the language of rights" and observes that "In reading the New Testament, one finds a great deal about the responsibilities of Christians, very little about rights," *The Way of The Lord Jesus* (Chicago: Franciscan Herald Press, 1983), Vol. 1, "Christian Moral Principles," ch. 9, p. 270.

sin instills in Christians a keen sense of how freedom can go awry and seems to imply that any notion of political freedom must be a conditional good, rather than an absolute good and could not be an abstract principle of political legitimacy. Original sin means weak and corruptible human beings need curbs on freedom by social and political institutions, including the legislation of morality by the state. Of course, Catholics have always maintained that the corruption of man by original sin does not obliterate his rational nature; but this implies even greater responsibilities for the state—not only suppressing vice and sin, but also perfecting the rational souls of citizens by inculcating moral and intellectual virtues. Such political responsibilities are hard to reconcile with protections for rights. And they indicate why Christians and Catholics have put more emphasis on “inner freedom”—the freedom of the soul from sinful desires or self-mastery—rather than “external freedom”—the freedom from external political controls, including the controls of a repressive state or the institution of slavery. When St. Paul spoke of Christian freedom, he meant inner freedom, not the external freedom proclaimed by natural rights. Thus, Paul could say without contradicting himself, “For freedom Christ has set us free... do not submit to the yoke of slavery” (*Gal. 5:1*) and “slaves, obey... your earthly masters” (*Col. 3:22*).

Fourth, Christianity, and especially the Catholic tradition, elevates the common good above the rights of individuals and even above the rights of separate groups. Catholic teaching about the family and man’s social nature also conflict with the individualism and privacy of rights. Traditionally, Catholicism did not define the common good as simply the condition for individual development (as it does today somewhat naively in *The Catechism of the Catholic Church*, see par. 1906-09). Rather, it viewed the common good in corporate fashion, embodied in corporate groups and upholding “unity in peace” that promotes the harmony of social classes and inculcates moral virtues that perfect the rational soul and promote civic friendship (“solidarity,” in today’s terms), as well as civic piety. The Catholic conception of the common good is best captured by the concept of corporate hierarchy, rather than by conditions for the exercise of individual or group rights.

Fifth, the Christian teaching about charity—whose essence is sacrificial love—makes the whole notion of rights seem selfish. The

culture of rights, when deeply entrenched, seems to create a society in which people feel the world owes them something when they declare, "I have my rights!" As Alexander Solzhenitsyn has said critically of Western rights: "Human rights' are a fine thing, but how can we be sure that our rights do not expand at the expense of others?"¹⁴ More precisely, rights are a two-edged sword: They are noble and glorious when used against real tyranny and real oppression, but they are base, selfish, and destructive when used against legitimate authority and traditional morality, as they often are in modern society. Although rights have practical or horizontal limits ("my rights end, where your rights begin"), there is no clear guideline within rights themselves to distinguish between the legitimate and illegitimate use of rights—for example, between the rights of Christian marriage vs. the rights of gay marriage, between the right to choose abortion vs. the right to life, between true vs. false rights. This distinction cannot be found in rights themselves, but in an objective hierarchy of goods that explains how rights must be properly used in order to be legitimate. Hence, from a Catholic perspective, it seems that rights are conditional goods—their value depends on the ends for which they are used, which means that rights are not properly speaking rights, but conditional goods subservient to higher goods.

Finally, Christians and especially Catholics cannot accept the premise of the natural freedom of the autonomous self that underlies most doctrines of rights. The most influential doctrines of rights emerged from the philosophers of Enlightenment Liberalism (Hobbes, Locke, Rousseau, Kant, Mill, Dewey, and Rawls). They argue that human beings are "born free," and they posit the existence of a state of nature or an "original position" which proclaims personal autonomy at the expense of human dependence on God or on fellow human beings and which denies natural sociality, as well as naturally given or divinely ordained hierarchies. Natural freedom and equality are antithetical to the notion of divinely ordained religious hierarchy in the church or a natural hierarchy in the family or claims that those who are more wise and virtuous have some legitimate title to rule over those who are less

¹⁴ Alexander Solzhenitsyn, *Rebuilding Russia: Reflections and Tentative Proposals* (New York: Farrar, Straus, and Giroux, 1991), pp. 54-55.

wise and virtuous. Since these notions are inherent in Catholic teachings, a Catholic doctrine of human rights cannot begin from the assumption of an autonomous self in a state of nature or an original position. The rights must be derivative from duties, hierarchies, and prior human goods, which raises the question if they are still rights at all, rather than conditional grants from a higher authority to use one's freedom for specified ends and goods.

These objections to Christian theories of human rights are weighty objections. They make one wonder how Catholics today can embrace human rights so readily and incorporate them into Catholic social teaching; they also make one doubt if Catholic natural law has had, all along, an implicit or embryonic idea of natural rights that gradually came to be recognized in the modern age. What is the basis of these claims?

The answer, I think, is the development within Catholicism of a new anthropological doctrine—"the dignity of the human person"—that has enabled Catholics to claim that it has a conception of the person that includes the possession of human rights. The philosophical and theological label for this doctrine is "personalism," the most influential movement in Catholic thought over the last century and the main reason why human rights are now a central feature of Catholic social teaching.

III The Dignity of the Human Person and Human Rights

Catholic personalism does not have a clear beginning point. Its first stirring seems to be the Thomistic-natural law revival of Pope Leo XIII at the end of the nineteenth century. In *Rerum Novarum*, Leo develops an eclectic notion of higher law from Aristotle, Thomas, Lockean property rights, and some references to "the dignity of the person" as a creature worthy of respect who should not be treated as a mere instrument of production or exploited as a means to others' ends. Leo tells business employers "to respect in every man his dignity as a person ennobled by Christian character.... [and not] to misuse men as though they were things in the pursuit of gain, or to value them solely for their physical powers—that is truly shameful and inhuman"; these moral imperatives are requirements of "natural reason and Christian philosophy" (par. 20).

Pope Leo's embryonic formulations of the dignity of the person were then developed in the twentieth century by many great theologians and church leaders—above all by Jacques Maritain, but also by Emmanuel Mounier, Gabriel Marcel, Heinrich Rommen, John Courtney Murray, Pius XII, John XXIII (especially, *Pacem in Terris*), John Paul II, and by the new natural law theorist, John Finnis. As one might suspect from this list, Catholic personalism comes in several varieties, with important and subtle differences. But all grow out of the same general project of building on Thomistic natural law, by adding features of modern philosophy derived from Kantianism, phenomenology (especially Scheler), and existentialism, in order to offer an enhanced notion of the person as an active, willing subject, as well as to provide a richer consciousness than original Thomism of the interior spiritual life and uniqueness of every human being.

The key point, as Maritain said, is that every human being is not merely an individual, differentiated from others by a material-bodily existence, but a "person"—a rational substance with a supernatural destiny, possessing intrinsic worth or dignity (often characterized as infinite, absolute, sacred, or inviolable) because each one is made in the image of God and (as later personalists add) because everyone is an absolutely unique and unrepeatable creation of God from the moment of conception. In a further refinement of personalism, Catholic theologians have argued that a "person" is not merely a "substance," but a "relation"—a creature possessing reason and free-will with a capacity for relating to others, especially in a dynamic relation of self-giving love (a new formulation for Christian charity).

The crucial political question is whether the human person as such is a possessor of rights that must be recognized by the state and fellow citizens. This was one of reasons for developing the concept of the person, although not necessarily the primary one. In Joseph Cardinal Ratzinger's important article, "Concerning The Notion of Person in Theology," the political implications of personhood are not even mentioned. Ratzinger's focus is on theology and ethics—showing that the Christian development of the term "person" from Greek philosophy is an evolution from the word for mask or dramatic role to a metaphysical substance to an external relation. For Ratzinger, personhood is relatedness to others in self-giving love, modeled on the

inner relations of God in the Trinity and, by analogy, existing in man as a social being who relates to others in self-giving love while preserving his own identity. A human person is thus not a substance but a relation—a dynamic, existential reality of relation, rather than a static or closed substance. For Ratzinger, personalism is a new way of fully understanding man as an image of the divine Trinity and of appreciating the interiority of man's spiritual nature.¹⁵

For Maritain and others, however, personalism is primarily *political*: it is a way of reconciling traditional natural law with the rights of man. Maritain sees human rights as an inference from the Gospels' notion of the intrinsic dignity of the person implied in God's love for every human being and flowing from the Christian duty to love everyone as a child of God. Maritain also believes that the Thomistic notion of natural law, which views man as a rational substance with free-will, can be developed into the modern concept of the person as a rights-bearing agent. But Maritain is aware that Christianity (and Catholicism in particular) has not always recognized the potential of the Gospel for inspiring the rights and dignity of the human person, nor has it found the correct balance of rights and duties. In fact, he admits, the path to these insights has been a rocky road:

In ancient and medieval times [more] attention was paid... to the obligations of man than to his rights. The great achievement of the 18th century was to bring out... the rights of man also required by natural law. That discovery was due to a progress in moral and social experience, through which the root inclinations of the human person were set free... But that great achievement was paid for by errors in the theoretical field... Attention even shifted from the obligations of man to his rights only. A genuine view would pay attention to both the obligations and the rights in natural law.¹⁶

With these historic shifts in mind, Maritain sees himself as developing for

¹⁵ Joseph Cardinal Ratzinger, "Concerning the Notion of Person in Theology," *Communio* 17 (Fall 1990): 439-54.

¹⁶ Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), p. 94.

the first time the proper mix of rights and duties in natural law—synthesizing the traditional natural law duties to perfect the rational soul through virtue with the modern natural rights of the person to be protected from the arbitrary power of the state or the repression of society. The result is a political theology that provides a Christian basis for a “democracy of the person” or “personalist democracy” that would avoid the errors of totalitarianism and liberal individualism.

In assessing the achievement of Maritain and others, I would like to draw attention to the paradox that they themselves recognized and understood as a serious problem. The problem is that the Gospels and Epistles speak about love and respect for all mankind, especially for the poor and powerless, in a way that sounds like respecting their rights as persons and empowering the disadvantaged groups of society. Moreover, Christianity emphasizes the infinite worth of every human being as a creature with an immortal soul, capable of either eternal life or eternal death. But the language of dignity, rights, and personhood and the momentous political implications of these concepts for democracy were not developed in the New Testament nor recognized for a long time in Western or world history. In fact, it took at least twelve centuries of canon law (according to Brian Tierney) or even eighteen centuries of natural law (according to Maritain) to see the Gospel inspiration for human rights and democracy. Until those times, no one really thought that the moral commands of the Gospel and the duties of natural law implied natural rights or human rights—in the precise sense of rights as immunities and protections of the individual from the arbitrary power of the state, or as a neutral zone of personal and private freedom from moral imposition, or as entitlements from the state for a certain level of material welfare and respect. Even when rights were recognized as such by Christians, the proponents of rights still had to make a sharp distinction between true and false rights and to specify precisely the ends for which rights must be used in order to be morally justified.

Brian Tierney, in particular, notes this stubborn fact in his book, *The Idea of Natural Rights*, where he argues against a Thomistic scholar of the old school, Michael Villey. According to Villey, Catholic natural law supports “objective right,” but not “subjective rights”—the former being a standard of natural justice that inheres in the moral order of

the universe (such as, the justice of the wise ruling over the unwise) and the latter being a power in the soul to choose freely or to claim dominion over property and immunity from the state. Tierney disputes Villey by arguing that "subjective right" or "rights" (*jus* or *jura*) began to emerge in twelfth century canon law before Aquinas and Ockham, eventually leading to the natural rights of modern liberalism. But Tierney honestly admits that no one in the tradition quite saw his point. In an extraordinarily candid admission he says:

Michael Villey sees rights theories ... as an aberration, [as] a deformed variety of Christian thought. Another whole school of thinkers, represented most eloquently perhaps by Jacques Maritain, sees a doctrine of individual rights as always implicit in the Christian emphasis on the dignity of human personality. If this last point of view is to be defended, the key word must surely be 'implicit.' Perhaps there was always a possibility that Christian teaching on the inherent value of each individual person could be reformulated as a doctrine of subjective natural rights. *But, certainly, through most of Christian history, the possibility was not realized.*¹⁷

The difficulty that Tierney acknowledges is the stubborn resistance of Christian ethical concepts (such as charity, universal love, the inherent dignity of the individual in the eyes of God, or the Christian preference for the poor) to being reformulated as natural or human rights. It requires Tierney to "smoke it out," as it were, but his scholarly writings leave many readers (including me) with the impression of finding all smoke and no fire in the Catholic canon law and natural law traditions. Many of Tierney's citations from medieval canon law refer to powers in the human soul to do what is right according to natural law, which is more like a virtuous power than a natural right—a power to act properly rather than a subjective right to act freely. Other citations by Tierney refer to *jus* or *jura* as grants from higher authorities to act in accordance with divine law.¹⁸

¹⁷ Brien Tierney, *op. cit.*, p. 215; emphasis added.

¹⁸ *Ibid.*, p. 41: "jus was not a violent power but a 'virtuous power'... a 'licit power'... a 'rightful power'"; and p. 63: Rufinus says, "natural jus is a certain

Apparently, the Christian idea that everyone is worthy of love is not the same as the claim that everyone is worthy of rights.

But where precisely is the sticking point that prevents Christian charity from leading to natural rights without the creative effort of scholars like Tierney to discover them in hindsight? In my judgment, the problem lies in the six weighty objections discussed above that indicate why the underlying beliefs of Christianity and Catholicism prevent one from arguing from charity to human dignity to human rights. Those six objections were: the priority of duties to God and neighbor over individual rights; the doctrine of original sin; the priority of the common good and man's social nature over the individual; the priority of perfecting the rational soul over letting people be free to express themselves; the selfishness implied in many rights claims; and the rejection of personal autonomy or natural freedom implicit in most notions of rights. To this list, I would add the observation that the Christian concept of human dignity applies primarily to man's relation to God—to the capacity for responding to God's law and God's love that animals and other creatures are not able to do and to the ability to become holy like the Holy God of the Bible. These attributes of human dignity are spiritual rather than political and do not automatically imply the freedom from external control, as well as the protections and entitlements, that we today call human rights.

Thus, it seems that the effort of Catholic personalists to discover in hindsight a doctrine of rights in the Christian tradition and to ground a doctrine of rights in the Christian idea of the dignity of the person is problematic. It does not stand up to careful scrutiny and must be rethought.

IV Troubling Conclusions

One of the great attractions of Catholic personalism is that it holds out the tantalizing prospect of a harmonious convergence between Catholicism and modern democracy based on natural or human rights.

force divinely inspired in man by which he is led to what is right and equitable.”

If a connection between the Gospel, Catholic natural law, and the dignity and rights of the human person does exist—as Tierney, Maritain, Murray, and others suggest—then Catholicism and the Declaration of Independence would share considerable common ground. The documents of the Second Vatican Council of the Catholic Church and statements of Pope John Paul II, a great Catholic defender of human rights, have encouraged us to think this way. As the Pope recently said on the occasion of receiving the new U. S. ambassador to the Vatican:

The Founding Fathers of the United States asserted their claim to freedom and independence on the basis of certain ‘self-evident’ truths about the human person: truths which could be discerned in human nature, built into it by ‘nature’s God.’ Thus they meant to bring into being... a great experiment in what George Washington called ‘ordered liberty’: an experiment in which men and women would enjoy equality of rights and opportunities in the pursuit of happiness and in service to the common good. Reading the founding documents of the US, one has to be impressed with the concept of freedom they enshrine: a freedom designed to enable people to fulfill their duties and responsibilities toward the family and the common good of the community. Their authors clearly understood that there could be no true freedom without moral responsibility... no happiness without respect and support for the natural units or groupings through which people exist, develop, and seek the higher purpose of life in concert with others... [Hence] it would truly be a sad thing if the religious and moral convictions upon which the American experiment was founded could now somehow be considered a danger to free society... [And] the credibility of the United States will depend more and more on its promotion of a genuine culture of life, and on a renewed commitment to building a world in which the weakest and most vulnerable are welcomed and protected.¹⁹

¹⁹ John Paul II, “John Paul II on the American Experiment,” *First Things* (April 1998), pp. 36-37.

The striking feature of the Pope's statement is the summary of the founding principles of the United States, including the Declaration and the intentions of the American founders, in such a way that it coincides with Catholic teaching on the human person and the right uses of freedom. He says true freedom is directed toward the true hierarchy of ends; it is responsible freedom under God that is dedicated to the family, to the common good, to the "higher purposes of life in concert with others" (meaning religious and moral ends in natural and spiritual associations), and to the protection of the weak and unborn in "a genuine culture of life." Yet, the proper name for such freedom is not natural rights but "ordered liberty."

The crucial point is that none of the higher purposes of ordered liberty that the Pope mentions in his eloquent statement are actually mentioned in the Declaration itself, which leaves open the question of the proper use of natural rights. While some might suspect the Pope of giving the Declaration a Catholic "spin," there is reason to believe that the American founders themselves, living in a more conservative era than our own, when natural rights did not imply the radical autonomy of today, understood freedom in similar ways. As the intellectual historian, Knud Haakonssen has argued: "In the eighteenth century, natural rights derived from natural law and natural duty. Natural rights were understood as part of a morally well-ordered universe [that is] structured and lent certainty by the law of nature. Natural rights theory was much less individualistic and [less] anti-authoritarian than it was later taken to be."²⁰ And Thomas West has recently given us a re-interpretation of Locke that brings out the traditional restraints on natural rights that Locke apparently intended—including the promotion of family values, a rationalized version of Christianity, a scheme of moral education in bourgeois virtues, and the moral

²⁰ Knud Haakonssen, "From Natural Law to the Rights of Man: A European Perspective on American Debates," in *A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law, 1791-1991*, eds. Michael J. Lacey and Knud Haakonssen (Washington, D.C.: Woodrow Wilson International Center for Scholars, 1991), pp. 19-61.

preconditions of citizenship in a free society.²¹ If these scholars are right, both Catholicism and Lockean-Americanism are converging toward a kind of “conservative liberalism” that includes a system of natural rights limited by traditional moral and religious constraints and directed to higher goods than materialism and individualism. Perhaps all are converging toward ordered liberty.

Yet, much of this strikes me as wishful thinking about the harmony of natural rights and Catholic principles. Not only is Tierney’s scholarly claim of an independent Catholic human rights tradition dubious on historical grounds (the subjective rights that he uncovers are not forerunners of modern natural rights but virtuous powers or internal supports for traditional moral virtues). One may also question the consistency of the Catholic teaching that claims that rights are inherent in the dignity of the person made in God’s image and in the possession of a rational nature and then adds the qualification that rights are legitimate only when used to serve higher purposes than personal happiness. This means that rights are both absolute and conditional. They are absolute in the sense of being inherent in the dignity of man and therefore inviolable. But they are, in fact, subject to conditions, qualifications, and even repression if they subvert the true hierarchy of ends that Catholics see as the real purpose of life—namely, the moral, intellectual, and theological virtues that direct the soul upward to its rational and spiritual perfection and to its last end, eternal life.

Thus, in the last analysis, Catholics cannot view rights as rights. Their belief in higher ends means that they must see human rights as conditional goods subservient to higher goods that reflect the whole truth about God and man. This view of rights carries the corollary that if voluntary preaching to use rights properly are repeatedly ignored—producing a debased mass culture in a secular democratic society, wholly indifferent to the truth about God and man—then legislating

²¹ Thomas G. West, “Vindicating John Locke: How a Seventeenth-Century ‘Liberal’ Was Really a ‘Social Conservative,’” *The Witherspoon Fellowship Lectures*, Feb. 23, 2001 (copyright by The Family Research Council and available at www.frc.org/pap...spoon/index.cfm).

morality or otherwise imposing on people to seek higher goods would be justified. The standard of legitimacy for Catholics, in other words, is not merely respect for human rights and the consent of the people, but the realization or the attempt to realize the virtues and perfections specified by natural moral law and the eternal law of God.

Thus, it seems to me that the correct procedure for Catholics in reasoning about natural or human rights ought to be the reverse of what is normally done today. Instead of arguing that natural or human rights are intrinsic to Catholic morality as a development of natural law and then trying to control those rights with moral restraints and appeals to higher ends, one should defend the true hierarchy of ends and then argue that rights are conditional goods whose value depends on their ability to produce the true order of higher goods. As soon as one reverses the procedure, however, one is back to traditional Thomism, which means one is forced to deny the convergence of Catholicism and the modern natural rights found in the Declaration of Independence and to accept instead a prudent alliance between the two sets of principles.

Starting from traditional Thomism, one would have to reason about modern politics and the American regime in the following way. Thomism begins by recognizing that God has ordained four types of law for the governance of the created world—eternal law, divine law, natural law, and human law. Eternal law is God's plan for the entire natural universe. Divine law is the revealed law of Scripture that guides man to his supernatural end, eternal happiness, and governs the spiritual realm of human affairs (the structure and sacraments of the Church, the order of charity and grace). By contrast, natural law directs man to earthly happiness and guides the temporal realm of politics. Natural law does this by articulating the natural inclinations and ends that God has imprinted on human beings as rational creatures made in His image and likeness. Natural law as such is not a theory of freedom or human rights; it is a theory of the hierarchy of being in which man participates as certain type of privileged creature in the universe (although not the highest creature, since angels are higher than men). Hence, natural law is the participation of the rational creature in eternal law, as Thomas says.

The first practical principle of natural law is "good is to be done, evil to be avoided." Thomas identifies three basic goods as those to which rational creatures are inclined by their God-given nature—the good of self-preservation, the good of procreation in the family, the good of rational perfection through living in political society and through knowledge of the truth about God. As Thomas clearly indicates, these goods are grounded in the hierarchy of created being (ascending from inanimate to animate to specifically human goods). These goods are also reflected in the hierarchy of the human soul, whose parts ascend from the appetitive part to the irascible part to the rational part. Natural law is essentially a theory of natural inclinations to the proper ends of man, understood as an objective hierarchy of goods that points to virtue as the perfection of the soul of the rational creature.

As a theory of natural inclinations to the proper acts and ends of man—from preservation to procreation to virtue—natural law does not directly specify which political regime is best. Prudence is needed to make judgments about how to apply the hierarchy of natural ends to politics. Those judgments are made by statesmen or legislators who apply natural law to the concrete circumstances of time and place, producing human law, such as the U.S. Constitution or the unwritten English Constitution. Following Aristotle, Thomas allows a variety of legitimate regimes in the temporal sphere of politics. The best choice in most cases is a constitutional monarchy—a mixture of kingship, aristocracy, and democracy balanced together in a stable order combining virtue and wisdom in the king and his council mixed with an aristocratic senate and the participation of the people in certain spheres of civic life. Other constitutional regimes—such as a polity—are second and third choices. In contemporary terms, this would imply that constitutional monarchy is better than constitutional democracy, because the former makes greater provision for the higher and nobler demands of virtue than the latter. In other words, a regime in which monarchical and aristocratic elements are mixed with popular elements is more conducive to the hierarchical ordering of the souls of its citizens—directing them to rational perfection, rather than to comfortable self-preservation or to the freedom to do as one pleases.

Applied to the American situation, Thomistic natural law requires one to judge the work of the American founding fathers by the

objective hierarchy of ends which God has ordained for man. Here, the decisive question would seem to be whether the natural law doctrine of the Declaration of Independence which guided the Americans contains some of the elements of a true natural law found in original Thomism. The answer, we now must admit, is that the Declaration contains only a partial or incomplete version of true natural law, because it does not provide sufficiently for the perfection of the rational soul. The Declaration of Independence asserts a right to pursue happiness, but does not provide sufficiently for the higher goods of temporal and eternal happiness, leaving them more to personal choice than to corporate responsibility or leaving them to the larger culture which surrounded the Declaration and the Constitution that still contained vital remnants of classical and Christian culture and of the English common law tradition. Yet, if the American founders had been more attentive to preserving these traditional elements, they might have been Tories rather than revolutionaries. Or, since they themselves were gentlemen politicians of quasi-aristocratic character, they might have waged a war of independence on less sweeping principles than natural rights and established a more hierarchical regime than a constitutional republic.

However, a Thomistic approach to politics requires prudence, which counsels statesmen to seek the best approximation of the true hierarchy of goods in the given circumstances. After the American Revolution occurred and the regime was settled in favor of republicanism, Catholic Thomists could be American republicans—they could have acted like Alexander Hamilton, who favored constitutional monarchy while accepting constitutional democracy or republicanism as the only practical option in the circumstances. Within that basic acceptance and loyalty to of the American natural rights republic, Catholic Thomists could hold reservations about the natural rights basis of the regime and hope to move it in a more hierarchically ordered and less individualistic and less materialistic direction. For, as Robert Bork has argued in the spirit of Thomas Aquinas (and of Edmund Burke and Russell Kirk), the natural rights principles of the Declaration of Independence have the seeds of moral decay within them, because they gave a “blank check” to future generations in the abstract principles of liberty and equality. The Declaration cannot really

prevent its sweeping grants of self-evident, inalienable natural rights from evolving over several generations from the ordered liberty of the American founders into the permissive freedom and radical egalitarianism of today, because such rights subvert the traditional moral constraints that held them in check for a hundred and eighty years (until the cultural collapse of the 1960s).²²

With this prudential judgment in mind, Catholic natural law thinkers and Catholic citizens of America can be patriots who love their country by loving the more conservative elements in the American political tradition rather than the natural rights principles, with their revolutionary and (long-term) subversive tendencies. They can find the greatness of America in all of its cultural and political traditions—including Protestant or evangelical Christianity, classical republicanism, English common law, quasi-aristocratic gentleman statesmanship, and Madisonian constitutionalism—without reducing America to its natural rights principles. And they can heed the critics of Catholic personalism, such as Simone Weil, who remind us that the human person is most dignified or elevated when it subordinates the self to the highest good—which it embraces as a gift, an inspiration, and an obligation—rather than expressing itself freely or pursuing a personal vision of happiness as an inalienable natural right.

At its best, then, the Declaration of Independence is a partial or incomplete version of Catholic natural law based on Thomistic principles. At its worst, the Declaration of Independence is opposed to Catholic natural law when "the pursuit of happiness" as a fundamental right loses all connection with rational or spiritual perfection and promotes a radical egalitarianism and expressive individualism that denies the legitimate hierarchies of church, family, and society. The relation between Catholicism and the Declaration of Independence should be seen therefore as more of a prudent alliance than a principled harmony. Such a relation can be the basis of a deep and enduring but conditional American patriotism that enables Catholics to

²² Robert H. Bork, *Slouching Towards Gomorrah: Modern Liberalism and American Decline* (New York: Harper Collins, 1996), chs. 1-4.

be "at home" here and now, but never entirely "at home" in the American political tradition.