

CLARENCE B. CARSON

THE FOUNDING OF THE AMERICAN REPUBLIC

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The Enlightenment Impetus

FROM THE EARLY 1760's to the mid-1770's, as colonial resistance to British rule mounted, ebbed, and flowed, colonists referred over and over again to the British constitution, to the rights of Englishmen, to the charters on which the colonies were founded, and so on. This they could do so long as they were attempting to alter British policy and retain existing relationships. But once they decided to break the connection with England they could no longer hinge their action on the British constitution nor any longer support their institutions with it. Experience could be utilized; forms and practices could be abstracted from the British pattern; but all these would have to have a new foundation and new justifications.

The new foundation on which they built was the natural law philosophy. This is not to say that the natural law philosophy was new or that Americans had just become acquainted with it. On the contrary, the natural law philosophy, or its underpinnings, is nearly as old as Western civilization; it had been greatly revived in English political discourse in the seventeenth century; and American thinkers were

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widely familiar with it long before the break from England. But it had got new impetus behind it in the past century and a half, and the doctrines out of it were being brought to a fruition at just the time that Americans turned to it to justify their actions and undergird their institutions. If James Madison had been aware of intellectual history in this way, he might have remarked about the occurrence of this fruition of the natural law philosophy at just this juncture of history in the same vein he did about another matter in these words: "It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution."

The Natural Law Philosophy

Documents, writings, and addresses of the revolutionary period are replete with references to the natural law philosophy and ideas derived from it. Jefferson based his argument in the Declaration of Independence on "Nature's laws." Thomas Paine argued both that independence was called for as a natural right and that the resulting country should be founded on underlying law. State constitutions frequently list-

ed a number of rights which were "natural." The United States Constitution was implicitly framed from an order explicit in the natural law philosophy. As Clinton Rossiter has said: "The principles in which they placed their special trust were . . . those of . . . the school of natural law." They "sought limits [on political power] more universal than those staked out in laws, charters, and constitutions. The great philosophy that preached the reality of moral restraints on power had always been a part of their Anglo-Christian heritage. Now, in their time of trial, the colonists summoned it to their defense."¹

The natural law philosophy is grounded in metaphysics. That is, it is grounded in something beyond the physical; it is not accessible to the senses directly. No one can see, hear, taste, feel (tactilely), or smell natural laws. If they are real, their reality is vouchsafed in some fashion other than through direct sensual contact. Their reality should not be understood as a becoming, either, as made up of ideals which may be fulfilled in the course of time. The founders of these United States were not idealists in this

¹ Clinton Rossiter, *The Political Thought of the American Revolution* (New York: Harcourt, Brace and World, 1963), p. 78.

sense; they did not conceive of natural laws as something it would be desirable to see established. On the contrary, they were understood as being already everywhere established, inviolable, and finished.

Self-evident Truths

Intellectual developments since the eighteenth century have made it increasingly difficult to understand the natural law philosophy, and the meaning of this is that it has become increasingly difficult to understand that on which these United States were founded. The difficulty can be exposed by examining a familiar phrase from the Declaration of Independence, the one which reads: "We hold these truths to be self-evident, that all men are created equal..." The phrase has been so often heard and seen that it has attained that status for us of an idea which is so familiar that it neither shocks nor calls forth any examination of it. Probably, in our day, most people hear not the words but a translation of them which would go something like this: We hold it as an ideal that all men should be made equal. Yet, that is not what the words say, nor is it reasonable to render them in this fashion.

In the first place, what does it mean that "these truths" are

"self-evident"? Today, the phrase "self-evident" is often used as if it were a synonym of "obvious" or "apparent." This is probably a way, unconsciously adopted, of avoiding the difficulty for us of the term. "Self-evident" means that the statement contains its own evidence. To turn it around, it means that there is no external evidence for the truth of the statement, or that none is being adduced. It can be made clear that in the instant case no evidence either is or can be adduced for the validity of the statement. All the evidence that I know of indicates that all men are *not* created equal. Each person is different from every other at birth, different in appearance, different in capacities, different in circumstance, and different in what he inherits. Jefferson's statement is one which, if true, must be "self-evident."

This is not to say that there is no evidence for the reality of natural laws; it is rather to affirm that such evidence as there is is indirect. Thomas Jefferson was working out of a long-established philosophical tradition when he wrote the Declaration of Independence. This tradition was dualistic, holding that there are two realms of being. They can most directly be described as the realms of the physical and the metaphy-

sical. The physical realm may also be described as the realm of the existential, the changing, the historical, and of appearances. The metaphysical may be called the realm of forms, of essences, of fixities, and of the real. It is, of course, the realm of natural law. It is that underlying order which gives shape, form, predictability, and their character to things.

Greek and Roman Influences

The philosophical roots of the natural law philosophy reach down deeply into Western thought from its early beginnings. The Greek thinkers of classical antiquity were early taken up with the difference between appearance and reality. To appearance, all things seemed to change; indeed, all physical objects undergo alteration and corruption with the passage of time. This led some men to conclude, such as Heraclitus, that all is flux, that there is only change. Others held, however, that the changing is only an appearance, that underlying it is fixity and order.

Philosophy, as we understand it, had its beginnings with efforts to find the primal stuff from which all else comes. It was commonly believed for a long time that there were four elements — earth, air, fire, and water — from which all

else is made. This search begot yet another one, the search for that which gives form and order to things, to that which causes them to assume the shapes that they do, to follow the course that they do in their development, and to behave as they do when impinged upon by something else. Men have, for as long as they have had settled modes of living at the least, been aware of numerous regularities and predictabilities in the world about them. Philosophy — by which is meant here its most abstruse branch — has been concerned with trying to make a coherent explanation of these.

Metaphysical thought reached a plateau with a line of Greeks which commences with Socrates, goes through Plato, and culminates with Aristotle, a plateau which it has ever since been difficult to reach or to rise above. New reaches in philosophy was only one of the achievements in the ancient world, of course, though these may have been the keystone. The Greek achievements were spread about the Mediterranean in what has since been known as the Hellenistic Age, and were taken up by the Romans who expanded and developed that portion of Greek culture which appealed to them. Roman thinkers were the first to set forth the natural law philosophy exten-

sively. They did so both to undergird the edifice of Roman law and to justify the spread of that law over a vast empire. Their acquaintance with a multiplicity of peoples of diverse cultures led some of them to seek for common features underlying the differences which would be of the order of law everywhere applicable.

***Revivals of the Natural Law
Philosophy during Middle Ages***

So impressive were the varied achievements of the Ancients that men refused to forget them even after the empires fell and Europe broke up once again. There were many revivals and renaissances over the years. Two major efforts to revive the learning of the Greeks and Romans occurred in the Middle Ages: the first is known as the Carolingian Renaissance, and the second took place in the twelfth and thirteenth centuries. There was an almost continuous renaissance in the Modern era from the fifteenth into the eighteenth century. There was a neoclassical revival in literature in the seventeenth century, and the music of the eighteenth century is frequently described as classical. If what is meant by classical is an emphasis upon order, harmony, balance, moderation, reason, and form, then the eighteenth century was the pre-

eminent neoclassical age of our era.

The natural law philosophy was revived in Europe in the seventeenth century. On the continent exponents of it in the political and legal realm included Hugo Grotius, Jean Bodin, and Samuel Pufendorf. English writers in this stream would include Thomas Hooker, Harry Vane, Richard Hooker, James Harrington, Algernon Sidney, and John Locke. Much of the English thought was produced during the constitutional struggles of the seventeenth century, struggles which culminated in the Glorious Revolution. This body of thought was most useful to Americans when they came to revolt, because they were able to hinge much of their case on English thinkers.

The natural law philosophy in general got a great boost in the seventeenth century from what we call scientific developments. These developments which are associated with the names of Francis Bacon, René Descartes, Galileo, Johannes Kepler, Leibniz, Spinoza, and Isaac Newton were both spawned by the revived natural law philosophy and gave new impetus to it. The central features of this development were the emphasis upon the rationality of the universe, the rationality of man, and mathematically expressible laws

governing the behavior of objects. Ways were worked out for discovering the laws, and these and other men experienced phenomenal success in the work of exposing them. Alexander Pope wrote:

Nature, and nature's laws lay hid
in night,
God said, Let Newton be, and all was
light.

So impressive was the natural order revealed by scientists that renewed efforts were made to discover more precisely the natural order as it applied to man and his affairs. The effort to do this in the political, social, economic, religious, and artistic realm has come generally to be called the Enlightenment of the eighteenth century. The title contains a considerable measure of presumption in it: it suggests that men were coming to be enlightened while those who had gone before had been in the dark. This is pointed up, too, by the conscious sloughing off of the reliance on the ancient thinkers and attempts to discredit them. A case can be made that the thought of the Enlightenment was deeply influenced by classical antiquity even as that age was no longer venerated. An equally strong case can be made that there was in the Enlightenment a potentially fundamental

break with tradition which would cut men off from their past. Both these things are true.

New Emphasis on Reason

It was with some trepidation that I used the term Enlightenment in the title of this installment. There is no doubt that Americans at the time of their revolt were under the sway of the natural law philosophy, but there is reason to doubt that they were under the sway of the Enlightenment. This doubt is occasioned, I think, because of the course of developments in France. Many historians of the Enlightenment have focused on French thinkers, on Voltaire, Diderot, Quesnay, Montesquieu, d'Alembert, Rousseau, and so forth. The French were the most dramatic proponents of the Enlightenment, the most daring and iconoclastic of thinkers, the ones who broke most emphatically with the past. In France, too, centuries-old anticlericalism shifted toward opposition to all the formal religions and became, for some, outright atheism. The repute of the Enlightenment has been tarnished, too, because in its wake came the French Revolution with all that entailed.

Now some Americans were influenced by French thinkers. Probably all Americans who knew

of it were favorably influenced by Montesquieu's arguments for a separation and balance of powers in *The Spirit of the Laws*. The affinities between the French and Benjamin Franklin, Thomas Jefferson, and Thomas Paine, as major examples, are well enough established. But the Enlightenment was not an exclusively French affair, nor the directions in which some of the French took it an inevitable one. The Enlightenment can be considered a much broader development encompassing the emphasis on reason, natural law, and balanced with a thrust toward liberty. In this sense, Americans shared in its fruits, and used the ideas associated with it. The bulk of Americans did not accept the more radical breaks with the past nor become antireligious as a result of their thinking. Americans tended to counterbalance abstract ideas with reference to experience and by the use of common sense.

"A State of Nature"

There are several concepts basic to the natural law philosophy. The most basic concept is that of a *state of nature*. Thinkers in the seventeenth and eighteenth centuries were given to beginning some statement with the phrase, "Man, in a state of nature. . . ." Anthropologists of the nineteenth and twentieth centuries have

pointed out that man is nowhere discoverable in a state of nature, that, on the contrary, he always exists in a social state. As is frequently the case when men of one era take on those of another in controversy, those of a later date have misunderstood the position, whether intentionally or not we do not know. The thinkers of an earlier day did not mean that man had ever existed in a state of nature historically, or that he could somewhere be found in that state at any time. The concept is essential, hypothetical, and imaginary. To know the nature of anything, it is necessary to strip away all that is peculiar and particular to that thing, all that has been accidentally added, and view it in terms of the common features it shares with all others of its kind.

To know the nature of man, then, is to know him in a state of nature, that is, to know him stripped of all cultural accretions. Stripped of his culture, a creature is only *potentially* a man, of course. It is a work of the imagination to discover man in a state of nature. It is an hypothesis from which to reason to other conclusions. It is man reduced to his essence that is discovered in this fashion. It is, as understood by the men about whom we have been talking, man as he really is. Thus, it can be affirmed that man is a

rational animal — i. e., that he is capable of reason, that his potentiality for reason separates him from other creatures. If reason were something acquired from the culture, then all other creatures in the culture could acquire it.

The state of nature concept, then, is used to discover the nature of things. Everything has its nature, men of the Enlightenment held, has its form, shape, and potentialities. This could be affirmed of government, of society, of economy, and so on. Nor was the state of nature a neutral concept in the Enlightenment. The nature of a thing was believed to be implanted there by God, and it behooved man and all institutions to conform to their natures. On this view, everything is either natural or artificial. Herein lies the most revolutionary side of the natural law philosophy. One can follow a line of reasoning that all culture and all artifice violates nature and must be destroyed. (This was the tendency of Rousseau's thought.) Or, this line of thinking may be followed in a more discriminating fashion and lead to conclusions that some cultural developments run athwart the nature of the thing — such as mercantile regulations, for example, while others do not, as, for example, the institution of marriage. The founders of these United

States tended to be quite conservative in their interpretation of the relation of their institutions to the nature of things.

"The Social Contract"

Another basic concept of the natural law philosophy could form a counterbalance to the revolutionary tendency of the state of nature concept. This is the concept of the *social contract* or *compact*. It will be useful here to distinguish between the essential and the existential social contract, even though such a distinction was not usually carefully employed in the eighteenth century. The essential social contract is timeless and universal; it is that contract which must exist if men are to live at peace in society. It is an enduring contract which one performs at birth and quits only when he leaves society. As I have noted elsewhere, the social contract "is that tacit, essential, and necessary agreement which binds man to man, members of a family to one another, members of communities together, binds generation to generation, binds people to government and government to people. It is everyman's tacit agreement not to use violence to get his way, to leave others to the enjoyment of the fruits of their labor, not to trespass upon the property of others, to fulfill

the terms of his individually entered into agreements, to honor his parents, to succor his children, to keep his word, to meet his obligations—to family, to community, to country—to keep all treaties, and to observe the amenities of his culture.”² It should be clear that the acceptance of such a social contract would mean that drastic changes would not be made in the social fabric, for to do so would be to violate the social contract. Americans accepted some such conception, as most peoples at most times do, whether they are aware of it or not.

The existential social contract is the particular one which prevails in a given society. When men referred to it they had in mind usually the compact between the governed and the governors. Any constitution would be such a contract, whether it had been written out or not, and whether or not both parties had formally ratified it. Americans in 1775 had a considerable history of dealing with such compacts. There was the British constitution, the colonial charters, the Mayflower Compact, the Fundamental Orders of Connecticut. In the natural law philosophy, if the rulers vio-

lated the existing social compact basically and consistently, a people could revert to their condition prior to their rulers and work out some new agreement. This is what Jefferson argued in the Declaration of Independence.

“Natural Rights”

Probably the most potent concept derived from natural law theory for the American colonists was the doctrine of *natural rights*. This is the doctrine that men have by nature, and as a gift of God, certain rights. They have been most commonly categorized as the right to life, liberty, and property. John Adams described the position this way:

All men are born free and *independent*, and have certain natural, essential, and unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.³

It was in their claim to rights that Jefferson was saying all men are created equal in the Declaration of Independence. He followed his famous phrase about equality with this one: “that they are endowed by their Creator

² *The Flight from Reality* (Irvington: Foundation for Economic Education, 1969), p. 498.

³ George A. Peek, Jr., ed., *The Political Writings of John Adams* (New York: Liberal Arts Press, 1954), p. 96.

with certain unalienable rights. . . ." It should be clear that this statement cannot be validated by an appeal to historical evidence. History is replete with instances of violations of the rights of individuals to their life, liberty, and property. Murder, suppression, and trespass have been all too common throughout history, nor would surveys anywhere at any time have been likely to turn up the fact that all were equally protected in the enjoyment of their rights.

But Jefferson did not appeal to historical evidence; he said that the truth of the position is "self-evident." The effective meaning of this is that the truth of the statement follows from the nature of man and of conditions on earth. What does it mean that one is entitled to life? It means that no one has a prior claim to it, that no one may take it without provocation, that it is his to whom it has been given. In the nature of things it is clear that no one could have established a claim on the life of another at birth or thereafter.

In a similar manner, man has a natural right to liberty, that is, to the free use of his faculties (with the commonly stated proviso that he do no injury to others in his use of them). In the very nature of things, no one may construc-

tively employ the mind, the senses, and the limbs of a person but that person himself. It follows that he to whom they belong does so by prior right which it is impossible for him to alienate. The right to property is shorthand for the right to the fruits of one's labor. It is self-evident that a person who has produced something by his own labor with his materials on his own time has a rightful claim to it. The right to property is the better phrase, however, for it encompasses the subtleties of distribution by which the fruits of one's labor may be determined in complex situations which usually prevail.

An Ordered Universe

The natural law philosophy mightily buttressed a belief in liberty. It also provided methods for discovering liberties and the means for establishing and maintaining them. The Enlightenment gave added impetus to making such discoveries and an urgency to acting upon them.

The concept of an ordered universe provided the most profound basis for liberty. Seventeenth century scientists had affirmed that the universe was governed by laws capable of precise formulation. Newton's statement of the law of gravity explained how the great bodies in the solar system are

kept in their orbits by a combination of the motion of freely falling bodies and the attraction of the bodies to one another. All sorts of other phenomena were shown to operate according to law. These laws were believed to be the creation of God and to be immutable.

As thinkers extended their activities into the social realm they discovered a natural order there as well. It is an order modified, however, by the free will of man. Man not only can reason but he can will as well, and he can will to do wrong to others. Hence, government is necessary, and certain prohibitions by it are essential to enable men to live fruitfully in society. But the existence of an order prior to government means that the role of government can be limited and restrained. It is not to be expected that everything will come apart if some human agency does not control and direct it; on the contrary, things will operate as they are supposed to ordinarily without some compulsive force.

Separation and Balance of Powers

To restrain government to its proper role, power must be separated into its various functions, and powers must be counterbalanced against one another to prevent those who govern from exceeding their bounds. The separation and balance of powers

concept was a paradigm of Newton's description of the universe itself. The heavenly bodies are kept from flying off into space by mutual attraction. On the other hand, they are prevented by their own motion from being drawn into the sun and consumed. A basic separation and a delicate balance between thrusts and pulls holds them in their orbit. This is one of the models for the separation of powers in government by which it may be kept to its task.

There is not space here to describe in detail the arguments for and justifications of liberty that derived from this outlook. Some of them will be described at other points. Suffice it to say that Americans were impressed wherever they looked with the felicitous possibilities for liberty. The broad lines of the insight went something like this: Compulsion is not necessary to make men sociable; man is a social creature by nature. He needs the society of others to satisfy his wants and will seek out the company of others. To have that company, he will be under pressure to behave in ways acceptable to others. There is an economic order which men willingly take part in without being compelled to do so or without being told what to do. Man is religious by nature. He cannot be compelled to believe what he does not be-

lieve. By nature this is impossible. But he might be expected to worship with others of like mind if left to his own devices.

By the time the crisis between Britain and America came, Americans were prepared by the natural law philosophy in three most important ways. With it they had ready to hand a foundation to substitute for the British constitution, one which undergirded that institution and transcended it in

its universal validity. And they were impelled toward liberty as a temporal object. The diversity of the colonies had once had the unity of a common British background. When they struck off the British connection they kept much of their diversity but thrust to a new unity on the basis of the natural law philosophy. Independence, liberty, unity, and diversity found shelter within the broad framework of natural law. (P)

Next: The Mercantile Impasse

Nature's Way

EQUILIBRIUM is nature's scheme and she maintains it by the use of power, which is developed from strain, which, in turn, is created by inequality.

Nature has never permitted stability in any form of life. Man will be going against nature if he seeks stability in his own affairs. It is strain that makes life not only worth while but actually possible, because from strain comes the only available power for individual development.

From The William Feather Magazine, July, 1971

IDEAS ON



LIBERTY

“MONOPOLIST”

CAN HE CHARGE “ANYTHING HE WANTS”?

JOHN A. SPARKS

TO THEIR FIRST COURSE in economic principles, college students bring a wide assortment of misunderstandings. The “nature of competition,” in particular, is a subject where there is almost always confusion. During a recent classroom discussion one student, who is representative, said: “This idea of rivalry between producers is fine, but what if there is only *one* producer of a product, for example, only *one* dairyman in a town. Then, it seems to me that he would have a monopoly and *could successfully charge any price he wanted to charge.*” The class nodded a general assent.

The fallacy that the exclusive producer of a good or service holds the enviable power to charge

“anything he wants” has been exposed and refuted.¹ Yet, most members of the class assumed that in the absence of other “flesh and blood” competitors there would be no curbs upon the pricing practices of the single seller. Preoccupied with “competition by competitors,” the class neglected other important kinds of competition. They are not alone.

“When competition is named as a regulator of enterprise outputs and prices, it is usually the competition among the firms already established in this or that industry which is emphasized . . . *Most studies of individual industries refer, when discussing competition, almost entirely to rivalry*

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¹ Hans F. Sennholz, “The Phantom Called Monopoly,” *Essays on Liberty VII*, (Irvington, N. Y.: Foundation for Economic Education, 1960), p. 295.