

Puritanism, Enlightenment And The U.S. Constitution

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Much contemporary thought tends to obscure the relationship between the Christian religion and the political institutions of the United States. On the one side, one finds liberals who see the birth of toleration in a collapse of religious hegemony and who treat religion as a matter of subjective will, as one among many ends the liberal consumer may choose.¹ On the other side, one finds conservatives of various stripes who treat religion as a datum of conscience, as a source or expression of objective imperatives which limit choice.² Neither of these alternatives fully comprehends the dialectic which obtains between religious and political consciousness in the United States.

The political life of the United States is rooted in a religious consciousness through which individuals achieve within themselves a more or less rational ordering of their desires and thus achieve in various forms an undivided union of rational and natural interests. In religious image and doctrine individuals have before them an ideal representation of the reconciliation of their particular desires within a divine order. While rooted in religion, however, the ethical life of the state cannot be reduced to religion. Religious life is fundamentally inward and in all forms related to representation. By contrast, civic life in its laws and traditions makes explicit the objective rationality of the subject, the fundamental principle and right of an enlightened self-consciousness.

In America the religious roots of the state are given explicitly rational form in Enlightenment thought. One finds a remarkable transition from a Puritanism born of a strict and exclusive adherence to a particular faith to a tolerant Enlightened constitution.

One finds in the American Constitution a *concrete universality*: a union of the particular and sectarian interests and needs of individuals with their more universal moral/legal nature -- the democratic will of individuals informed by the common will of the nation. In the Constitution, the interests expressed in the legislature gain rational form by public debate, by their relation to law and by their relation to the operation of the

¹ Cf. for example Ronald Dworkin, *Taking Rights Seriously*,(Cambridge: Harvard University Press, 1977) and David Richards, *Toleration and the Constitution*,(New York: Oxford University Press, 1986).

² Cf. for example, Michael Sandel, *Democracy's Discontent: America In Search of a Public Philosophy* (Cambridge: Harvard University Press, 1996) and William Galston, *Liberal Purposes: Goods, Virtues, Diversity in the Liberal State*,(Cambridge: Cambridge University Press, 1991).

whole state. In short, the plurality of subjective interests is informed by its relation to an objective common good.

This essay suggests that if the United States is to bring about a resolution to the contradictions inherent in revolutionary individualism which pose a threat both to ethical institutions and to the satisfaction of human needs, it must find a common good beyond the economic advantage of individuals, a good which degenerates neither into spiritless bureaucracy nor into a coercive moralistic enthusiasm. Further, it must seek this good not in the abstraction of what "ought to be" but in the ethical spirit which has animated its history and successfully wedded revolution and stability in its Constitution.

The present argument thus sketches the logic of the development from the Calvinism at the heart of American Puritanism to the Enlightenment thought which underlies the U.S. Constitution in order to clarify the relationship between religion and state in America. The course of this development is from a subject whose freedom is accomplished for him through the religious representation of divine activity, specifically grace, to a subject who knows this freedom as the inward principle of his own self-consciousness and its political enactment.³

In this development Puritanism transforms the Calvinist emphasis on the *divine* reconciliation of particular desire and universal law by making explicit the free activity of the *human* subject in conversion. Here the Puritan subject, confident in his own inward freedom, becomes a religious reflection of Enlightenment subjectivity, free in its relation both to its own rationality and to its natural desires. This forms the subjective pole of the development.

The objective pole likewise begins with a religious paradigm but has as its concern not only individual freedom but also its communal expression. The inward relation of the individual to the divine will (initially conceived as total submission and obedience) provides a religious paradigm for the political order. Absolute surrender, the content of faith, is held to provide the model for the relation between the religious community and the secular realm: as the individual submits to the divine, so too the secular realm must be governed by the religious order.

From this starting point, the upshot of the participation of the individual conscience in the divine plan comes increasingly to be conceived in terms of the individual himself and his finite communal relations; the common good no longer is seen to demand the sublimation of particular individual interests but can be achieved through their expression.

The proceeding sections have the following content and logical form:

³ A fuller treatment than permitted by the confines of this essay would show the transformation as it occurred in various colonies, especially Virginia.

(1) *Calvinism* -- Human subjective freedom is subsumed by the divine will and this union is upheld as an ideal from which we have fallen. This conception of subjectivity has as its political correlate institutions the source of whose authority is extraneous to the individual will in that they exist only to correct it.

(2) *Puritanism and Covenant Theology* -- The covenant theology makes explicit the importance of the individual's free assent in the reception of grace. The development in the Puritan "covenant theology" asserts the free assent of religious subjects as the finite moment of religious and political legitimacy and establishes an explicitly rational basis for both realms.

(3) *The Collapse of Puritanism and the Transition to Enlightenment Within Puritanism* there occurs a division between reason and nature which is manifest in a general way in the division between the practices and doctrines of Massachusetts and Connecticut. What is crucial in this development as in Enlightenment thought is that the object of faith has been thoroughly inwardized and thus an object of reason and experience.

(4) *The American Revolution* -- The human subject confident of itself as the rational source of political legitimacy overturns arbitrary monarchic rule but as revolutionary spirit finds expression in unstable institutions.

(5) *The U.S. Constitution as Concrete Universal* -- The revolutionary will turns back on itself in a 'Calvinistic' reflection on its own limits. This will is given stable form in a constitution which secures in political form the reconciliation of the particular interests of free individuals with an objective communal good. The Constitution is thus a rational sovereignty, the free adherence to which overcomes the divisive technological and moralistic moments which threaten the political life of the U.S..

(6) *Conclusion: the Spirit of the Religious Clauses of the First Amendment* -- The present argument concludes with reflections on the First Amendment which suggest that there is an establishment of religion in the United States and that properly conceived this is consistent with the Constitution. Further it is argued that in this light the *free exercise* clause should be interpreted as granting religious exemptions from generally authoritative laws.⁴

1. Calvinism

Calvinism it must be noted is not a destruction of reason but its subordination, with nature, to necessity in the form of divine predestination.⁵ It develops a concrete knowledge of God. In Calvin's words: "not that knowledge which, content with idle

⁴ The 'religious clauses' of the first amendment state: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

⁵ Cf. Calvin, *Inst.* I,1,2 where it is argued that *knowledge* of self and nature result from God's grace.

speculation, merely flits in the brain but that which will be sound and fruitful if one duly perceive it and if it takes root in the heart."⁶ On this view, the unity of the rational and the natural, of head and heart, results in a practical or moral wisdom, piety. For Calvin, it is idle to question what God is; what is required is not speculation but reverence grounded in recognition and worship of the divine majesty. This recognition is the result of reflection upon divine law as expressed in the Commandments. In such reflection, the Calvinist becomes aware not only of the sovereignty of God as the giver of law but also of the poverty of the subject, in himself utterly unable to fulfill the divine commands, the legacy of original sin which corrupts heart and mind.⁷

For the subject thus estranged, the expression of God's mercy in Christ amounts to a reward which is completely undeserved. According to Calvin, human sinfulness casts us into the role of debtors, a debt which we attempt to repay through obedience and faith. Thus: "he [God] therefore yields his own right when he offers a reward."⁸ This reward manifests God's covenant with his people. In Calvinism the formula of this Covenant is expressed in Leviticus: "I will be your God and you will be my people."⁹ Further, "He is our God on this condition: that he dwell among us as he has testified to Moses."¹⁰ Thus, the Calvinist conception of the covenant gives rational form to the relationship between an austere deity and his elect. On the objective side, the covenant expresses the universality of God's promise and the eternal significance of his relation to humanity. On the subjective side, there is the nascent sense of being chosen or elect.

So by contrast with Augustine's view that human memory, will, and understanding are the image of God, Calvin finds the human reflection of God's image in obedience: "God has so depicted his character in law that if any man carries out in deeds whatever is enjoined there, he will express the image of God as it were in his own life."¹¹ On the one hand, this represents a purification of the subject's relation to the divine through merely finite image. On the other hand, however, because such definition does not make explicit the rational element of the human relation to God, it portrays the subject's relation to God in a less than comprehensive manner. On Calvin's account, in the moment of reconciliation with the divine both reason and will are passive. The union with God then is merely immediate, involving the dormancy of human reason and will in the divine activity. As such, grace does not comprehend the rational and natural aspects of human subjectivity but restrains them. Whereas Augustine's conception of the divine image as memory, will and understanding contains, in the understanding, a moment of rational reflection on conversion and the relation of mind and will to God, Calvin, in asserting passivity, de-emphasizes the significance of rational comprehension.

⁶ Calvin, *Inst.* I,V,9.

⁷ For Calvin: "[the mind] conceives desires and undertakes only that which is impious, perverted, foul, impure and infamous. The heart is so steeped in the poison of sin that it can breathe out nothing but a loathsome stench. (*Inst.* II,V,19) Cf. also *Inst.* II,viii,3.

⁸ Calvin, *Inst.* II, viii,4.

⁹ Calvin, *Inst.*, II,x,8; *Lev.* 26.12.

¹⁰ Calvin, *Inst.* II,x,8; *Lev.* 26.11.

¹¹ *Inst.*, II,viii,51. Cf. also *Inst.* I, xv,4 and Augustine *The Trinity*, X, 11- 12; XIV,4,6,8; XV,21.

Nevertheless, Calvin, without infringing the primacy of the divine will and predestination, indicates through the content of obedience an objective criterion of one's reconciliation with God. He states: "because a man does not easily maintain love in all respects unless he earnestly fears God, here is proof also of his piety."¹² Further, "our life shall best conform to God's will when it is in every respect most fruitful for our brethren."¹³ However, the objective limit of this conception is that it finds institutional expression in a church which inadequately recognizes the importance of the individual's rational assent and which thus asserts itself as an authority over both the individual and the community.

On the subjective side, then, the moment of grace exhibits a less complete appropriation of God's will than does man's state before the fall; it is thus an abstraction from a prior more realized state.¹⁴ Likewise, on the objective side, the divine will itself achieves only abstract determination: its spiritual doctrine achieves incomplete institutional enactment. Hence, as Calvinist doctrine is not comprehensive of finite individuality, so the church is not comprehensive of diverse human ends. As such, the attempts by the church to govern the state will meet with resistance, with rational rebellion against an authoritarian institution.

Accordingly, the state thus conceived exists in a merely instrumental relation to the divine providence in which the subject finds his truth: it is used to correct and punish the sinful individual. As such, the state exists in an external relation to the human subject and the subject finds his true relation to God, himself, and nature outside the state. It will thus be unclear to individuals why they should subordinate themselves to a state which is external to their inward relation to the divine. Thus a real political spirit cannot be cultivated in this situation.

What is of great interest for the present argument is the sense of individuality implicit in this Calvinistic inwardness. The dignity of the individual consists in an ethical principle prior to all institutional relations. While in its initial and abstract form this principle has the shape of obedience, it also indicates the primacy of the individual conscience, so far as the individual will is given over to the divine will.

2. Puritanism And Covenant Theology

Calvinism's abstract reconciliation of the rational and natural interests of humanity breaks down into a division between Arminianism and Antinomianism.¹⁵ Arminians,

¹² *Inst.* II, viii, 52.

¹³ II, viii, 54

¹⁴ For Calvin: "God's image is the perfect excellence of human nature which shone in Adam before his defection" but which was blotted out by the Fall. *Inst.* I, xv, 4.

¹⁵ Here I follow the suggestion of Perry Miller. Antinomianism, however, is not an entirely precise term. Perry Miller, *The New England Mind: The Seventeenth Century, Vol. I* (Mass.: Harvard University Press, 1939, 1982) pp.370-1.

Arminius himself in Holland and Laud in England, criticized Calvinism for its destruction of moral rationality. On their view, absolute predestination cannot ground moral obligation. If the spiritual destiny of individuals is eternally preordained, what reasons, other than those of the casuist, can ordinary people be given to perform their duties? Arminians, then, asserted that the correct operation of human reason and will is prerequisite to the reception of grace.

Antinomians, for example, Anabaptists, Quakers, Ranters, and Levellers, criticized Calvinism because it provided no means by which individuals could be assured they were elect. They asserted therefore that union with God was immediate and did not require a special act of grace. Thus, whereas Arminians downplayed the corruption of human reason and will, Antinomians downplayed the corruption of human nature.

Puritanism as it developed in England and New England drew these subjective moments back into relation to an objective divine providence. However, the Puritan concept of the relation between God and humanity achieved a more determinate comprehension of reason and nature than did Calvinism, conceiving this relation, in its 'federal' theology, in terms of covenant. Perry Miller puts it as follows: "Arminianism was a kind of ethical rationalism that had lost a sense of piety, and Antinomianism was an uncontrolled piety without the indispensable ballast of reason; Puritanism looked upon itself as the synthesis of piety and reason, and the federal Puritans looked upon the covenant theology as the perfection of that synthesis."¹⁶

The covenant theology transformed the Puritan conceptions of: (1) the relation of the individual to God -- The Covenant of Grace; (2) the relation of the individual to the church -- The Church Covenant; (3) the relation of the individual and the church to the state -- The Social Covenant and; (4) the relation of God the Father to God the Son -- The Redemption Covenant.¹⁷ Here the individual is recognized as a source of the legitimacy of the relation to God in (1) and (4) and to institutions in (2) and (3).

The covenant of grace makes the activity of the individual an essential element in conversion or regeneration. Though humanity has fallen from an original and perfect relation to the divine, it is not thoroughly vitiated. Prior to regeneration humans have at least that amount of goodness which allows them voluntarily to accept divine grace. As Richard Sibbes puts it: "Though God's grace do all yet we must give our consent."¹⁸ Also John Preston in his *The New Covenant* (1629) states: "Take heede of refusing the acceptable time ... Beloued, there is a certaine acceptable time, when God offers Grace, and after that hee offers it no more"¹⁹ Individuals thus have a voluntary and active role in obtaining their own salvation. Covenant theology thus conceived conversion as a contract on equal terms between parties in all other respects unequal. The covenant is a

¹⁶ *New England Mind I*, 373.

¹⁷ The present argument does not consider the covenant of redemption which stresses Christ's voluntary acceptance of his 'cross' and the Father's pledge to discharge humanity of its sin. Cf. *New England Mind I*, 407-9, 411, 419.

¹⁸ In Perry Miller, *Errand in the Wilderness* (New York: Harper and Row, 1956) p. 84.

¹⁹ *Errand*: 85.

free gift of God's mercy and is freely accepted by the individual. Further, both God and the individual are bound by the covenant. John Preston states: "You may sue him of his own bond written and sealed and he cannot deny it."²⁰

No longer is sin conceived in ontological terms as an essential corruption of human nature. Rather it is more explicitly defined in terms of the moral activity of the free will. Whereas Calvin thoroughly subordinates reason to divine predestination, finding in human nature innate corruption, Preston, for example, finds in human nature an innate goodness. On his view, both sense and reason are unpolluted. He states: "faith teaches nothing contrary to reason, for sense and reason are God's works as well as grace...."²¹

Puritanism thus achieves a practical reformulation of the divine-human relationship emphasizing, to a greater degree than Calvinism, the freedom, rationality, and moral capacity of individuals and the perceivable regularity of the divine will circumscribed by the covenant. Human activity does not therefore lie outside the divine principle but is the finite prerequisite of the individual's relationship with the divine. Moreover, abiding by the terms of the covenant gives the individual *rights* against God himself and thus assurance of salvation.

In the individual's active participation in the divine work of his own salvation is achieved a more determinate union of divine and human than is available on strict Calvinism. Nevertheless, the Calvinist spirit though modified is not overturned. For the Puritan, God is still conceived as sovereign and in Himself unknowable but no longer appears arbitrary or tyrannical in relation to humans. Further, while humanity continues to be seen as fallen and sinful, it is not without rational and moral capacity. And finally, while grace remains a special dispensation, it is thought not to be opposed to human reason but rather to be its elevation.²²

The finite activity of individuals is thus more completely reconciled with the divine will. As a result, the Puritan has a more determinate sense of his own inwardness as the essential spirit of religious and political life. The individual recognizes in his own regenerate moral will the foundation and legitimation of all practical institutions. Thus, the individual in the finitude of his particular interests is not simply corrupt and a mere falling away from the divine principle but contains within himself the potential for more universal relations. Whereas the corrupt individual of Calvinism can, in principle, welcome correction from an external political order, which would impinge only upon a fallen particularity, the Puritan, whose individuality is conceived as a concrete union of reason and nature, finds in political coercion an infringement of the universality implicit in the subject's own self-relation.

The development of the sense of human freedom through the Covenant of Grace and the Church Covenant is at the heart of the Puritan conception of political life in the Social

²⁰ *New England Mind I*, 389.

²¹ *In Errand*, 76.

²² Cf. Perry Miller (ed), *The Puritans, Vol. I* (New York: Harper and Row, 1939, 1963) p. 39.

Covenant. Congregationalism was the most unique feature of New England Puritanism.²³ On this format, each town was centred around a church whose membership was constituted by those who had given proof that they were regenerate, who were party to the Covenant of Grace. Church membership represented only one-fifth of the population - four-fifths of the town were not church members.²⁴

The Church Covenant was limited, then, to those who had visibly accepted the Covenant of Grace and who were judged as sincere through principles of rational charity. The Church Covenant is thus an institutional expression of the inward covenant. Miller quotes a telling axiom of Puritanism: "the Covenant of Grace is clothed with Church-Covenant in a Politicall visible way."²⁵ The Church Covenant gives institutional recognition to the moral will of regenerate individuals.

The moral will, therefore, is seen as the source of church powers and those elected by regenerate individuals are placed in charge of the community at large. On the subjective side, individual freedom is thought to be a necessary condition of political legitimacy. As John Winthrop states: "No common weale can be founded but by free consent."²⁶ John Cotton expresses the objective corollary: "It is necessary, therefore, that all power that is on earth be limited, Church power or other."²⁷ Thus, the moral will of the regenerate individual is no longer defined by obedience alone but by *political* activity. In his inward self-reflection, the subject participates not only in the divine will but in worldly institutions whose objective basis is divine law and whose legitimation and limit is grounded in the subject's moral will.

Nevertheless, the supreme political virtue for Puritans is obedience. However, the power of the magistrate to whom obedience is due comes not only from God but from the people. Moreover, as Winthrop argues in *A Modell of Christian Charity* the magistrates are limited in three ways: (1) as members of the church they are bound by the church covenant; (2) as freemen they are bound by the social covenant to which they had sworn and; (3) As rulers they are bound by the oaths of office and party to a covenant with the people.²⁸

3. The Collapse Of Puritanism And The Transition To Enlightenment

The "federal" (or covenant) theology thus conceives divine-human and individual-community relations in terms of contract. The communal covenants of church and society

²³ *New England Mind I*, 433.

²⁴ It is remarkable that only one-fifth offered themselves as regenerate. Miller contends that "They were honest people and found it difficult to romanticize about themselves -- even when they desperately wanted to." *Errand*, 158.

²⁵ *New England Mind I*, 447.

²⁶ In *New England Mind I*, 408.

²⁷ In *Errand*, 43.

²⁸ *New England Mind I*, 424.

are fundamentally subordinate to the subject's inward relation to God in the Covenant of Grace. In this sense, there remains a division between the individual and the determinate ethical order such that institutional life is rendered unstable by the contingency of adherence. The migration to Connecticut, May 1636, expresses this inherent contingency: an element of society breaks away forming its own order, external to that of Massachusetts. This renders Massachusetts one among many orders and as such not the universal fulfilment of God's plan. This fragmentation was not compatible with its place as a "city on the hill".

In the division between the Massachusetts and Connecticut communities, a division which originates in the contractual division between the individual will and the social order, one finds a development of the implicit democratic tendencies of Puritanism. Thomas Hooker, pastor of the Newtown congregation which moved to Connecticut, developed the notion of preparation to include virtually all inhabitants. Whereas John Cotton would restrict church membership to those who were found worthy, upon examination by magistrates, Hooker emphasized that one could not tell who was reprobate and who was not.²⁹ Hence, in the *Survey*, Hooker defined the qualifications for church membership with generous latitude. He argued that if one professes faith, does not live openly in sin, has some knowledge and can give some reason of his hope, "these be grounds of probabilities, by which Charity poised according to rule may and ought to conceive, there be some beginnings of spirituall good."³⁰

Nevertheless, dwindling church membership drew both sides of the New England spirit together in acceptance of an expansion of the Church Covenant, what is called the *Half-Way Covenant*. In the Half-Way Covenant, the Synod of 1662 changed earlier restrictive requirements for church membership. While New England had admitted the children of adult members to baptism, assuming they would later "own" the covenant through a profession of faith, it had required of adult members understanding, good behaviour and, most importantly, an experience of conversion. But this left many outside church membership, the children of those who were baptised but had not yet received faith. Edmund Morgan succinctly expresses the change wrought by the Synod: "It meant that if a person born and baptised in the church did not receive faith he could still continue his membership and have his own family baptised, by leading a life free of scandal, by learning and professing the doctrines of Christianity and by making a voluntary submission to God and his Church."³¹

However, in the further reflection upon the Half-Way Covenant by Increase and Cotton Mather and John Stoddard, spiritual leaders of Massachusetts and Connecticut respectively, one finds an important division in the New England mind. Stoddard was struck by the fact that while the Half-Way Covenant enlarged the congregation, it diminished the number of those who were full church members, namely those who

²⁹ Perry Miller, *The New England Mind: From Colony to Province, Vol.II* (Boston: Beacon Press, 1953, 1961) p.74.

³⁰ *New England Mind II*, 76.

³¹ Edmund S. Morgan, *Visible Saints: The History of the Puritan Idea* (Ithaca: Cornell University Press, 1974) p.131.

partook in the Lord's supper.³² Increase Mather took a different perspective on the situation. In 1679 he bemoaned the fact that the distinction between those who partook in the Half-Way Covenant, and those in the town who did not, had diminished to the point that there seemed little difference between one who was and one who was not in covenant with God.

The issue, then, for both was to invigorate and revive the religious spirit of citizens in the face of an emergent secularism. The Mathers re-emphasized the contractual nature of the covenant and its rational components. Increase Mather admitted that the founders had based their idea of the covenant not only upon the bible but also upon nature and reason.³³ From this side, the importance of subjective consent was stressed and defined in terms of innate principles of reason and morality. In 1700 Cotton Mather published *Reasonable Religion* in which he states: "The power of reason is Natural to the Soul of Man."³⁴ For Mather, while the truths of revelation are higher than reason they are not contrary to it.³⁵ In his later work *Manuductio ad Ministerium* (1726) he went so far as to state that principles of morality are innate and "as Plain, as Clear, as Undeniable, as any that are purely Mathematical."³⁶ As spelled out in his 1710 *Bonifacius. An Essay Upon the Good that is to be Devised*, Mather saw the development of piety to be the work of rational individuals and groups who through social pressure would exhort citizens to moral action. In this way Mather sought to reconcile the divisions born of an emerging capitalist economy, the doctrine of individual rights, and the toleration enforced by the Crown. From their own particular standpoints, the divided interests of society, through pious action, would realize a common good and thus uphold the divinely ordered gradations of the Puritan state.³⁷ Solomon Stoddard, the "dictator of Connecticut", was far more sceptical of the rational and moral power of the human mind. He rejected the Half-Way Covenant and indeed the whole structure of the 'federal theology' as it had been defined in Massachusetts. By contrast with the view of the Mathers which defined the covenant as a contract whose terms were discernable by reason, Stoddard returned to the Calvinist doctrine of the covenant as command and asserted that grace could be known only in the inward intuition of grace itself.³⁸ For Stoddard, God's grace was dispensed on the basis of His sovereign and inscrutable will which remained impenetrable to the human mind. He states: "The only reason why God sets his love on one man and not another is because he pleases." Further: "He exercises grace freely from His Sovereign Will and Pleasure."³⁹

Because no human can rationally discern sainthood, Stoddard argued, the gates to church membership should be opened to all. Though he was critical of the Church Covenant, arguing both that it could not be derived from reason and that it was

³² *New England Mind II*, 115. Miller indicates that the duties required of full communicants were too onerous for most citizens. They were thus satisfied if they could obtain baptism for their children. *New England Mind II*, 114-5.

³³ *New England Mind I*, 255.

³⁴ *New England Mind II*, 419.

³⁵ *New England Mind II*, 422.

³⁶ *New England Mind II*, 435.

³⁷ Cf. *New England Mind II*, Chapter XXIV.

³⁸ *New England Mind I*, 283.

³⁹ *New England Mind I*, 233.

unscriptural, Stoddard nevertheless upheld the communal covenant and in Miller's words: "He treated the congregation and virtually the whole town (there were still a few resolute sinners) as the Church; at one stroke he cut his way through the maze of the covenants by identifying the church not with a society of saints but with the town meeting -- where he himself was dictator."⁴⁰ Although Stoddard's abolition of the "oligarchic rule of the elect" contains democratic implications he was also quick to suppress these. By contrast with the congregationalist view in which control remained with the local church, Stoddard organized the churches in western Massachusetts into "consociations" based on the Presbyterian model, and ruled this as a "Protestant Pope".⁴¹

Thus one finds in the central theological-social debates in New England, basic components of the revolutionary spirit which animated the American colonies in 1776, yet at this stage of their development defined in opposition to each other and secured by authoritarian social orders. On the one hand, one finds a conception of the individual as a subject whose rational spirit finds expression in the social order. The Mather's, even in expanding the rational capabilities of the individual, nevertheless conceived them as tied to a pre-modern social hierarchy. On the other hand, Stoddard while asserting the "equality" of all individuals under God, at least so far as rational social discriminations could not be made on the basis of grace, nevertheless stabilized this democratic impulse through his own dictatorial authority. In each community the seeds of democracy are present but do not yet permeate the social order in which they take root. The further development of the "New England mind" suggests how, in its own pre-modern way, Puritanism increasingly emphasized the subjective principle which animates the American Revolution and which leads to the collapse of Puritanism itself. The contrast between the views of Charles Chauncey and Jonathan Edwards is instructive.

Following his precursors Wise and Mayhew, Chauncey brings to fruition the rationalism implicit in the covenant theology. In Massachusetts, John Wise, more radically democratic than the Mathers, was also more rationalistic. Through emphasizing the direct connection between God and natural reason, Wise eliminates the priority of Scripture; it becomes a secondary confirmation of propositions known by reason alone.⁴² Jonathan Mayhew marks a further step in this development. As Miller argues, with Mayhew: "The purposes of society are no longer the deity's, but the subject's."⁴³ What is important here is the well-being of citizens. Charles Chauncey reinterprets religion in this rationalistic light. For Chauncey, true religion: "approves itself to the Understanding and Conscience, ... and is in the best Manner calculated to promote the Good of mankind."⁴⁴ From this *secularized* religion arose both the rejection of the Westminster Confession

⁴⁰ *New England Mind II*, 227.

⁴¹ Cf. Perry Miller, "Solomon Stoddard, 1643-1729," *Harvard Theological Review* 34 (1941) 277-320 and Elizabeth Flower and Murray Murphey, *A History of Philosophy in America Vol. I* (New York: Capricorn Books, 1977) p. 139.

⁴² *Puritans I*, 193.

⁴³ *Puritans I*, 194. The extent of Stoddard's domination of the Connecticut Valley was remarkable, and all the moreso in that it was exercised from Northampton.

⁴⁴ In *Errand*, 193.

and the birth of Unitarianism. Theologically liberal but socially conservative this rationalism represents one side of the collapse of the Puritan view.

In 1729 Jonathan Edwards succeeded his grandfather Solomon Stoddard as the theological leader of Connecticut and western Massachusetts.⁴⁵ Edwards, intensifying the doctrine of grace, reasserted what he conceived as the Calvinist spirit of Puritanism. He: (1) rejected the judicial interpretation of original sin; (2) declared God unfettered by agreement or obligation; (3) made grace irreversible and; (4) annihilated man's natural ability.⁴⁶

For Edwards as the result of the Fall, humans are utterly devoid of the "spiritual principles" which enable one to love God. As a result, one is captive of the "natural principles" and unable to overcome one's natural desires and self-love. He sees grace, however, as a partial restoration of the spiritual principles. Utilizing Lockean psychology, Edwards describes grace as the gift of a *new sense* or as the reception of a *new simple idea*. To be given a new sense is to be able to perceive the love and beauty of God, actually to love God. For Edwards, grace is not itself a simple idea but rather allows one to perceive the new simple idea, that is, God's presence in human consciousness.⁴⁷

It can thus be seen that the positions advanced by Unitarians and Edwardsians are not mere opposites. Rather both presuppose that God is to be found in the immediate data of consciousness in the innate ideas of natural law and the simple idea conferred by grace respectively. Likewise, both in varying degrees redeem human reason and nature: Unitarians through the denial of original sin and Edwards through his Lockean reinterpretation of the Calvinistic doctrine of Grace.⁴⁸ On the Unitarian view, the subject, thus restored, looks to logic to discover truth, while on Edwards' view he looks to the evidence of experience. But what is of significance in both views, is that the truth is immediately present to the subject's consciousness. The implicit political determination of this doctrine finds legitimacy in no authority which does not somehow emanate from and secure the right of subjectivity.⁴⁹

Thus, there is an identical spirit at work in Puritanism and in Enlightenment: one from the side of faith, one from the side of pure rational insight; two aspects of the one subjectivity whose democratic enactment is the basis of the revolutions of the time.

4. The American Revolution

⁴⁵ *History of Philosophy in America*, 140.

⁴⁶ *Errand*, 98.

⁴⁷ *History of Philosophy in America*, 180-82.

⁴⁸ Edwards believed in a partial restoration of the spiritual principles of man which had been lost in the fall. Cf. *History of Philosophy in America*, 179-183

⁴⁹ For a discussion of the logic of Enlightenment cf. F.L. Jackson, "The Paradoxical Idealism of Enlightenment" *Dionysius*, Vol.1, (Dec. 1977): 161-76.

The division of Puritanism into two complementary but opposed doctrines, roughly deism and evangelicalism, is the religious form of the dual moments of the Enlightenment spirit, rationalism and empiricism. What is common among these forms of self-consciousness is the individual's inward confidence that knowledge is found nowhere but in the subject's own reason and experience. By contrast with the doctrine of Calvin, this reconciliation of divine and finite is seen to occur not simply in the divine substance but also in and for human subjectivity. James Doull argues that for the Calvinist the division and unification of the natural and sensuous nature of the subject was "received as the movement of the trinitarian idea." By contrast, in Enlightenment thought the division and the process of unification is referred to the subject itself.⁵⁰ Thus, John Wise adheres to the concept of natural law and Jonathan Edwards treats of grace as a simple idea, the former reflecting Descartes's emphasis on innate ideas, the latter reflecting Locke's emphasis on simple ideas. In a more developed form this is a revolutionary subjectivity which would overturn all merely external restrictions of its freedom. The politicized Cartesian subject asserts itself as the principle of political legitimacy.⁵¹

The empiricist Lockean subject gives primary enactment of this confidence in the right to property. Whereas the Calvinist obtains merely an inward freedom through the unwarranted gift of divine grace, the Lockean subject obtains the practical guarantee of his political liberty through the appropriation of property. What is originally God's gift "to all in common" is appropriated by individuals and divided into several parts.⁵² The individual's property is not merely a gift but is also the product of his own activity, of having "mixed his Labour with, and joyned to it something that is his own."⁵³ Further, property is here conceived in a broad sense to include "Lives, Liberties and Estates" and the purpose of government is conceived as the preservation of property.⁵⁴

The rallying cry of the Revolution, "No taxation without representation", thus expresses Americans' experience of a difference in British and American interests which poses a threat to the concrete freedom they obtain in the security of their property. In the argument of Daniel Dulany this difference in American and British interests makes virtual representation impossible. Developed to its logical conclusion, this difference makes political union itself impossible.⁵⁵ Moreover, the British insistence on an identical authority over legislation and taxation aids in the American deduction: Britain has no right to tax. Thus if legislation and taxation are equivalent, it follows that they have no right to legislate.⁵⁶ Further, by executing an arbitrary and absolute power over the

⁵⁰ James Doull, "Faith and Enlightenment" *Dionysius*, Vol.X (Dec. 1986) p. 132.

⁵¹ Cartesian here applies to both Descartes' and Locke's concept of the subject.

⁵² John Locke *Two Treatises on Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988) II,V,25-6.

⁵³ Locke, *Two Treatises*, II,v,27.

⁵⁴ Locke, *Two Treatises*, II,ix,123-24.

⁵⁵ Cf. Edmund S. Morgan, *The Birth of the Republic, 1763-89* (Chicago: University of Chicago Press, 1977) p. 123.

⁵⁶ Cf. Morgan, *Birth*, 44.

colonies, the British parliament was thus formally identical to an absolute monarch. And this identification reflects negatively on King George.⁵⁷

The subject's right to property thus places limits on governmental action and implies a continuation of the Puritan opposition to absolute monarchic power. The great Puritan John Cotton states: "It is necessary therefore that all power that is on earth be limited, Church power or other...."⁵⁸ Compare a newspaper article which appeared in response to the Stamp Act: "No Parliament can alter the Nature of Things or make that good which is really evil There is certainly some Bounds to their Power and 'tis Pity they were not more certainly known."⁵⁹

The work of the Founding Fathers was thus to limit government in terms compatible with the freedom of the property-owning, moral subject; a freedom known in both political and religious terms.⁶⁰ The Declaration of Independence indicates why it is that the British system does not contain sufficient limitations. As James Young puts it:

The form of the Declaration is clearly that of a large-scale, Lockean syllogism. The famous second paragraph states the premises of the argument. It begins with the assertion of self evident truths that all men are created equal and are possessed of certain inalienable rights, notably 'life, liberty and the pursuit of happiness.' Governments are said to be created to secure these rights and to derive their power from the consent of the governed. If government becomes destructive of these ends, a right inheres in the people to alter or abolish it and to institute a new one in its place.

The body of the Declaration that follows is basically a long list of grievances against King George III. These grievances are said to be violations of natural rights and the doctrine of consent, thus leading inevitably to the conclusion that a severance of ties linking Crown to colonises is justified.⁶¹

The unity emergent in the common struggle against Britain and in the attempt to articulate its justification is given institutional form in the *Articles of Confederation*. *The Articles* were in place from the end of the Revolution to the ratification of the Constitution in 1787. *The Articles* unified the states in an external manner allowing each state to retain its sovereign individuality, any power not explicitly given to the U.S. Congress being retained by the states.

⁵⁷ For example, Thomas Paine incorporates scripture and Locke in his denunciation both of the King and of the principle of monarchy. He states: "How impious is the title of sacred majesty applied to a worm, who in the midst of his splendour is crumbling into dust." Thomas Paine, "Common Sense" in *Political Writings* (Cambridge: Cambridge University Press, 1989) p.9. Cf. also pp. 8-15.

⁵⁸ Miller, *Errand*, 43.

⁵⁹ In Morgan, *Birth*, 23.

⁶⁰ Cf. *Puritans I*, pp. 193-4 for a discussion of the revolutionary implications of ministers Barnard and Jonathan Mayhew. Also cf. pp 277-80 for Jonathan Mayhew's 1750 sermon *A Discourse Concerning Unlimited Submission*.

⁶¹ James P. Young, *Reconsidering American Liberalism* (Boulder: Westview Press, 1996) pp.44-5

5. The Constitution As Concrete Universal

The development of the U.S. Constitution arises from a twofold negation: (1) of the *Articles of Confederation* (2) of the legislative tyranny of state governments. The impetus in each case, however, is not merely the rejection of the institutional results of the revolution but also a gradual recognition of the supremacy of the people and the positive impetus to realize this sovereignty in reformed institutions. The unity between the subject's reason and nature, that is, between the universal divine order and the finite human will, achieved initially in religious representation, is now given adequate political enactment.

Alexander Hamilton among others made explicit the limits of the *Articles of Confederation*. The central defect was that, according to the *Articles*, the federal government was not directly related to individuals but merely to state governments. As a result, Congress could raise neither men nor money by direct conscription or taxation of individuals but relied on the states' fulfilment of various congressional requisitions. With "neither troops, nor treasury, nor government" the security of the Confederation and of freedom of individuals was in question.⁶²

Individuals thus had a more stable allegiance to their particular states, which they knew as the basis of the security of life and property and whose authority they knew in the sanction of law and taxation, than they had to the federal government. So long, therefore, as the primary division was between state-government and Congress, the people's loyalty remained with the state. Hence Hamilton's description of the Confederation: "Each state yielding to the persuasive voice of immediate interest has successively withdrawn its support till the frail and tottering edifice seems ready to fall upon our heads and crush us beneath its ruins."⁶³

However, just as the Confederation could not bring institutional stability to the revolutionary will, so too a division emerged between state legislatures and the will of the people. State legislatures engaged in paper money schemes and enacted laws which confiscated property and suspended established ways of debt collection. Private property, the determinate expression of individual freedom, thus became insecure and the legislative expression of the people's will, so far as it was in opposition to the subjective freedom which is its basis, appeared as capricious and arbitrary as that of a monarch.⁶⁴ As

⁶² Alexander Hamilton, John Jay, James Madison, *The Federalist Papers* (ed) Clinton Rossiter, (Chicago: Mentor Books) Section 15.

Hereafter references will refer to the author responsible for the specific section, title and section number

⁶³ Hamilton, *Federalist*, 15. For example various states ignored the nation's treaties with foreign countries, waged war on the Indians, built their own navies, and refused to fulfill national requisitions. Cf. Morgan, *Birth*, 124.

⁶⁴ Cf. Gordon Wood, *The Creation of the American Republic 1776-1787*, (Chapel Hill: The University of North Carolina Press, 1969) pp. 403-9. Morgan states: "Rhode Island where a wildly depreciating paper currency had been made legal tender, was the notorious example. Hordes of happy debtors were paying off their obligations in worthless paper, leaving their creditors bankrupt." Morgan, *Birth*, 124.

Madison stated: "The legislative department is everywhere extending its activity and drawing all power into its impetuous vortex."⁶⁵ Here the Revolution had turned back on itself, destroying the institutions which gave stability to its will and making its freedom vulnerable to outside interests, those of other states or foreign powers.⁶⁶

In critical reflection upon the defects of the *Articles of Confederation* and upon the tyranny of state legislatures there was, thus, the deeply felt need of institutional reform. As abstracted from its contemporary political structures, the revolutionary freedom of Americans returned to the unified will forged in opposition to British Dominion. This will, however, was now mediated not merely by the negation of external dominion but likewise by the negation of its own incomplete political forms, specifically *The Articles* and the priority of particular states which it sustained. Madison among others made clear that only republican government could give institutional enactment to this mediated freedom while remaining true to the character of the American people, the fundamental principles of the revolution, and self-government.⁶⁷

As conceived by the Framers, all government, federal and state, was grounded in the universal will of the people. As Hamilton states: "The fabric of American empire ought to rest on the solid basis of CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure original fountain of all authority."⁶⁸ But the will of the people was divided between the universal identity of all Americans and their particular identities as members of the various states. In conceptualizing the republican institutions which would make determinate the concrete freedom of Americans and unify its relations to federal and state government, the major difficulty with which the framers wrestled was that of faction, specifically the threat that a majority faction would dominate the state and coerce the rights of the minority.

What was required was a self-differentiated union of universal and particular interests, not the dominion variously of one over the other. In comprehending the whole of the individual's political life, the Constitution would operate directly on all citizens, thus achieving *national* government while leaving substantial jurisdiction to the states and maintaining a federal character.⁶⁹ Moreover, as the legislature tends to predominance in republican government, it would be divided into Senate and House of Representatives.⁷⁰ Further, the President would have veto power over acts of the legislature -- "an indispensable barrier against the encroachments of the latter upon the former."⁷¹ Finally, as Hamilton contends, the judiciary would be: "designed to be an immediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority."⁷² But neither the executive nor the judiciary

⁶⁵ Madison, *Federalist*, 48.

⁶⁶ Hamilton, *Federalist*, 6.

⁶⁷ Madison, *Federalist*, 39.

⁶⁸ Hamilton, *Federalist*, 22.

⁶⁹ Madison, *Federalist*, 39.

⁷⁰ Madison, *Federalist*, 51.

⁷¹ Hamilton, *Federalist*, 66.

⁷² Hamilton, *Federalist*, 78.

would, in principle, be superior to the legislature. As Madison states: "The several departments being perfectly coordinate by the terms of their common commission, neither of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers."⁷³ All authority comes from the people and as each department is grounded in the popular will, all are, in principle, equal.

Thus, the Constitution draws together the elements of universality and particularity which could not be given secure determination in Puritanism. The stability of law was unified with the democratic rebellion which reigned in the former colonies. In the Constitution, the individual's inward self-relation, conceived in its universality as the will of the people, is given determinate objective form. One finds in it not a mere correction of a fallen individuality but the enactment of a subjectivity confident of itself as the source of political legitimacy. There is room both for the universal will and for the particular interests of individuals in their private pursuits. The basis of this confidence is the recognition that the particular will is not a mere falling away from the universal but essential to its concretion. In a Madisonian pluralism, the common good arises out of the division and clash of particular interests; indeed on this view, given the division of interests, a majority could coalesce only around principles of justice and the general good.⁷⁴

However, the common good is not contingent upon the particularity whence it emerges. Rather, it becomes objective for the multiplicity of subjective wills, comprehensive of their difference. Madison states: "The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government."⁷⁵ Yet, in its comprehension of competing interests, the constitution does not eliminate differences but maintains them in dynamic relation, securing its own stability by turning ambition against ambition.⁷⁶ Here the Enlightenment faith in the immediate goodness of the individual is returned to a more Calvinist reflection on the need to correct man's depravity. In the words of George Washington: "We have probably had too good an opinion of human nature in forming our confederation."⁷⁷ Madison's 'auxiliary precautions' are born of the recognition that men are neither angels nor ruled by angels. Madison states: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."⁷⁸

But in this renewed recognition of original sin the *redemption* of the individual consists neither in abstraction from the world, in an inward submission to the divine, nor

⁷³ Madison, *Federalist*, 49.

⁷⁴ Madison, *Federalist*, 51.

⁷⁵ Madison, *Federalist*, 10.

⁷⁶ Madison, *Federalist*, 51.

⁷⁷ Washington to Jay, Aug. 15, 1786 in Wood, *Creation*, 472.

⁷⁸ Madison, *Federalist*, 51.

in suffering correction from an external authority. In the Constitution, the correction of the subject's inward freedom consists not in submission but in objective enactment -- the subject does not retreat from the world to an abstract inner unity but realizes this unity in concrete relation to others. Thus, the constitution embodies a fundamentally Christian recognition of the unity of reason and nature. Natural self-interest and rational principles of justice are conceived, not as irremediably opposed, but as mutually sustaining moments of a whole. The will of the people is given rational form in the Constitution which in turn rests on the people's sovereign will. But as Madison is clear, neither element exists in separation from the other: in abstraction from each other, both the raw will of the majority and the rule of law are equally destructive of freedom.

6. Conclusion: The Spirit Of The Religious Clauses Of The First Amendment

One thus finds in the U.S. Constitution an expression of the objective principles of freedom, a necessary content which both limits and enacts individual freedom. To be free in a universal and rational manner, the individual must will the objective constitutional structure which makes freedom possible. The principles of the Constitution embody the Christian reconciliation of reason and nature, of the individual's universal and particular interests. In the words of Mark DeWolfe Howe this amounts to a "de facto establishment of religion".⁷⁹

But religion is established not as a particular sect but in terms of the universal principle of freedom implicit in Christian representation and given concrete institutional form in the U.S. Constitution. Contemporary commentators have lost sight of the principles common to religious and political life. One finds a tendency to treat religion either as a matter of individual conscience or of choice, each of which ignores the common ethical objectivity present both in the Constitution and for the conscientious religious believer. As a result the difference of religious conscience from abstract individual conscience is lost, with a resulting criticism of special exemptions for religion.⁸⁰

A return to the intentions of the framers and the concrete principles of the U.S. Constitution suggests a correction of this contemporary view. What is remarkable in the views of the framers is that each of the competing interpretations of the relation of church and state expresses from its own standpoint not only the *distinction* between religious and secular realms but also the existence of a *unifying* principle.⁸¹

⁷⁹ Mark DeWolfe Howe, *The Garden and the Wilderness* (Chicago: University of Chicago Press, 1965) p.11.

⁸⁰ Cf. the excellent historical analysis of this First Amendment question in Michael W. McConnell's "The Origins and Historical Understanding of Free Exercise of Religion", *Harvard Law Review*, Volume 103, Number 7 (1990)

⁸¹ This indicates the limits of John Rawls's account of the relation between religion and the state. On his account, the liberal state transforms individuals' religious, moral and philosophical views in an external

Starting from a Lockean position which radically separates church and state, Jefferson moves to a position of universal Unitarianism, where the separation of church and state dissolves, each realm conceived as grounded in the rational powers of the ethical individual. Whereas Jefferson would separate church and state to defend against irrational enthusiasm, he also expected a Unitarian conquest of irrational religion. He states: "I rejoice that in this country of free inquiry and belief, which has surrendered its creed and conscience to neither kings nor priests, the genuine doctrine of one only God is reviving, and I trust that there is not a young man now living in the United States who will not die a Unitarian."⁸² One might say that Jefferson expected an establishment of Unitarianism based upon the free will of individuals, not upon state support.

By contrast with Jefferson, who pursued the question from the standpoint of the rationally free citizen who had not given up his right of conscience, the evangelical standpoint stressed that the source of one's religious views lies not in the individual's rational morality but in the commands of a sovereign God. From the evangelical side, the separation of church and state was not intended to protect the state from enthusiasm but rather to protect religion from secular corruption.⁸³ However, from the standpoint of faith they also conceived a unity between the two realms, recognizing God as sovereign in both.

James Madison in his *Memorial and Remonstrance* brought these standpoints together, recognizing both the need to prevent religious warfare and oppression and to permit individuals to follow absolute duties. On a Madisonian view, then, there is an important reciprocity between religious and political life. On the one hand, the state can provide substantial protection for the free practice of religious duty, while on the other hand, religious ethics can promote virtue among citizens. Perhaps the most famous statement of this principle is by Washington: "of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports ... And let us with caution indulge the supposition that morality can be maintained without religion."⁸⁴

Madison, in fact, contends that the duty to God is "precedent both in order of time and in degree of obligation to the claims of civil society."⁸⁵ However, while Madison accepted the priority of divine commands in times of conflict between religion and state, his position is intelligible only if one recognize that he assumes a general agreement between the claims of religion and the claims of the state -- government would be impossible if there were a radical separation between constitutional and divine law.

manner and thus makes possible a consensus on a liberal conception of justice. By contrast, the present argument suggests that the relation between religion and state is grounded in a common rational spirit. Cf. John Rawls, *Political Liberalism*, (New York: Columbia University Press, 1993) pp. 159, 160, 160n25, 163.

⁸² Letter from Thomas Jefferson to Dr. Benjamin Waterhouse (June 26, 1803) in McConnell, "Origins", 1450.

⁸³ Cf. McConnell, "Origins", 1437-1443.

⁸⁴ Washington's "Farewell Address" (Sept. 17, 1796) in McConnell, "Origins", 1441.

⁸⁵ James Madison, *Memorial and Remonstrance* in McConnell, "Origins", 1453.

What underlies the standpoint of the Constitution and its relation to religion is the recognition of an objective good which comprehends the universal and particular expressions of the individual's will. The Constitution reconciles the rational and natural interests of the individual; the goods of government and religion do not contradict but are, in principle, identical. Still, politics and religion in their finite interests, as a particular government or sect, may indeed conflict. In a situation of conflict, both religion and state are rendered abstract or one-sided and either may be on the side of justice or injustice. In such instances, a standpoint compatible with the spirit of the U.S. Constitution will not subordinate religious interests to those of government, assuming government to be comprehensive. Rather, under the *free exercise clause* of the First Amendment, it will permit exemptions which enable believers to enact their religious duties.⁸⁶ These exemptions recognize the universality implicit in religious practice and give expression to the underlying identity of constitutional and religious principles. They uphold the awareness that in times of conflict -- either side may be untrue to their concrete identity.

From the side of the state (conceived in abstraction from religion), these exemptions might be conceived as giving the individual the opportunity to develop on his own terms a greater allegiance to the broader socio-political realm. From the side of religion (conceived in abstraction from the state), these exemptions permit the practice of duties owed to a superior power. What is implicit in the Constitution is the unity of universal ethical law, in both its political and religious moments, with the particularity of legislative act and religious representation.

The ethical principle of the U.S. Constitution is the reconciliation of individual's universal moral will and particular self-interest. These principles, though religious in origin, cannot be appropriated on the basis of sectarian religious viewpoints, but must be comprehended philosophically as the universal political enactment of self-conscious freedom. To invigorate their contemporary ethical life, Americans must not retreat to a standpoint prior to modernity, to fundamentalist religion, but must reflect more deeply on the fundamental principles and determinate history of their Enlightenment Constitution.

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⁸⁶ These exemptions must be subject to the proviso that the duties they protect must not violate human rights and dignity. Such violations contradict the spirit which animates the Constitution.