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# TWO EUROPEAN INFLUENCES ON THE AMERICAN REVOLUTION: PURITANISM AND JOHN LOCKE

L. Edward Allemand\*

*By suggesting the relationships which unify the American Revolutionary Period with the continuum of European philosophical, political, and religious thought, Professor Allemand has chosen a topic which "necessarily relates to the fields of law and jurisprudence." By limiting the scope of the Article to a discussion of Puritanism and the Enlightenment as represented by John Locke, the author has preserved for his readers a familiar background from which to relate his observations to the members of the legal community. In publishing this Article the Board of Editors salutes not only the Bicentennial of the Republic, but also the scholarship of the DePaul University Department of Philosophy.*

## INTRODUCTION

The American Revolutionary Period represents an unusual moment in the history of Western culture. It remains a mystery how a small number of men and women were able to bring about a political change which was neither quite understood nor enthusiastically endorsed by the public at large.<sup>1</sup> Nevertheless, the change was a *fait accompli*, and it has stood as a 200 year old chapter in the search for liberty.

This Article proposes to suggest the influence of some aspects of European thought upon the American Revolution and its progeny. While this task is primarily a philosophical and historical

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1. Popular American history and beliefs to the contrary, studies of the pamphlets in circulation during the revolutionary era indicate that there were as many, if not more, colonists actively engaged in support of the British cause as there were in opposition to it. The balance, perhaps, was found in the bulk of individuals who refused to actively support either side and whose non-cooperation was more harmful to the Tories than to the American cause. See B. BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967); B. BAILYN, *THE ORIGINS OF AMERICAN POLITICS* (1968); *1 PAMPHLETS OF THE AMERICAN REVOLUTION, 1750-1776* (B. Bailyn ed. 1965).

exercise, it necessarily relates to the fields of law and jurisprudence.<sup>2</sup> The ability to see this relationship, however, diminishes as one becomes more specialized, a characteristic which is shared by the practitioners of all modern disciplines. Yet, unlike the arts, the law has a greater tendency to submit to the all encompassing pressures of the pragmatic. Lawyers are engaged, after all, to discover, identify, and solve numerous practical problems within the context of a system which has attempted to become more and more "scientific" in both appearance and results. One should not condemn those lawyers who explore the dimensions and limits of their craft and thereby serve the needs and desires of their clients—such men and women should indeed be praised. However, one may often get the impression that the law has lost sight of its historical, philosophical, political, and, indeed, religious origins, and has become the victim of a system which eludes its own understanding.<sup>3</sup> Consequently, this Article seeks to contribute to an understanding of the broader meaning of the system by discussing Puritanism and the Enlightenment as represented by John Locke, two great intellectual achievements which were, in their own ways, responsible for the birth of our Republic and the consequent structures of our legal system.<sup>4</sup>

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2. The methodology of contemporary philosophy bears a kinship to at least one dimension of the process of legal thought. If the philosopher can be seen as one engaged always in the process of generalization, looking back to cultural events and symbolizing them (in hopefully fruitful capsule statements), and at the same time looking forward to a future set in motion by plans of action which flow out of the generalized and capsuled statements of today, then such a vision describes also the functions of a lawyer. However, while philosophy fulfills itself in satisfying the role of wonder, the law goes beyond in order to make its concepts "flesh" in the social order. Compare ARISTOTLE, *METAPHYSICS*, Bk. I ch. 2, at 691-93 (McKeon ed. Ross transl. 1941), concerning the nature of philosophy, with O. HOLMES, *THE COMMON LAW* 5 (DeWolfe ed. 1963); E. LEVI, *AN INTRODUCTION TO LEGAL REASONING* 1-2 (1948), on the nature of law and the legal process.

3. Two approaches to the law might be distinguished. One can view the law from a purely positivistic viewpoint and simply take it as it is given. On the other hand, the law can be interpreted from a perspective of dialogue between that which is given and the one who receives. This latter approach, one that is fundamentally phenomenological, sees the law emerging from a totality of human experience and history, a totality which provides nothing other than a full cultural translation and understanding. See generally Comment, *A Phenomenology of Justice and the Case for Civil Disobedience*, 24 DEPAUL L. REV. 705 (1975).

4. It should be of little surprise that an article such as this would opt for the phenomenological approach to the law, for within a perspective of positivism there would be little, if anything, to say. Consequently, the term "legal system" encompasses much more than the sum total of all statutory and decisional law; it also entails a thought process, and

## THE PURITAN SOIL OF DEMOCRATIC THINKING

As the first great intellectual influence in the Colonies, Puritanism was a continuation of an earlier and vigorous English movement.<sup>5</sup> In England, the influences of the movement had already become clearly visible as early as the sixteenth century.<sup>6</sup> While it is difficult for contemporary society to conceive of the time when religion and theology played dominant roles in the shaping of political and legal institutions, the mass of statutory "reform" enacted between the accession of Henry VIII and the death of James I demonstrates that this was surely the situation.<sup>7</sup>

It was also during the sixteenth century that Martin Luther's

the philosophical, political, and cultural heritage of a nation. *See generally* W. LUIJPEN, PHENOMENOLOGY AND HUMANISM (1966); W. LUIJPEN, PHENOMENOLOGY OF NATURAL LAW (Koren transl. 1967).

5. The study of the development of Calvinism from the time of the publication of Jean Calvin's *Institutes of the Christian Religion* (1536) to the arrival of the Puritans in the New World during the 1620's and 1630's, and then until the period of the American Revolution, is a complex undertaking beyond the scope of this Article. Those who might wish to consult further literature would do well to see the following: 1-2 C. BAIRD, HISTORY OF THE HUGUENOT EMIGRATION TO AMERICA (1885); E. BYINGTON, THE PURITAN IN ENGLAND AND NEW ENGLAND (4th ed. 1900); C. CREMEANS, THE RECEPTION OF CALVINISTIC THOUGHT IN ENGLAND (1949); H. DAVIES, THE WORSHIP OF THE ENGLISH PURITAN (1948); J. FLYNN, THE INFLUENCE OF PURITANISM IN THE POLITICAL AND RELIGIOUS THOUGHT OF THE ENGLISH (1920); J. MCNEILL, THE HISTORY AND CHARACTER OF CALVINISM (1954).

In general, this Article subscribes to the thesis of Bernard Bailyn that the American political movement of the period between 1763 and 1776 had its origins in English developments dating back to the Civil War of 1648. *See* B. BAILYN, THE ORIGINS OF AMERICAN POLITICS 3-104 (1968). The precedent for rightful, if not lawful, regicide having been set in the case of Charles I no doubt weakened any psychological distaste for open rebellion to George III.

6. *See generally* C. NETTELS, THE ROOTS OF AMERICAN CIVILIZATION 53-79 (1938), for a discussion of "The Reformation and the New World."

7. The forced transformation of the Roman Catholic Church in England into the Church of England was originally attempted by the Act of Supremacy, 26 Hen. 7, c. 1 (1534). Centuries would pass before the law would attempt to catch up with the idea of religious toleration. This fact is best explained by the political significance that went with the crown's support for one denomination over another. In the preecumenical era alliances could be bought or sold in the switch of a prince's religion. Thus, in the case of England, as the fervor and strength of Reformed Christianity took hold among many of the merchants and the nobility, definite lines of polarity would form between London and Rome. What could have remained a simple act of Parliament became transformed into the first plank in a platform against the Papacy, the Empire, and, through these institutions, the Continent itself. Only the brief reign of Mary Tudor would threaten the scheme of Britannic ascendancy through religious independence and royal primacy. *See, e.g.*, Act, 1 & 2 Phil. & M., c. 8 (1554) (reestablishing the Church of Rome in England).

theology of Biblical primacy would be enunciated<sup>8</sup> and consequently endorsed by all of his successors in Reformation, including Jean Calvin.<sup>9</sup> While the Roman Catholic Church viewed the Scriptures as the inspired word and as a source of patterns of personal conduct, it did so within a veil of secrecy and strict authoritative control concerning interpretation. Consequently, only official Latin and Greek texts were approved<sup>10</sup> and few commentaries were allowed in the vernacular.<sup>11</sup> This indirect suppres-

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8. Following Luther's posting of his 95 theses in 1517, the occasion would arise for him to have to further explain and defend his position against charges of heresy. As time went on, however, his concern for being a heretic was eradicated in favor of his total commitment to reform the Church of Christ. His Reformation would rest upon two principles, salvation by faith alone, and not by good works, and the primacy of the Bible as the sole source of revelation.

First, I testify that I desire to say or maintain absolutely nothing except, *first of all*, what is in the Holy Scriptures and can be maintained from them; *and then [and only then]* what is in and from the writings of the church fathers and is accepted by the Roman church and preserved both in the canons and the papal decrees.

M. Luther, *Explanations of the Ninety-Five Theses* in 31 LUTHER'S WORKS 83 (American ed. 1957).

9. See 1 CALVIN: INSTITUTES OF THE CHRISTIAN RELIGION 74 (J. McNeill ed. F. Battles transl. 1960):

Before I go any farther, it is worth-while to say something about the authority of Scripture, not only to prepare our hearts to reverence it, but to banish all doubt. When that which is set forth is acknowledged to be the Word of God, there is no one so deplorably insolent—unless devoid also both of common sense and of humanity itself—as to dare impugn the credibility of Him who speaks. Now daily oracles are not sent from heaven, for it pleased the Lord to hallow his truth to everlasting remembrance in the Scriptures alone.

See also *John* 5: 39 (Jerusalem Bible): " 'You study the scriptures, believing that in them you have eternal life; now these same scriptures testify to me . . . . ' "

The lawyer should be interested in knowing that the major academic training of Calvin took place in the law faculty of the University of Orleans. Furthermore, "[h]e carried into theology and ethics the logic, precision, and severity of Justinian's *Institutes*, and gave his own masterpiece a similar name. He became above all a lawgiver, the Numa and Lycurgus of Geneva." 6 W. DURANT, *THE STORY OF CIVILIZATION: THE REFORMATION* 459-60 (1957).

10. The Roman Church at that time recognized only the Greek translation of the Old Testament known as the *Septuagint*. This translation was prepared at Alexandria between 250 and 100 B.C. The official Latin text was, and has continued to be, the *Vulgate*. This version of the Bible (both Old and New Testaments) was prepared by Saint Jerome at the direction of Pope Damasus I who reigned from 366 to 384.

11. The Roman Catholic Church not only selected which texts were to be made available to scholars, it also prohibited the reading of the Bible without references and explanatory notes of recognized Fathers and Doctors of the Church. Those commentators generally approved were, in addition to Saint Jerome, Clement of Rome, Ignatius of Antioch,

sion of the Bible<sup>12</sup> clearly fostered a mode of life which could be dictated by a few men in positions of ecclesiastical authority, an authority which was subject neither to dispute nor to question, but only to acceptance.

On the other hand, the Reformation's support of the individual's right to interpret the Bible for himself presented a theological defense of a democracy of mind and, in a sense, one of the earliest assaults to the principles of monarchy, aristocracy, and uniformity. This polarity of Bible and Bishops was eventually to push the reform movement through stages of anti-papacy, anti-episcopacy, anti-presbyterianism, anti-clericalism, and anti-organizationalism.<sup>13</sup> Ultimately would come the religion of Deism

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Polycarp, Justin, Irenaeus, Clement of Alexandria, Cyril, Basil the Great, Gregory of Nazianzus, Gregory of Nyssa, John Chrysostom, Cyprian, Hilary, Ambrose, Leo the Great, Gregory the Great, and Saint Augustine of Hippo. See Leo XIII, *Providentissimus Deus* (November 18, 1893) in *ROME AND THE STUDY OF SCRIPTURE* 1-29 (7th ed. 1962).

While the Reformation would inaugurate the movement toward translation of the Bible into vernacular, the Roman Church itself would follow this lead. Thus, the first English version accepted by Rome would be the *Douay-Rheims Bible*, published in 1582 (New Testament) and 1609-1610 (Old Testament). This version is still the basis for today's Standard English Catholic Bible; however, the Roman Catholic hierarchy has recognized and approved several recent translations from the original texts. Although Biblical scholarship has advanced tremendously under the direction of the popes during the last 80 years, the Magisterium (teaching authority) continues to limit the texts available to the faithful for their personal reading and study:

Easy access to sacred Scripture should be provided for all the Christian faithful.

That is why the Church from the very beginning accepted as her own that very ancient Greek translation of the Old Testament which is named after seventy men; and she has always given a place of honor to other Eastern translations, and to Latin ones, especially that known as the Vulgate. But since the word of God should be available at all times, the Church with maternal concern sees to it that suitable and correct translations are made into different languages, especially from the original texts of the sacred books.

*Dogmatic Constitution on Divine Revelation*, ch. VI, para. 22 (November 18, 1965), in *THE DOCUMENTS OF VATICAN II* 111, 125-26 (W. Abbott ed. 1966).

12. Because modern vernacular languages had replaced the ancient tongues in everyday life and were beginning to do so in the universities, and because of the tremendous rate of illiteracy throughout Europe, the caution of the Roman Church produced almost a complete ignorance of the content of the Bible. This problem has continued to infest the Roman Catholic world to present time.

13. Arranging the various sects of Christianity according to their acceptance of traditional organization and government (Roman Catholicism being the pattern), there appears the following table:

Roman Catholicism	Papacy, Episcopacy, Sacramental priesthood
Church of England (Anglican)	Episcopacy, Sacramental priesthood
Presbyterian	One order of ministers (sacramental)
Calvinism (Baptists, Puritans)	Non-sacramental ministry
Quakers	Congregational worship, no ministry <i>per se</i>

and rationality and the free-thinking natural law philosophy evidenced by the Declaration of Independence itself.<sup>14</sup>

The tension of "Bible v. Bishop" was also a prototype of the often recited description of American government as one of law and not of men.<sup>15</sup> However simplistic such a description might be in so far as it is always men and women who make the law,<sup>16</sup> the label serves to point out that the law, whether legislatively enacted or judicially pronounced, stands apart from any individually sovereign will.<sup>17</sup> Moreover, the feelings which are suggested by the description were, in part, responsible for the ascendancy of Parliament and the fleeting success of Republicanism in seventeenth century England, following closely upon the reigns of Elizabeth I and her successor, the "absolute" monarch, James I.<sup>18</sup>

Thus, as the Puritans and the large numbers of other reformed

14. The majority of those responsible for the theory embodied in the Declaration of Independence, including its principal author, Thomas Jefferson, were officially members of main-line Protestant denominations. However, their religious conceptions probably were outweighed by their commitment to the Naturalism and Deism preached by the Enlightenment. Consequently, the independence of this Republic is based upon a rational ideal and a God of Reason, "the laws of nature and of nature's God . . . ."

15. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634, 654 (1951) (Jackson, J., concurring): "The essence of our free government is 'leave to live by no man's leave, underneath the law'—to be governed by those impersonal forces which we call law."

16. The concept of "making" the law suggests elements of legal positivism. To a certain extent there is a *creative* process involved in legislative acts; however, and perhaps more fundamentally, the promulgation of the law should be characterized as a process of discovery or as interpretation of the present requirements of justice itself:

The demands of justice become a *ruling* humanity when a positive rule of law, imposed with coercive force and thus embodied in the existing relationships, is formulated as that which imposes itself as a demand of humanity encountered in man's 'yes' to his fellow-man with its actually existing conditions and relations.

W. LUIJPEN, *PHENOMENOLOGY OF NATURAL LAW* 206 (Koren transl. 1967). In either case the human contribution is necessary.

17. See W. LUIJPEN, *EXISTENTIAL PHENOMENOLOGY* 349 (rev. ed., Koren transl. 1969).

18. To King James, during whose reign the Puritans began their emigration to the New World, the world is indebted for the most eloquent defense of the divine right of kings, *a deo rex a rege lex* (the king is responsible to God, the law to the king):

The state of monarchy is the supremest thing upon earth. For kings are not only God's lieutenants on earth, and sit upon God's throne, but even by God Himself are called gods . . . they make and unmake their subjects, they have power of raising and casting down, of life and death; judges over all their subjects and in all causes, and yet accountable to none but God only.

Speech of James I to the Parliament of 1609, *quoted in* 7 W. & A. DURANT, *THE STORY OF CIVILIZATION: THE AGE OF REASON BEGINS* 138 (1961).

Christians who had been raised in the common Biblical milieu of Luther and Calvin<sup>19</sup> established themselves in the New World, they brought with them the seeds of future development and ultimate revolution. Having been led from the autocracy and authoritarianism of Pope and bishops, only the combination of time and Reason would be required before the targets of King and lords would be recognized and assailed. Much of the strength and fervor of the coming assault is thus foreshadowed in Puritan sermons and pamphlets of Puritan origin.<sup>20</sup>

Two Protestant concepts, "covenant" and "calling," and the separation of church and state have been suggested as representing America's legacy of Puritan thought.<sup>21</sup> These concepts have left their imprint on the shape of American political institutions and have influenced the development of our legal thought.

To those trained in the law the notion of covenant imparts a variety of special meanings depending upon the historical locus and modifying language to which the word is related.<sup>22</sup> In its primordial meaning, however, the concept refers to an agreement under seal or "[t]he name of a common-law form of action *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal."<sup>23</sup> The significance of covenant to the Puritan mind precisely reflects or, better, precedes this legal understanding. The particular agreement of their concern, of course, was the Biblical covenant which had been promised to the first generation of humanity,<sup>24</sup> had been formally executed and sealed by the blood of animals between the Lord Yahweh and His Chosen People,<sup>25</sup> and which was ultimately delivered and

19. The word "Puritan" has no special sectarian meaning and refers only to those English and Colonial Christians of the 16th and 17th centuries who wished to take the Reformation beyond the limits established during the reigns of Elizabeth I and James I. These men and women held to the teachings of Calvin, but are identified by their citizenship rather than by any particular church.

20. See generally works cited in note 1 *supra*.

21. See E. MORGAN, *PURITAN POLITICAL IDEAS, 1558-1794*, at xv-xvii (1965).

22. See BLACK'S LAW DICTIONARY 436-39 (rev. 4th ed. 1968).

23. *Id.* at 436.

24. See *Genesis* 3: 15 (Jerusalem Bible): "I will make you enemies of each other: you and the woman, your offspring and her offspring. It will crush your head and you will strike its heel."

25. See *Exodus* 24: 3-8 (Jerusalem Bible):

Moses went and told the people all the commands of Yahweh and all the ordinances. In answer, all the people said with one voice, 'We will observe all the



renewed by novation through the death of Jesus on the cross on Calvary.<sup>26</sup> As heirs of this covenant, the Puritan reformers saw themselves as a promised elect of God, a vision which encompassed not only the promise of a life eternal following death, but the moral and religious correctness of their temporal affairs as well.<sup>27</sup>

Another aspect of the covenant, which was derivative in nature yet essential in practice, concerned the relationship of each member of society to each other member. Puritans considered themselves bound not only to God, but also covenanted to one another in community. Such a notion of community covenant pre-dates the later continental and English theories of the "social contract,"<sup>28</sup> and in this regard provided fine soil for the ultimate planting of these theories in American political thought.

The second of the Puritan theological/political concepts provided the early Americans with yet another principle of democracy. The theology of Calvin was not content in proclaiming the corruption of authoritarian regimes in the Bible v. Bishop controversy; it also would insist upon a certain inherent equality of

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commands that Yahweh has decreed'. Moses put all the commands of Yahweh into writing, and early next morning he built an altar at the foot of the mountain, with twelve standing-stones for the twelve tribes of Israel. Then he directed certain young Israelities to offer holocausts and to immolate bullocks to Yahweh as communion sacrifices. Half of the blood Moses took up into basins, the other half he cast on the altar. And taking the Book of the Covenant he read it to the listening people, and they said, 'We will observe all that Yahweh has decreed; we will obey.' Then Moses took the blood and cast it towards the people. 'This,' he said, 'is the blood of the Covenant that Yahweh has made with you, containing all these rules.'

26. See *Matthew* 26: 27-28 (Jerusalem Bible): "Then he took a cup, and when he had returned thanks he gave it to them. 'Drink all of you from this,' he said, 'for this is my blood, the blood of the covenant, which is to be poured out for many for the forgiveness of sins.'"

27. The origins of our native American piety began with the Puritan translation of spiritual salvation into the notion of America, and later the United States, as a sacred land, endowed with a mission of expansion and moral leadership.

28. Social contract theories developed in Europe and in England during the early years of the period of the Enlightenment. While there are great differences in emphasis, each of the contract thinkers subscribed to a view that civil government originated in the agreement among individuals to form a society under law. See generally T. HOBBS, *LEVIATHAN* (Collier ed. 1962); J. LOCKE, *The Second Treatise of Government*, in JOHN LOCKE: *TWO TREATISES OF GOVERNMENT* 283-446 (P. Laslett ed., 2d ed. 1967); J. ROUSSEAU, *THE SOCIAL CONTRACT* (L. Crocker ed., Washington Square Press ed. 1967). See also text accompanying notes 77-81 *infra*.

persons through the doctrine of calling. Not only was each individual to be called to Christ and to His Church, but he or she also was called to a particular station in life.<sup>29</sup> This notion, however, presented its own conflicts. On the one hand it was reminiscent of the hierarchical structures of medieval society which in turn found support in the early writings of Plato.<sup>30</sup> On the other hand, it provided a positive and stabilizing element in a society not yet touched by the mobilities which would surface through modern transportation and communications. The covenant of community would be supported by each individual belonging to a particular function and each function being served by a particular individual. The concept of calling also imparted to each member of the community an individuality of purpose and identity.<sup>31</sup> Moreover, no function and no station in life was considered unworthy of an individual's attention and efforts. All work was holy work and all work was respected by the community as a whole.<sup>32</sup>

While such a non-mobile society makes little sense to those brought up within the milieu of Horatio Alger stories<sup>33</sup> and the "American Dream," Puritans accepted this state of affairs as God's method of establishing order out of chaos. This view of society, therefore, should not be seen as a degradation of the human capacity for growth, but as an exaltation of the divine plan of God for the salvation of man.<sup>34</sup>

29. See *William Perkins on Callings* in E. MORGAN, *PURITAN POLITICAL IDEAS, 1558-1794*, at 35-73 (1965).

30. See Plato, *The Republic*, Bk. IV, in *SOCIAL AND POLITICAL PHILOSOPHY: READINGS FROM PLATO TO GANDHI* 19 (J. Sommerville & R. Santoni eds. 1963).

31. Here we find an anomaly within an otherwise societal climate. The notion of "rugged individualism," while clearly an American phenomenon, finds no special sanction in Puritan thought.

32. From the very beginnings of the Puritan settlements one finds the presence of what would become known as the "Protestant Ethic"—the exaltation of manual labor for profit.

33. Horatio Alger, the son of a Unitarian minister and graduate of Harvard College (1852) and Harvard Divinity School (1860), lived from 1834 to 1899. Although he was ordained a minister of the Unitarian Church, he soon abandoned this "calling" and concerned himself with the betterment of the masses of young boys who idly clustered the streets of Boston. True to his Protestant nature he exalted the work ethic, but he denied the necessity of social immobility as a sacred and unifying principle. In several novels he preached a "rags to riches" philosophy of industriousness which became the hallmark of the great American success story. See generally H. MAYES, *ALGER: A BIOGRAPHY WITHOUT A HERO* (1928).

34. See 1 CALVIN: *INSTITUTES OF THE CHRISTIAN RELIGION* 35-39 (J. McNeill ed., F. Battles transl. 1960).

The Biblical view that humanity has an inherent propensity toward evil<sup>35</sup> necessarily leads to the proposal that the society of man requires the regulatory coercion of a legal order which, in the view of Saint Paul, takes its only legitimate authority from God.<sup>36</sup> Deeply rooted in our Puritan heritage, this vision helps to account for the real, yet often chauvinistic, respect which the people of this Republic have exhibited for the ideas of law, order, and progress through regulation.<sup>37</sup>

Paradoxically, the emphasis on order and the regulation of societal morality found in Puritan thought conflicts with the emphasis on democracy and equality discussed earlier.<sup>38</sup> The attempted resolution of this conflict began in the town meetings of early New England, but the problem persisted and continued to confront the American people up through the Revolutionary Period and even beyond the times which witnessed the ratification of the Constitution and the Bill of Rights. The ultimate framework of government thus would be found to be a peculiar mixture of representative and participatory democracy, national and state sovereignties, limited and plenary authority. Such a government could succeed only through both horizontal and vertical separation of powers and functions—a calling forth of specialization, departmentalization, and hierarchical structures.<sup>39</sup>

The notion of separation of church and state was by no means intentionally fostered by the original Puritan settlements of Massachusetts. Although the organizers of the Massachusetts Bay Company had boldly repudiated the authority of the established Church of England,<sup>40</sup> as it contradicted their more fundamental

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35. See *id.* at 241-55.

36. See *Romans* 13: 1-2 (Jerusalem Bible): "You must all obey the governing authorities. Since all government comes from God, the civil authorities were appointed by God, and so anyone who resists authority is rebelling against God's decision, and such an act is bound to be punished." But see *Acts* 5: 29 (Jerusalem Bible): "'Obedience to God comes before obedience to men . . .'"

37. See, e.g., Hall, *Legal Toleration of Civil Disobedience*, 81 *ETHICS* 128, 134-35 (1971): "American society is extremely legal-minded at present [and traditionally]; enforcement of the law simply because it is the law is highly valued as the only means to law and order."

38. But here the conflict finds its sanction in the Bible. See note 36 *supra*.

39. For a philosophical defense of the separation of powers doctrine see J. LOCKE, *The Second Treatise on Government*, ch. XII, in JOHN LOCKE: TWO TREATISES OF GOVERNMENT 382-92 (P. Laslett ed., 2d ed. 1967).

40. By cleverly arranging to have their corporate charter transferred with them to the

acceptance of an austere and simple congregational form of church worship and government, they had no qualms about establishing theocratic rule in America.<sup>41</sup> Throughout the seventeenth century the Puritan towns which developed in the New England area patterned their political structures upon the corporate form of government which had been imported to the Bay Colony.<sup>42</sup> This form of government entailed an identity of church and state interests and restricted participation to adult male church members. Thus, while there was the beginning of popular and representative democracy and the insistence upon the preservation of English liberties through chartered rights and powers, the climate neither desired nor understood those elements of free exercise and anti-establishment which would be incorporated into the first amendment.<sup>43</sup>

How then is the idea of separation of church and state a product of the Puritan experience? Fundamentally this question can be answered only by the dialectical circumstances of history. With the rise of the Stuart dynasty in England, the reform of the Anglican Church came to a standstill due to the Catholic attachments of the royal house. As these attachments framed organizational and liturgical structures along traditional episcopal and sacramental lines, those Englishmen who sought to complete the work begun by Henry VIII, Archbishop Cranmer, and Elizabeth I soon found themselves out of favor and, in fact, the target of official persecution.<sup>44</sup> Faced with two choices other than conformity, namely revolution or self-imposed exile, many of the Nonconformists (Puritans) sought refuge in Europe and ultimately made their way to the soil of New England.<sup>45</sup> Others

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New World, the Governor and Company of the Massachusetts Bay in New England succeeded in establishing their religion and community within the English empire, yet apart from it. By the mid-seventeenth century the Bay Colony assembly would disavow its allegiance to the laws of England. See S. MORISON, *THE OXFORD HISTORY OF THE AMERICAN PEOPLE* 64-65, 69 (1965).

41. See *id.* at 65.

42. See *id.* at 67.

43. U.S. CONST. amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

44. See, e.g., James I, *A Proclamation against Seditious, Popish, and Puritanicall Bookes and Pamphlets* (No. 256, August 15, 1924), in 1 *STUART ROYAL PROCLAMATIONS* 599-600 (J. Larkin & P. Hughes eds. 1973).

45. By 1700 there would be approximately 130,000 persons inhabiting the New England colonies. Most of this population were descendants of Puritan settlers who landed during

remained and later succeeded in establishing the short lived Puritan Commonwealth under the Lord Protector, Oliver Cromwell.<sup>46</sup>

Those who chose exile and emigration to America, perhaps earlier than those who opted to remain and prosecute the Civil War and Revolution of 1649, were confronted with a conflict of religious principles concerning duty to conscience on one side and duty to the state on the other. While both religion and revelation supported monarchical authority and state sovereignty, and while Saint Paul had commanded obedience to legitimate government,<sup>47</sup> these Puritans also knew that their king was requiring them to support a false religion to which they could never yield. While they would, to a certain degree, practically solve this dilemma by establishing their own theocratic settlements in Massachusetts and there practice and preach their own brand of the Christian Gospel and morality, two obstacles to total reconciliation nevertheless would remain. First, they still only had compromised. Surely, they obtained self-government and the freedom to practice their religion openly. Yet at whose grace and under whose charter were these things accomplished?<sup>48</sup> They remained English subjects even while across the ocean. Second, would they not have preferred to have had the choice of remaining in England under circumstances of toleration, no matter what religion the monarch practiced? It is in the attempt to answer this inquiry that the idea of the separation of church and state begins to take form.

The early American Puritans were by no means tolerant of competing religious sects. Calvin himself had taught the necessity of religious persecution and monolithic belief and practice as prerequisites to political stability.<sup>49</sup> One could suggest that having been victims of intolerance, there was latent within the Puritan heart a sympathy for tolerance which sooner or later would

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the years 1620-1645. See S. MORISON, *THE OXFORD HISTORY OF THE AMERICAN PEOPLE* 131 (1965).

46. See generally 8 W. & A. DURANT, *THE STORY OF CIVILIZATION: THE AGE OF LOUIS XIV* 183-206 (1963).

47. See note 36 *supra*.

48. See note 40 *supra*.

49. See 2 CALVIN: *INSTITUTES OF THE CHRISTIAN RELIGION* 1495-96 (J. McNeill ed., F. Battles transl. 1960).

surface.<sup>50</sup> Whether or not the establishment of the Colony of Rhode Island and Providence Plantations was the result of these latent feelings or a reaction to the immediate and harsh circumstances of Massachusetts Bay or Plymouth is not as important as the fact that here was established, by Puritans, a political entity which expressed from its founding the ideals of religious liberty.

Rhode Island was founded in response to the needs of three left-wing Puritans—Roger Williams, Samuel Gorton, and Anne Hutchinson—and others like them who had either been banished from or never did fit in with the already established Puritan settlements of Massachusetts.<sup>51</sup> The new colony stood as an historical mock of Calvin's insistence upon uniformity and the need for persecution to insure the purity of practice and as a living retort to the idea that upon these teachings depended the unity of the state. The success of Rhode Island clearly demonstrated that the endorsement of toleration could be the key to unity in the presence of existing diversity of religious viewpoints. Once this fact had been established, toleration would encompass the acceptance of all reformed Christian denominations,<sup>52</sup> and ultimately even admit Roman Catholics and non-Christians to its embrace. As time has progressed, however, the concept of toleration has become totally supplanted by the abolition of church/state entanglement in this country at both federal and state levels.<sup>53</sup>

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50. Not all of those who preached the Reformation were intolerant men. A prime example of one committed to reform yet also committed to the idea of religious freedom is Sebastian Castellio (1515-1563), a contemporary and friend of Calvin until he began preaching tolerance. See 6 W. DURANT, *THE STORY OF CIVILIZATION: THE REFORMATION* 484-87 (1957).

51. See generally D. LOVEJOY, *RHODE ISLAND POLITICS AND THE AMERICAN REVOLUTION, 1760-1776* (1958), for insight into Rhode Island's contributions to American Independence.

52. There would continue to be an anti-Roman Catholic prejudice among American Protestants for many years following the establishment of the United States. This is attributed to the legitimate fears of early reform years when the Papacy had a real political clout. While such fears are no longer justified, there remains a considerable intolerance of public displays of Roman Catholic thinking and institutions in contemporary America.

53. In the case of *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the United States Supreme Court recognized the fundamental nature of the rights sought to be protected by the "free exercise" and "establishment" clauses of the first amendment. As a result of this recognition, these rights are incorporated into the due process clause of the fourteenth amendment and made applicable to the states.

## THE ENLIGHTENMENT OF JOHN LOCKE (1632-1704)

John Locke, more than any other person, represents the Enlightenment<sup>54</sup> to the English speaking world. He was born near Bristol in 1632 as the son of a Puritan lawyer from whom he received the requisites to study first at Westminster and later at Christ College, Oxford, where he would also spend time as a don. Following his father's death and his inheritance of a small fortune in 1661, Locke would study medicine and become associated with Anthony Ashley Cooper, later the first Earl of Shaftesbury, a minister in the government of Charles II.<sup>55</sup> Due to his association as family physician to the Shaftesburys, Locke would become involved with Whig politics and become influential in the movement to expel the Catholic James II and establish the Protestant William III and Mary Stuart on the throne of England in the Glorious Revolution of 1688. Only after the throne was secure in Protestant succession would Locke set out to publish the works of epistemology and political philosophy in which his influence would survive to be echoed in 1776.

First appearing in 1690, Locke's *Essay Concerning Human Understanding*<sup>56</sup> is the result of nearly 20 years' thought and labor. While the lawyer is perhaps more directly concerned with the *Treatises on Government*,<sup>57</sup> the major political writings which also appeared in 1690, the *Essay* reveals an element of the philosophy of man which becomes significant for democratic thinking.

A physical observation of this text reveals a monumental work seemingly written for a time more suited to the leisure required to read through it. The book begins with an investigation of man as he interacts with the physical environment, a task which has been acclaimed as the first work of modern psychology.<sup>58</sup> Herein one finds that element of Locke's philosophy of mind which con-

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54. The label, "Enlightenment," refers to a philosophical movement of the 17th and 18th centuries which is characterized by rationalism, a rebirth of interest in learning, and empirical skepticism in both social and political thought. The 17th century period of this movement is also called "The Age of Reason."

55. See 8 W. & A. DURANT, *THE STORY OF CIVILIZATION: THE AGE OF LOUIS XIV* 575-78 (1963).

56. J. LOCKE, *AN ESSAY CONCERNING HUMAN UNDERSTANDING* (P. Nidditch ed. 1975) [hereinafter cited as *ESSAY*].

57. JOHN LOCKE: *TWO TREATISES OF GOVERNMENT* (P. Laslett ed., 2d ed. 1967).

58. See R. AARON, *JOHN LOCKE* 1 (1937).

cerns the purposes of this Article; the negation of the concept of "innate ideas."<sup>59</sup>

The concept of innate ideas had been developed in philosophy as early as the time of Plato.<sup>60</sup> Its function was served in explaining the *how* of human knowledge. The traditionalists had always wrestled with the problem of relating outside stimuli to the ideas and words which are formulated to express knowledge of the world and of oneself. Nevertheless, no one had succeeded in establishing just how the process operated—how the molecule becomes the idea.

Beginning with the methodological doubt of Rene Descartes,<sup>61</sup> some thinkers approached this problem through a belief that the right course to the solution lies in an emphasis on the active role of the mind and a de-emphasis on the absorption of the environment. As a result of such approaches, it was concluded that man has certain innate, inborn ideas which help to organize the variant data of the senses into signs (words) and categories capable of human understanding and communication. This system failed to explain the origin or structure of innate ideas and Locke's scientific disposition precluded him from accepting such weak assumptions without proof or demonstration. He felt that all knowledge comes through the senses and that the environment, not the mind filled with innate ideas, is the dynamic ingredient. Mankind possesses no inborn ideas, but only an intuitive power of the mind which permits all rational beings to deduce knowledge from their experiences. For Locke no true idea could be innate, not even the idea of God; nevertheless, the certainty of God's existence and the dimensions of His attributes could be based solely upon an experience of His creation.<sup>62</sup> So too with practical knowledge, which is to say the knowledge of good and evil. Consequently, moral judgments or choices based upon perceptions gained through experience could not be absolute; "they are a social inheritance differing from place to place and from

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59. See *ESSAY*, *supra* note 56, Bk. I, ch. II, at 48-65.

60. Plato's position on innate ideas is set forth in his Allegory of the Caves. See PLATO, *The Republic*, Bk. VII, in *GREAT DIALOGUES OF PLATO* 312 *et seq.* (W. Rouse ed. 1956).

61. See generally R. DESCARTES, *DISCOURSE ON METHOD AND OTHER WRITINGS* (F. Sutcliffe transl. 1968).

62. See *ESSAY*, *supra* note 56, Bk. IV, ch. X, at 619-30.



time to time."<sup>63</sup>

Relating this thought to the background of American revolutionary thinking, it is apparent that here, too, is a dynamic independence and democracy of mind. The portrait of the human person as being born to the possibility of an individually discoverable way of life suggests a strong propensity toward democratic principles and the acceptance of conflicting life-styles. Totally unlike his Puritan forefathers, Locke refused to believe that one is born to an idea or to any particular station in life. But, like those early reformers who preached the freedom of individual paths to God through experience of the Bible, his philosophy teaches the primacy of the individual exploration of the environment. His vision is thus atomistic, one in which the part (individual) and not the whole (society) is given the important emphasis, one which is reflected in the values sought to be preserved in our Bill of Rights.<sup>64</sup> Moreover, in Locke we find a firm commitment to the world as the dynamic source of all human understanding, a world openly "revealed" through science, subject to the hegemony of man's reason.<sup>65</sup> Thus, having based all knowledge upon the ability of man to intuitively perceive the objects of the world about him, and having made no concessions on this theory with respect to the objects of practical knowledge, Locke's conception of the political/social arena presented in the *Treatises on Government* is that the individual person has a natural right and the rational power to determine his own way of life<sup>66</sup>—a certain self-possession.

Of the *Treatises*, the second presents Locke's mature political theory. Thus, it will be sufficient for the purposes of this Article to deal with the first and lesser treatise in brief. Written in response to the *Patriarcha, or the Natural Power of Kings*

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63. 8 W. & A. DURANT, *THE STORY OF CIVILIZATION: THE AGE OF LOUIS XIV* 585 (1963).

64. See, e.g., Frankel, *The Jurisprudence of Liberty*, 46 *MISS. L.J.* 561, 577-91 (1975).

65. With the arrival of the scientific method during the Enlightenment, man was now prepared to take seriously the direction given to the first man and woman: "fill the earth and conquer it." *Genesis* 1: 28 (Jerusalem Bible).

66. See P. Laslett, *Introduction*, in JOHN LOCKE: *TWO TREATISES OF GOVERNMENT* 1, 94 (P. Laslett ed., 2d ed. 1967): "'We are born Free as we are born Rational', and the liberty of acting according to our own will, never from compulsion by the will of others, is grounded on the possession of reason."

Asserted<sup>67</sup> of Sir Robert Filmer, this *First Treatise* served one main purpose. First and foremost it was an apologia for the Glorious Revolution and, consequently, an attack upon absolute monarchy and the notion of the divine right of kings.<sup>68</sup> Filmer's position, which had been put forth in defense of Charles I, was supportive of the notion of divine right. His work compared through historical analogies the authority of the crown to that of the father of a family or the patriarchs of the Old Testament. Royal power, he concluded, was but a natural extension of such parental authority, which all were born subject to by God's grace and the law of nature. Locke's response, needless to say, was totally critical and sarcastic of Filmer's thesis.<sup>69</sup> By matching Filmer's arguments with his own historical and biblical references, Locke would demonstrate only an alternative viewpoint;<sup>70</sup> the systematic demonstration of this viewpoint would await the *Second Treatise*.

In the *Second Treatise on Civil Government*, also known by its title, "An Essay Concerning the True Original Extent and End of Civil Government," the opponent is no longer Filmer. Rather, Locke undertakes to systematically refute the political views only recently set forth in Thomas Hobbes's *Leviathan*.<sup>71</sup> Never naming Hobbes, Locke's work sets forth a view of government which rests upon three fundamental grounds: the law of nature, the concept

67. See R. FILMER, *PATRIARCHA, OR THE NATURAL POWER OF KINGS* (E. Bohun ed. 1949).

68. See J. LOCKE, *The First Treatise*, in JOHN LOCKE: *THE TWO TREATISES OF GOVERNMENT* 153, 159 (P. Laslett ed., 2d ed. 1967):

Slavery is so vile and miserable an Estate of Man, and so directly opposite to the generous Temper and Courage of our Nation; that 'tis hardly to be conceived, that an *Englishman*, much less a *Gentleman*, should plead for't. And truly, I should have taken Sr. Rt: Filmer's *Patriarcha* as any other Treatise, which would perswade all Men, that they are Slaves, and ought to be so, for such another exercise of Wit, as was his who writ the *Encomium of Nero*, rather than for a serious Discourse meant in earnest.

69. See *id.* See also 8 W. & A. DURANT, *THE STORY OF CIVILIZATION: THE AGE OF LOUIS XIV* 580 (1963).

70. *Id.*

71. See, e.g., T. HOBBS, *LEVIATHAN* 103 (Collier ed. 1962):

And because the condition of man, as hath been declared in the precedent chapter, is a condition of war of every one against every one; in which case every one is governed by his own reason; and there is nothing he can make use of, that may not be a help unto him in preserving his life against his enemies; it followeth, that in such a condition, every man has a right to every thing; even to one another's body . . . .

of property, and the theory of the social contract. Underscoring each of these grounds would be, of course, the psychology of his *Essay Concerning Human Understanding*, the primacy of reason as the correct rule of human conduct.

Where Hobbes saw the human state of nature as one of war of all against all,<sup>72</sup> Locke's vision presents only a state of perfect freedom<sup>73</sup> bounded by the law of nature.<sup>74</sup> Herein, all of mankind have a right to all that can be affected by their labor as individuals, and thus title to property originates solely in the labors of man and in the setting of goods apart from the natural environment to the use of man.<sup>75</sup>

Because each individual is entitled to the peaceful use and enjoyment of the fruits of his or her labor, each is also entitled to enforce and defend this right against those who would attempt to frustrate it. Each individual in the state of nature thus acts as interpreter, judge, and executioner with respect to the enforcement of the principles of the law of nature.<sup>76</sup> Locke's speculation, being empirically and pragmatically based, however, could not have ended at this point. While the freedom of the individual in the state of nature sets forth the foundational ideal, not all individuals respond to the rule of reason which is at their disposal.

72. *Id.* at 103-04.

73. See J. LOCKE, *The Second Treatise of Government*, in JOHN LOCKE: TWO TREATISES OF GOVERNMENT 283, 287 (P. Laslett ed., 2d ed. 1967):

To understand Political Power right, and derive it from its Original, we must consider what State all Men are naturally in, and that is a *State of perfect Freedom* to order their Actions, and dispose of their Possessions, and Persons as they think fit . . . .

74. *Id.*: "[W]ithin the bounds of the Law of Nature . . . ."

75. Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*.

*Id.* at 305-06.

76. And that all men may be restrained from invading other Rights, and from doing hurt to one another, and the Law of Nature be observed, which willeth the Peace and *Preservation of all Mankind*, the *Execution* of the Law of Nature is in that State, put into every Man's hands, whereby every one has a right to punish the transgressors of that Law to such a Degree, as may hinder its Violation.

*Id.* at 289.

Thus, Locke's philosophy holds for the eventual, if not primordial, status of man as a social and political species. Nevertheless, there is no exaltation of the society over the individual, for, as in his *Essay*, Locke's political thought remains essentially atomistic.

Consequently, in order to better protect the lives and property of individuals from those who would transgress the laws of nature, and for no other purpose than this, civil government is instituted through the common acknowledgement and agreement of a sufficient majority of individuals.<sup>77</sup> In forming this *social contract*, the rights and powers of the individual thus are surrendered to the common goal. Such surrender, however, also works to separate the functions of government as between the legislative and executive departments.<sup>78</sup> The legislative function, insofar as it would supplant direct rule by the law of nature, is supreme. Hence, while Locke's *Treatise* supports the throne of William and Mary against the claims of James II and his followers, he more enthusiastically defends the rights of Parliament which he viewed as being more immediate to the people in their grant of sovereignty.<sup>79</sup>

But Locke's notion of the social contract, again unlike that of Hobbes,<sup>80</sup> does not result in the permanent surrender of sovereignty to any particular dynasty or form of government, nor does it mark the beginning of the reign of law.<sup>81</sup> Both man's inherent dignity as an individual and the authority of the law of nature

77. *Id.* at 348-49.

78. See note 39 *supra*.

79. See J. LOCKE, *The Second Treatise of Government*, in JOHN LOCKE: TWO TREATISES OF GOVERNMENT 384-92 (P. Laslett ed., 2d ed. 1967).

80. While both Locke and Hobbes saw the social contract as establishing government, Hobbes also held that therein was found the origin of the law as well. Thus, while Locke can be characterized as expounding a true natural law theory, Hobbes, although making use of natural law language, is best categorized as a legal positivist because he admits of no law prior to the will of the sovereign:

[B]efore the names of just, and unjust can have place, there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenant; and to make good that propriety, which by mutual contract men acquire, in recompense of the universal right they abandon; such power there is none before the erection of a commonwealth.

T. HOBBS, *LEVIATHAN* 113 (Collier ed. 1962).

81. See notes 73 & 74 *supra*.

survive the institution of government. As a result of this rever- sionary interest in the sovereign power, the people retain a right, even a duty, of revolution when the purpose of government to protect private property is abused or those in office otherwise breach the trust bestowed upon them. Herein lies the defense of the Glorious Revolution which Locke began in his *First Treatise*, and herein lies the recited justification and only legitimate basis for the American War of Independence and the resulting constitu- tional government of the United States of America.<sup>82</sup>

### CONCLUSION

It has been the purpose of this Article to illuminate the major European influences upon the American Revolutionary Period. The juxtaposition of the Puritan mind with the philosophy of John Locke clearly suggests elements of common insight as well as divergent concerns and emphases. Both sources present strong positions for a democracy of mind, and at the same time endorse the necessity of government and the rule of law. However, one finds differences in the ends for which the government and the law are instituted.

While Puritanism emphasized conformity to the rule of the Bible and exalted the covenant above any individual man or woman, Locke taught the freedom inherent in the rule of reason and committed himself to the individual and to the "mysteries" of this world revealed through the practice of science. In essence, what is suggested is the synthesis of these two systems of viewing man and his world in the resulting life of the American nation. Thus, in such a synthesis is uncovered a thought which is no longer European, but the beginnings of a native American theo- logical and philosophical jurisprudence.

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82. *Declaration of Independence*:

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, *deriving their just powers from the consent of the governed*; that, whenever any form of government becomes de- structive of these ends, *it is the right of the people to alter or to abolish it . . .* (emphasis added)