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Individualism, Professional Ethics, and the Sense of Community: From Runnymede to a London Telephone Booth

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Individualism, Professional Ethics, and the Sense of Community: From Runnymede to a London Telephone Booth

*George Anastaplo**

Pompey:

Ah, this thou shouldst have done
And not have spoke on't! In me 'tis villainy;
In thee 't had been good service. Thou must know,
'Tis not my profit that does lead mine honor;
Mine honor, it. Repent that e'er thy tongue
Hath so betrayed thine act. Being done unknown,
I should have found it afterwards well done,
But must condemn it now. Desist, and drink.

—William Shakespeare.¹

CONTENTS

Introduction.....	286
1. Magna Carta and Self-help.....	286
2. On Liberty and Morality.....	292
3. Major Challenges for the Legal Profession.....	298
4. Professional Ethics and the Classics.....	303
5. Professional Ethics and the Bible.....	308
6. Professional Ethics and Shakespeare.....	313
7. Self-help in a Telephone Booth.....	316
Conclusion.....	319
Appendix. A Return to "Paradise Lost".....	320

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1. WILLIAM SHAKESPEARE, *ANTONY AND CLEOPATRA* act 2, sc. 7, 74-81. See GEORGE ANASTAPLO, *THE ARTIST AS THINKER: FROM SHAKESPEARE TO JOYCE* 376 n.22 (1983) [hereinafter ANASTAPLO, *THE ARTIST AS THINKER*]. See also *infra* notes 65 and 80.

INTRODUCTION

A *profession* stands for something. It professes something. It is in the service of something; it is not an end in itself. And it has political and spiritual foundations upon which it rests.

We need to be reminded again and again of the whole in which professionals find themselves. Professional ethics cannot operate in a vacuum. The ethical rules that are provided can become merely formal, sterile, and ineffective when there is not much to shore them up—or when what there is at the foundations should be forgotten and neglected.

We should consider, therefore, not only the problems that an ethical system such as ours may have but also the principal sources of moral principles in Anglo-American life. Those sources are still the Classical, the Biblical, and the Poetic, however much they have been challenged by modern natural science, historicism, and relativism. We can see in Part 6 of this Article and (in considerably greater detail) in the Appendix to this Article how first-rate poets have blended the Biblical and the Classical, anticipating thereby various of the issues touched upon in this Article. In considering these issues we begin with what can be usefully considered the bedrock of the Anglo-American political community, and hence vital to our moral life: Magna Carta.

I. Magna Carta and Self-help

I.

A recent introduction to an English translation of the Great Charter includes these observations:

Early in the year 1215, the barons of England, the great land owners and political magnates, rose in rebellion against King John. He had provoked them by his rapacious taxes, abuse of royal power, and contempt for their rights. John knew that to protect his throne he had to come to terms with the barons. So he agreed to meet them on neutral ground at Runnymede, near Windsor and halfway between his military camp and theirs. The meeting worked out a framework for securing the barons' rights and on 15 June John accepted it. [The] full [Latin] text of the charter [was written out thereafter] at the royal Chancery in London . . .

In sixty-three clauses, Magna Carta established the freedom of the Church of England, protected free men from the arbitrary use of royal power, provided for certain taxes to be raised only

by common consent, re-established traditional forest and fishing rights, and standardized weights and measures. It also guaranteed foreign merchants free passage for commerce, regularized procedures for courts to hear common pleas, and established that no one could be condemned or punished without following the process of law and by the judgement of his equals.²

Of particular interest to us here is the reference to that form of self-help recognized when it is said that "the barons of England . . . rose in rebellion against King John." I will say more about that in connection with Chapter 61 of Magna Carta.³

II.

Magna Carta is often spoken of as having established, provided for, or guaranteed this or that privilege or immunity. But, as prominent English historians have recognized, "the charter contains little that is absolutely new."⁴

Instead, much of the document is devoted to reaffirming arrangements and institutions that are treated as long-established. Since quite familiar matters are being dealt with, there is no need in the document for definitions.

III.

The same sort of thing may be seen in the Declaration of Independence. The dozens of grievances collected there refer to longstanding rights, privileges, and institutions.

There is explicit in the Declaration of Independence, and implicit in Magna Carta, a reliance upon what we know as either natural right or natural law. It is this which helps us determine which guarantees and other conventions should be insisted upon and in what way. This is reflected in the invocation of *prudence* in the Declaration of Independence.

Such prudence was drawn upon in the development of the Constitution of 1787. It had to be determined in the Constitutional

2. RACHEL SPONAR HARRISON, MAGNA CARTA OFFICER, LINCOLN CASTLE, FOR THE DIRECTORATE OF EDUCATION AND CULTURAL SERVICES (upon publishing a translation of Magna Carta).

3. See GEORGE ANASTAPLO, THE AMENDMENTS TO THE CONSTITUTION: A COMMENTARY 244-55 (1995) [hereinafter ANASTAPLO, THE AMENDMENTS] (for one translation of the text of Magna Carta); George Anastaplo, *The Making of the Bill of Rights, 1791*, in THE GREAT IDEAS TODAY 318 (1991) (for another translation).

4. See J. C. HOLT, MAGNA CARTA 201 (1965) (quoting I. F. POLLOCK & F. W. MAITLAND, HISTORY OF ENGLISH LAW 172 (1898)).

Convention which of the principles affirmed and used in the Declaration of Independence could be immediately implemented, and in what way, in the Constitution.

The Constitution, too, draws upon familiar terms and institutions, adapting them to the American circumstances of its day.⁵

IV.

One of the critical innovations of Magna Carta is with respect to the barons' rising in rebellion against their king. Rebellion itself was not new—that had happened before and was to happen again. What *was* new was the institutionalizing of rebellion in Chapter 61 of Magna Carta, to which more than one-tenth of the document is devoted.

One modern scholar has described Chapter 61 in this way:

This important chapter stands by itself, providing machinery for enforcing all that precedes it. It thus forms what modern jurisprudence would describe as the "sanction" of the whole, but what was known in the current phrase of its own day as "the form of security" It contains the only executive clause of the Charter, the sole constitutional machinery.⁶

This scholar continues:

The procedure devised for enforcing the Charter was crude: John conferred upon twenty-five of his enemies a legal right to organize rebellion, whenever in their opinion he had broken any one of the provisions of Magna Carta. Violence might be legally used against him, until he redressed their alleged grievances "to their own satisfaction". . . .⁷

Self-help was thus legitimated against a king known to be unreliable in whatever he undertook.

We see here, in however awkward a form, a qualified right of revolution.⁸ Or put another way, if the King stepped out of line again,

5. See George Anastaplo, *Natural Law or Natural Rights?*, 38 LOY. L. REV. 915 (1993). See also *infra* note 23. See GEORGE ANASTAPLO, *THE CONSTITUTION OF 1787: A COMMENTARY* (1989) [hereinafter ANASTAPLO, *THE CONSTITUTION OF 1787*] (on the Declaration of Independence and the Constitution). The principles of the Declaration of Independence are further implemented in the Amendments to the Constitution as circumstances permitted. See *supra* note 3.

6. WILLIAM S. MCKECHNIE, *MAGNA CARTA* 468 (2d ed. 1914).

7. *Id.*

8. See George Anastaplo, *On Freedom: Explorations*, 17 OKLA. CITY U. L. REV. 465 (1992) [hereinafter Anastaplo, *On Freedom*]. See also A.E. Dick Howard, *MAGNA CARTA ESSAYS* 3, 20-21 (1965). Consider how the right of revolution is put by Chief Justice Marshall in *Marbury v. Madison*, 5 U.S. 137, 176 (1803):

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their

the barons were authorized to do again what they had just done. It would be “back to Runnymede,” so to speak. (Nothing is said in Chapter 61 about such details as how the initial set of twenty-five barons are to be chosen by the barons of the kingdom.) It did not seem to trouble the barons that what the King had agreed to had been extracted from him under duress. Rather, the barons anticipated that more duress, or coercion, would be needed from time to time if their interests were to be protected. Besides, they knew that this king and his predecessors had themselves gotten and remained where they were, in large part, by the use of force.

This, as well as the barons’ “presumptuousness,” is reflected in the insistence, incorporated in Chapter 62, that the King pardon the barons and their supporters for taking up arms against him, past and future. The respect with which kings can be regarded is indicated, four centuries later, in the plea for pardon included in Thomas More’s petition to Henry VIII regarding parliamentary freedom of speech.⁹

V.

The oaths and assurances of June, 1215, did not hold long. By the fall of that year, the King and the barons were at war again. Even so, Magna Carta must have meant something. It kept being revised and reissued—almost three dozen times, it seems—in the centuries that followed. The people and the country were eventually shaped by Magna Carta, so much so that it ceased being controversial.¹⁰

Perhaps the most effective royal confirmation of Magna Carta was by Edward I in 1297:

Know that, for the honour of God and of Holy Church and for the benefit of our entire kingdom, we have granted for ourself and for our heirs that the Great Charter of Liberties and the Charter of the Forests [which was derived, in part, from the Great Charter], which were drawn up by the common assent of the whole kingdom in the time of King Henry, our father, are to be observed without impairment in all their particulars.¹¹

It was on that occasion that Magna Carta was permanently imbedded in

own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original rights is a very great exertion; nor can it, nor ought it, to be frequently repeated.

Id.

9. See ANASTAPLO, *THE AMENDMENTS*, *supra* note 3, at 258.

10. See Anastaplo, *On Freedom*, *supra* note 8, at 561.

11. CARL STEPHENSON & FREDERICK GEORGE MARCHAM, *SOURCES OF ENGLISH CONSTITUTIONAL HISTORY* 164 (1937). The father of Edward I, Henry III, was the son of King John.

the law of the land:

And we will . . . that our justices, sheriffs, mayors, and other ministers, whose duty it is to administer the law of the land under us and through our agency, shall cause the same charters in all particulars to be admitted in pleas and judgments before them—that is to say, *the Great Charter of Liberties as common law* and the Charter of the Forest according to the assize of the forest, for the relief of our people. And we will that, if any judgment is henceforth rendered contrary to the particulars of the charters aforesaid by our justices, or by our other ministers before whom pleas are held contrary to the particulars of the charters, it shall be null and void.¹²

This development, which sees ideas and principles thus elevated, reminds us that the most “realistic” among us may not be those people who consider themselves so.

VI.

Magna Carta, however ineffective its enforcement machinery, did embody a spirit that would not be denied. It eventually contributed, for example, to the 1689 Bill of Rights and the related Act of Settlement. More practical than the machinery of 1215 have been such developments as the principle of ministerial responsibility and the ever-tighter control by the House of Commons over the purse (something that is anticipated in Edward’s 1297 declaration). So far-reaching have these developments been that the British monarch’s power now depends almost entirely upon the innate loyalty of the British people, upon a general awareness of the usefulness of the monarchy, and upon the character and manners of the Royal Family.

The spirit of Magna Carta includes features that restrained the barons at least as much as they did the King. This may be seen in Chapter 60, of which it has been said:

It would have been as impolitic as it was obviously unfair for the barons, in their capacity of mesne lords, to inflict upon their own tenants those very exactions which they compelled the King to abjure as against themselves. Accordingly, the benefit of the “customs and liberties” conceded by John to his feudal tenants was—in a somewhat perfunctory manner, it is true—extended to the feudal tenants of all other magnates, whether cleric or lay.¹³

However “perfunctory” the manner in which this was done, the acknowledgment in Chapter 60 proved to be remarkably powerful,

12. *Id.* (emphasis added).

13. MCKECHNIE, *supra* note 6, at 463-64.

especially when reinforced by the potentially expansive provisions in Chapters 39 and 40.¹⁴ Another element that has come to be generally accepted is that of majority rule, which is explicitly provided for in Chapter 61 with respect to the decisions of the twenty-five barons.

VII.

Various of the British developments touched upon here may be seen in the American constitutional system as well. The limitations upon the executive found in British constitutionalism have been taken even further in the United States by limited grants of powers to governors and presidents and by the availability of executive impeachment by legislatures. Thus, we in this country are suspicious of any claims of inherent executive powers and of executive prerogatives.

Still, it should be noticed, however important principles are, a legitimate recourse to force must also be available in the system to insure that it works properly. But force without principles is self-defeating in the long run, in that it is unthinking and likely to be suicidal.

Magna Carta helped establish the importance of documents in a constitutional system. In the founding documents of a people, the framers, even (or, perhaps, especially) when they strive to justify their self-interest, naturally reach for principles that they may not fully comprehend. David Hume has said that "time gradually ascertained the sense of all the ambiguous expressions" in Magna Carta.

One grand consequence, to which Magna Carta contributed, was the systemic development of the rule of law in the English-speaking world. The rule of law means, in large part (at least among us), the rule of lawyers—and for this the competence and character of lawyers can be decisive. It is only prudent, then, to require of all lawyers what King John was obliged to say, in Chapter 45 of Magna Carta, about the competence and character of his officers: "We will not make justiciars, constables, sheriffs, or bailiffs except of such as know the law of the realm and are well inclined to observe it."

14. See Anastaplo, *On Freedom*, *supra* note 8, at 485-87. Chapter 39 of Magna Carta provides, "No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land." Reprinted in Anastaplo, *The Making of the Bill of Rights*, *supra* note 3, at 328.

Chapter 40 of Magna Carta provides, "To no one will we sell, to no one will we deny, or delay right or justice." Reprinted in Anastaplo, *The Making of the Bill of Rights*, *supra* note 3, at 328.

2. *On Liberty and Morality*

I.

The supposed clash between a moral society and individual liberty is often discussed. What, we may well wonder, contributes to the widespread opinion in this country today that there is inherently a conflict between a moral society and individual liberty?

Contributing to this troubling opinion may be misconceptions as to what *individual liberty* means. One misconception prompts partisans of liberty to feel threatened because of the repressive demands of society; another misconception prompts partisans of morality to feel threatened because of the licentious claims of individualism.¹⁵

Related to this juxtaposition of partisans is a longstanding development recorded by Leo Strauss in a study of Edmund Burke: "The quarrel between the ancients and the moderns concerns eventually, and perhaps even from the beginning, the status of 'individuality.' Burke himself was still too deeply imbued with the spirit of 'sound antiquity' to allow the concern with individuality to overpower the concern with virtue."¹⁶ Some tension, if not conflict, between individualism and virtue is, therefore, nothing new.

The lure of individualism includes the expectation that only it can nurture and sustain the principled human being despite intense pressures for a crippling conformity. Individualism can be cherished in such repressive circumstances because it promotes morality. On the other hand, the risks of individualism include its tendency to degenerate into the desire for self-gratification, with an emphasis placed upon one's getting whatever one chances to want from time to time.

Self-indulgent people can resent anything which interferes with their being able "to do their own thing." This resentment may be seen in the hostile responses by some among us to all forms of authority. It may even be seen in their refusal to respect, say, the table manners or the politer forms of language of their day. This kind of exhibitionism can be either sad or comic, when it is not simply contemptible.

The remarkable openness to individuality among us may be in part due to modern state-of-nature speculations, which in turn may be related to Christian doctrines. Human beings are understood, thereby, to have a capacity for self-realization somehow independent of civil

15. See GEORGE ANASTAPLO, *THE AMERICAN MORALIST: ON LAW, ETHICS & GOVERNMENT* 327-37 (1992) [hereinafter ANASTAPLO, *THE AMERICAN MORALIST*].

16. LEO STRAUSS, *NATURAL RIGHT AND HISTORY* 323 (1953).

society. One manifestation of this faith may be the phenomenon known as the *conscience*, a supposed human attribute which was nevertheless unfamiliar to “sound antiquity.” This approach to individuality may be reinforced and legitimated by the American dedication to both equality and progress.

One consequence of all this is the attempt to secure liberty, as well as morality, without formal ethical training, especially any training originating directly or indirectly with the community. Reliance upon the beneficent workings of unregulated forces may sometimes be seen, for example, in what is expected from a market economy. It is easy to lose sight of the ultimately subordinate character of any form of economic organization. In their thinking about these matters, the typical market-economy partisans are babes in the philosophical woods, as are (unfortunately) most teachers of jurisprudence, including the well-meaning Law and Literature people on law school faculties.¹⁷

Another form that the unleashing of individualism takes in this country has been the transformation of the constitutional term *freedom of speech [and] of the press* into the now fashionable term *freedom of expression*. This is a movement from an emphasis upon political discourse and its primary concern with the common good to an emphasis upon constant personal experimentation and its primary concern with self-fulfillment. A kind of anarchy is thereby encouraged, if not even approved. For the more desperate among us, freedom of expression is likely to “peak” in violence.¹⁸

Perhaps the most dramatic instances of such self-expression in the history of the American Republic were the efforts made in 1861-1865 by some of the liberty-invoking, slavery-sanctioning States to secede from the Union when they did not find to their liking the direction that political debate, the national moral judgment, and peaceful balloting were taking the country.

II.

How, then, should our cherished liberty be thought about? Even to put the issue in this way implicitly questions the prevailing modern view, for it does suggest that there are better and worse ways of thinking about such matters. Not all sentiments, opinions, or feelings are equal.

17. See George Anastaplo, *Law & Politics*, 25 POL. SCI. REVIEWER 127 (1996).

18. See ANASTAPLO, *THE AMENDMENTS*, *supra* note 3, at 459 (on *freedom of expression*).

It is useful to consider here Patrick Henry's celebrated March 23, 1775, speech, which includes in its peroration perhaps the most memorable passage on *liberty* in American oratory:

Gentlemen may cry, peace, peace; but there is no peace. The war is actually begun! The next gale that sweeps from the north will bring to our ears the clash of resounding arms! Our brethren are already in the field. Why stand we here idle? What is it that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God—I know not what course others may take; but as for me, give me liberty, or give me death!¹⁹

This may be the only part of the most famous speech attributed to Patrick Henry that is clearly his, however much all of it reflects what he did think in 1775. A few suggestions about this speech should be useful here.

This apostle of liberty invokes positive law (in his lament, elsewhere in the speech, for the constitutional rights and privileges subverted by the British government); he invokes nature (in his suggestions about the merits of standing for liberty and courage against cowardice and slavery); he invokes the divine (in his references to God and in his repeated use of Biblical language). Thus, the liberty he exercises and argues for is *not* that of a human being "liberated" from the guidance provided by recognized authorities.

Patrick Henry, as a Virginian, had seen enough of chattel slavery to recognize that liberty is far preferable to chains, whether physical or spiritual. That the principle of liberty is *not* for him the only consideration, however, is reflected in his recognition elsewhere in his speeches and letters that, dreadful as the institution of chattel slavery was, Virginia could not risk abolishing it immediately. The men and women who submit to slavery rather than die also testify to the opinion that the principle of liberty is not the only consideration for determining how one should conduct oneself.

The importance of law and the political community for Patrick Henry is evident in the fact that he makes his most celebrated speech in a legislative setting, and does so pursuant to the rules of the assembly that he is addressing.²⁰ Moreover, he advocates liberty for every

19. Patrick Henry, Give Me Liberty or Give Me Death, in 2 THE ANNALS OF AMERICA, 323 (1976) (reprinted from WILLIAM WIRT, SKETCHES OF THE LIFE AND CHARACTER OF PATRICK HENRY 137-42 (1841)).

20. See George Anastaplo, *On Robert's Rules of Order*, in THE GREAT IDEAS TODAY 232 (1996) [hereinafter Anastaplo, *On Robert's Rules of Order*] (on the importance of rules for deliberative assemblies).

citizen of Virginia, not just for himself. He does not intend to go to war alone, however much his speech may sound like a personal declaration of independence. Nor does he advocate any return to the state of nature. Rather, he stands for one country, of course his own, in its contest with another country.

No doubt, a dramatization of liberty can lead to mere individualism, if not even to anarchy, when it is not properly disciplined. This may be seen in the notorious proposal endorsed by the unscrupulous Jack Cade, in Shakespeare's *2 Henry VI*, that he and his fellow revolutionaries kill all the lawyers—that is, they propose that they eliminate those who are trained in and disciplined by the law. This is indeed to repudiate the excellence by which liberty must ultimately take its bearings.

However fiery Patrick Henry could be, it is evident throughout his 1775 speech, as well as in the most effective part of his career, that a high degree of discipline is at work. That is usually the case in the greatest orations. The central passage of his speech is devoted to reminders of the efforts that had been made by Americans for a decade to reason with the British government: they had set forth their grievances again and again. In the Declaration of Independence, a year later, a detailed recollection of dozens of grievances is at the heart of that document's reasoning in turn.

Thus, Patrick Henry urges his fellow Virginians to stand firm, in a reasoned manner, for liberty—that is, to act resolutely, and to take risks, for God and Country. In short, he urges them, in the name of liberty, to be what we now call a moral society.²¹

III.

We return to the widespread opinion of our day that there is inherently a conflict between a moral society and individual liberty, whatever tension there may naturally be between individualism and virtue. A more political term than *society*, and less subject perhaps to misunderstanding, is *polis*, *country*, or even *community*.

I believe that however much the gentlemen of Patrick Henry's generation might have differed among themselves about constitutional provisions and political measures, few if any of them would have dissented from the assumption evident throughout Henry's great

21. It was useful for the Colonists to be able to say, in the Declaration of Independence: "Nor have we been wanting in Attentions to our British Brethren. We have warned them from Time to Time of Attempts by their Legislature to extend an unwarrantable Jurisdiction over us." THE DECLARATION OF INDEPENDENCE, in ANASTAPLO, THE CONSTITUTION OF 1787, *supra* note 5, at 242.

speech—that personal liberty and a moral community go together and that neither of them is, in modern circumstances, likely to be in good shape for long without the other.

So much do these two conditions go together, the Founding generation would have argued, that the community must train citizens properly, both directly and indirectly, if there is to be an enduring and useful liberty. The liberty, such as it is, of barbarians or of primitive peoples is not likely to be very effective or very satisfying, especially in the face either of natural disasters or of civilized challenges.

The direct moral training provided by the community takes the forms of a system of laws (including the common law), of schools, and of other more or less public institutions. This can include teaching children the great words and noble deeds of their ancestors. This can also include taking into account the moral consequences of all kinds of governmental measures that are not primarily concerned with morality. The indirect moral training takes the forms of economic and athletic contests, of public opinion and customs, and of “private” associations chartered or otherwise permitted if not even supported by the community. Among the “private” associations important in the United States have always been the religious and other charitable bodies that often do much of the work that a responsible community would otherwise have to do.²²

Fanaticism does infect such bodies from time to time. A sound community, confident of both its judgment and its prerogatives, should be able to recognize and to discipline those religious and other “private” associations which are demented, violent, or otherwise harmful in their tendencies. It should also be able to recognize what kind of, and how much, rivalry between sects may safely be tolerated from time to time. In such circumstances, the dubious aspects of liberty should be readily apparent. Of course, the older the religious or other such association, however questionable some of its founding doctrines may have been, the more likely it is that nature has had an opportunity to work upon the association and make it socially responsible and otherwise useful. It is likely to be the most useful when assigned its proper place in the community by a prudently-framed constitution.

I suggested at the outset of Part 2 of this Article the misconceptions about what *individual liberty* means which contribute to the inherent conflict which is often posited between that liberty and a moral society.

22. See George Anastaplo, *Church and State: Explorations*, 19 LOY. U. CHI. L.J. 61 (1987); George Anastaplo, *The Religion Clauses of the First Amendment*, 11 MEM. ST. U. L. REV. 151 (1981).

Misconceptions about what a *moral society* means also contribute to these difficulties. Vital to a sensible resolution of any “inherent conflict” here is consideration of what is truly moral.

People are suspicious, and properly so, of authoritarian, intolerant, or moralistic (as distinguished from moral) interventions in their lives. The abuses here, just as with those perpetrated in the name of individual liberty, can lead to excesses among those determined to counter such abuses. Perhaps at the heart today of the principled opposition to the deliberate influence and efforts of the community on behalf of morality is the widely-held assumption that moral standards and judgments must be rooted in one religion or another, all too often a religion of which one disapproves. Relevant here, as well as throughout my remarks in this Article, is a question put by Voltaire (in the “Why” entry in his *Philosophical Dictionary*): “Why in antiquity was there never a theological quarrel, and why were no people ever distinguished by the name of a sect?” Contemporary opposition, based upon “anti-theological ire,” to any moral direction by the community would be substantially reduced, if not virtually eliminated, if it should be generally recognized that most enduring moral standards, including those endorsed by most religions and by most systems of law, have been decisively influenced by, even if they were not originally grounded in, nature. As such, those moral standards would be discoverable, or at least refined in their application to particular circumstances, by human reason.²³

A proper individuality contributes to that full development of the human being that nature seems to point to: only then is one truly free, conquering the ravages of chance and the dictates of fate as much as is humanly possible. It must be rare, if not impossible, for human beings to develop and to be sustained, or at least to be perpetuated across generations, without a solidly moral community. In these circumstances, the truly free human being wants to do, and indeed is likely to do, only that which is good. Thus, the moral community, if it knows what it is doing—that is, if it is soundly moral—cherishes that liberty without which morality itself, as well as a prudent political life (which should be sovereign in these matters), is virtually impossible in modern times.

23. See GEORGE ANASTAPLO, *THE THINKER AS ARTIST: FROM HOMER TO PLATO & ARISTOTLE*, Ch. XI, Pt. 2 (forthcoming 1997) [hereinafter, ANASTAPLO, *THE THINKER AS ARTIST*] (on the Idea of the Good); Anastaplo, *Teaching, Nature, and the Moral Virtues*, in 1997 *THE GREAT IDEAS TODAY*, Pt. 2 (forthcoming 1997) [hereinafter Anastaplo, *Teaching, Nature and the Moral Virtues*]. See also *supra* note 5, *infra* note 33.

I have done no more than sketch here an argument which suggests that there need not be a conflict, but rather that there can be a useful relation, between "individual liberty" and "a moral society." Even so, I hope I have said enough, considering the moral as well as the intellectual training still available from one institution or another, to permit my readers to develop for themselves a far better argument than I have had space to develop here. By doing this, readers can make a most salutary use of their own precious liberty.

3. *Major Challenges for the Legal Profession*

I.

In discussing the major challenges for the legal profession in the United States today, I will look first at the legal profession as seen by its practitioners, then at the heart of the practice of law, and finally at the legal profession as seen by the rest of the community. I should preface these remarks by observing that law school is itself a salutary challenge for the intelligent youngster of an active disposition, especially if one knows both how to control oneself and what to look for.

I am told by various of my former classmates, fellow graduates more than forty years ago from one of the best law schools in this country, that they (knowing what they do now) would not go to law school if they had it to do again. These are men—there were only three women in my class, compared to the multitudes of women now in law school—these are men who have done quite well financially and are considered at the top of their profession.

Perhaps their disillusionment reflects a general disillusionment with life itself induced by that awareness of failing powers which accompanies the onset of old age. But I do not believe that this is critical to their mood. I do not believe, that is, that the counterparts of these men, two or perhaps even one generation ago, had been so disillusioned in *their* old age. Besides, I have begun hearing similar disparaging talk about the legal profession from men a generation younger—from men, by the way, not from women, in part, I suspect, because women are more apt to give up on the profession as conventionally practiced while men, for one reason or another, are obliged if not even inclined to stick with the careers they have chosen.

Such reservations are not limited to older men, however. The young, including the most successful young (with salaries verging on \$100,000 a year during their first five years after admission to the

bar), find themselves oppressed by seventy-five-hour work weeks upon which even more demands can be piled from time to time. The demands made of them are particularly onerous for youngsters who have been softened by "the good life" which is financed by the money they make. It does not help matters for all too many talented and successful lawyers to discover that they really do not like the wealthy people that they serve. This is not the kind of career they had in mind when they were first drawn to the Law.

The long hours would be far less troublesome for them if they believed that they were engaged in a noble profession. But a quite new way has taken hold in the organization of the profession during the past quarter century, at least in the larger law firms which eventually influence many other lawyers in our cities. The lawyer is much more apt today to be a narrow specialist; he is much more apt to find himself part of a large organization that is run like a business, but a business which is at the beck and call of still other businesses known as clients.

A common complaint is that law firms no longer train young associates, ethically as well as technically, the way they once did. Related to this is the recognition that the young people taken on by a firm might not be around very long, certainly not (in most cases) long enough to be made partners who can share in the "surplus wealth" generated by the thousands of hours billed annually by the young associates. That is, these are no longer lifetime associations; mergers between, and layoffs within, law firms have become common.

Some middle-aged lawyers strive to keep their profession from becoming too much like a business. Others are concerned to make their profession more efficient, especially as it accommodates itself to more and more sophisticated information-processing technology. Such accommodations tend to make legal practice more mechanical, affecting how fundamental legal issues are thought about or, rather, how they are managed so that they need not be really thought about. It is this sort of thing which has made the calling of the lawyer less meaningful and less interesting, helping account for the discontent that has steadily demoralized a noble profession.

II.

A teacher of mine insisted in 1948 that "ideas have consequences."²⁴ At the heart of the practice of law, very much affecting how the

24. See RICHARD M. WEAVER, IDEAS HAVE CONSEQUENCES (1948). Is it not odd that anyone had to *argue* such a thesis?

profession permits itself to be used, is the prevailing idea about the nature of justice. The dominant notions these days tend to be shallow when they are not simply cynical. That is to say, there is not much serious thinking either in the schools or among the bar about the meaning of justice. However much people rely, almost instinctively, upon old-fashioned natural-right opinions, practitioners are neither encouraged nor helped to develop a solid and reliable grounding in those opinions.

A proper sense of justice would guide appropriate responses by the legal profession to the challenges facing it. Instead, the profession seems to have become unable to grasp the significance of the very notion of a profession. This makes it difficult for lawyers to regulate themselves and to address the problems of the legal system. Quick fixes and technological innovations are the order of the day, as may be seen in the readiness of law firms to experiment with equipment and methods that promise modern business efficiency.

Vital to this situation is the question of the proper education of the bar, an education that had begun to deteriorate before I went to law school (1948-1951) and the grimmer consequences of which we are now seeing. Another way of putting this is to say that the general deterioration in American education is catching up with the law schools and with the legal profession, however much the conservative tendencies of the Law have perpetuated traditional modes of thinking and acting among the bar.

Law school faculties talk about, and are reassured by, how the scores of their entering students are getting ever higher. Even those who recognize that students may not be as well prepared as they once were are not inclined to embark upon remedial measures of a fundamental character. Courses which teach law students how to read the Bible, Shakespeare, and our great constitutional documents are not likely to be encouraged.²⁵ Students well versed in these subjects (to say nothing of Plato and Aristotle, which it is not prudent to make much of) are more likely to notice, and to think seriously about, the principles which the Anglo-American system of law has depended upon and nourished for centuries.

The best law schools in this country may well be in the worst shape because they tend to be the most fashionable. Those are the schools in which the brightest and most prestigious scholars are found and in

25. On the other hand, such courses may be permitted, if any faculty member should want to teach them. My Fall, 1996, Jurisprudence course at the Loyola University Chicago School of Law, using the Bible, was oversubscribed and proved successful. The same can be said of my Spring, 1997, Jurisprudence course using Shakespeare.

which social science disciplines are dominant. Economics is the current fad, following upon experiments in recent decades with sociology and psychiatry. Realism, in pursuit of "power," is the order of the day, which amounts to a steady corruption of "the best and the brightest."

The celebrated professors in the best law schools are really "babes in the woods" when it comes to the most important things that they should know. Very few of these scholars know much about the Declaration of Independence, for example. They do not even know what familiarity with the United States Statutes at Large should tell them, that the Declaration has been enshrined there for two centuries now as one of the four "organic laws of the United States."²⁶

The major challenge facing the legal profession then is whether the understanding of lawyers can be sufficiently deepened to permit the restoration of the old-fashioned opinions about what the profession and the legal system it serves should be like. Fundamental to those opinions, I have suggested, is a sound idea about the nature of justice.

III.

I began in this Part by looking at the legal profession, as seen from the inside. I now look at it from the outside, having touched upon the prevailing idea about the nature of justice which is at the heart of the practice of law. How the profession is seen from the outside does affect how it is regarded inside, just as how it is regarded inside eventually affects how it is seen from the outside, if only because of the things lawyers permit (if not even require) themselves to do.

Lawyers are no longer likely to be seen as heroes, or even as solid members of the community. Rather they are more apt to be seen as tricksters for whom "winning" is everything. Both their ethical reliability and their dedication to justice have been called into question, not least because they themselves no longer seem to be confident that there are moral standards of an enduring character by which lawyers (along with others) should take their bearings.

Immediately in the public eye, of course, has been the O.J. Simpson case, which a sensible and self-respecting system would have disposed of within six months of Mr. Simpson's arrest. We can be thankful, in any event, that we did not have the capital punishment issue to distort that case even further, something which we are seeing

26. See George Anastaplo, *The Declaration of Independence*, 9 ST. LOUIS U. L.J. 390 (1965).

in the case being publicized about Mumia Abu-Jamal, an African-American journalist on death row in Pennsylvania.²⁷

There are atrocities on the civil side of the docket as well. A particularly blatant case was the Pennzoil/Texaco litigation in Texas a few years ago. The shamelessness of a major corporation and its attorneys, aided and abetted by various peculiarities in Texas-style trial by jury, was very much in evidence.²⁸ Even worse, for only a few billion dollars were mishandled in that litigation, is what we have been seeing from the tobacco companies and their lawyers who, in pursuit of many more billions, are contributing to the deaths of hundreds of thousands of people annually by doing what they can to promote an unfortunate addiction among the young. The full-page ads we saw, following upon a "successful" threat of litigation by a tobacco company against a television network, were simply disgraceful, exposing to public view as they did the monumental hypocrisy of a major corporation and the unbecoming subservience of its lawyers.²⁹

It is not only lawyers, however, who have come to consider "winning" to be everything, something which is reinforced by an emphasis upon "the bottom line" in business. Consider what is happening to our sports. Why is it as important, as some are now arguing, that we must "know," by recourse to a post-season playoff system, who is "Number One" each year in college football? One consequence of this is the depreciation of the individual contest and the pleasure, as well as the instruction, that can be gleaned from it. For example, the opening game in Notre Dame's 1994 football season was a thrilling contest which was decided in its closing seconds. The following morning the sport pages were filled with the lamentations of Notre Dame partisans, depressed by what this loss had done to their prospects for "a national championship." The magnificence of the contest itself could not be appreciated by them. Such distortions very

27. See *Commonwealth v. Abu-Jamal*, 555 A.2d 846 (Pa. 1989); Marc Kaufman, *The Rise of Death-Row Chic; How Abu-Jamal, Convicted Cop-Killer, Became the Darling of the Left*, THE WASH. POST, Aug. 20, 1995, at C2; George Anastaplo, *On Crime, Criminal Lawyers, and O.J. Simpson: Plato's Gorgias Revisited*, 26 LOY. U. CHI. L.J. 455 (1995); Anastaplo, *The O.J. Simpson Case Revisited*, 28 LOY. U. CHI. L.J. (forthcoming Spring 1997) [hereinafter Anastaplo, *The O.J. Simpson Case Revisited*]. See also, "Racism," *Political Correctness, and Constitutional Law: A Law School Case Study* (1995-96) (collection available from author).

28. See, e.g., *Texaco, Inc. v. Pennzoil Co.*, 729 S.W.2d 768 (Tex. Ct. App. 1987); THOMAS PETZINGER, JR., *OIL & HONOR: THE TEXACO-PENNZOIL WARS* (1987).

29. See George Anastaplo, "Private" *Gambling and Public Morality*, 142 CONG. REC. S9449 (Aug. 1, 1996; entered by Senator Paul Simon) (on another addiction promoted by wealthy corporate interests); ANASTAPLO, *THE AMENDMENTS*, *supra* note 3, at 195 (on the limits of Prohibition).

much affect the quality of our lives, partly by making it difficult for us to appreciate and savor what we do happen to have.

Distortions may be seen not only in legal practice but also in our political life, which (as we have noticed) has always been very much influenced by lawyers. It sometimes seems it is not only legitimate but even expected that the ambitious politician should take whatever position that may happen to be required to advance his immediate interests. The misconceived push for term limitations is an understandable reaction to what has happened to the calling of politics in this country. I say "misconceived" because it does not make sense for us to insist that our highest legislative councils can have in them no members who have been there for more than a decade. (Would we consider it reassuring to hear a hospital advertise that it has no doctors who have been on its staff for more than a decade or to learn that the general staff of the country's military has no officer with more than ten years of service above, say, the rank of lieutenant colonel?) One consequence of term limitations, by the way, is likely to be that lawyers will become even more influential than they already are in legislatures; since theirs *is* still a profession which can be relatively easily returned to after (if not even enhanced by) a career in politics.³⁰

We have been taught by Tocqueville that it is salutary that lawyers be as influential as they are in this country so long as lawyers *are* properly trained and are dedicated to the cause of justice and the cause of domestic tranquillity. These causes usually, but unfortunately not always, reinforce each other. Prudence is called for in their mediation. Thus, the common good depends upon our lawyers being both competent and patriotic, a condition which in turn depends upon that reform of legal education which would contribute to how lawyers see themselves and are seen by others who have to rely upon their invaluable services.

4. *Professional Ethics and the Classics*

I.

If someone is interested in linguistics or in medicine or in geography, he can go to various of the Classics for information bearing on the development, if not even on the substance, of his discipline. Thus, the student of medicine can spend many a profitable

30. See George Anastaplo, "To Amend" Means "To Improve," 141 CONG. REC. E739 (Mar. 30, 1995; entered by Representative Patsy T. Mink) (on term limitations); ANASTAPLO, *THE AMENDMENTS*, *supra* note 3, at 230-32, 443-44, 465.

hour with Homer, Plato, Sophocles, Herodotus, Thucydides, Aristotle, and Lucretius, extracting from them materials which illuminate the history of medicine and perhaps even some indications of how to prevent or to treat certain afflictions of the body or of the psyche.

But to deal with the greatest authors and their texts in this way obviously would be to make limited use of them, if not even (in some cases) to misuse them. Such texts have not survived and achieved the eminence they have because they have been put to technical uses, but rather because of what they offer toward our general understanding of things. One does not fully appreciate works of this caliber, or secure what can be gotten from them, if one is not open to the full range of the arguments made in them.³¹

II.

Do the reservations I have just indicated about the recourse to these books for what they can teach us about linguistics or medicine or geography apply also to using them to serve moral (or ethical) interests? We do hear more these days about the need to use the Classics in order to train business managers and other professionals in ethics. Obviously, how one should live is a higher (or more critical) concern than those of the linguist, the doctor, or the geographer as such. But to recognize an ethical life as higher than the other pursuits I have mentioned is also to recognize that there is a science of higher and lower and ultimately a science of *the good*. That is, such recognition looks to—in fact, it tacitly acknowledges—a comprehensive understanding of things, an understanding which can be a guide to action, but also a guide to contemplation. Contemplation offers itself as something independent of, if not even superior to, action.³²

Fundamental to serious inquiries is, as we have seen, the question of nature: What is the nature of nature? How does nature bear upon our capacity to understand? How does it bear upon what is to be understood? What guidance does it provide for judgments about good and bad? Intimately related, then, to the question of nature is the need to become aware of what it is to know, of what is worth knowing, and of how far one may be from knowing what is to be known. Only if

31. For a well-worked list of such texts, see GEORGE ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 299. How such texts should be approached is illustrated in the Appendix to this Article, "A Return to *Paradise Lost*."

32. On intellectuals and morality, see George Anastaplo, *Lessons for the Student of Law: The Oklahoma Lectures*, 20 OKLA. CITY U. L. REV. 19, 179 (1995) [hereinafter Anastaplo, *Lessons for the Student of Law*].

these inquiries are taken seriously can one begin to learn how to think. Particularly vital here is learning what it is to learn and to know. Only thus is one, without the privilege of revelation, apt to be opened up to the grandeur of things and to a liberating sense of wonder.³³

For us to consider such questions properly, questions which are central to our humanity, the help of the best minds is virtually indispensable. That guidance depends in its highest form upon reading, on their own terms, the finest works of the mind. To read such works on their own terms, however, is not what is usually expected or done in the typical program in ethics.

III.

Consider the implications, for ethics, of an observation found in the Babylonian Talmud:

Those who have done *penance* have more merit than those who have never sinned.—Let a man always consider himself half innocent and half guilty. Happy is he who does a good deed! By so doing he tilts the scale in the favor of his merit. Woe to him who commits a sin. He tilts the scale in the direction of his guilt.—It is not sack-cloth and fasting that bring about forgiveness, but rather making amends and good deeds.³⁴

The judgment that those who have done penance have more merit than those who have never sinned raises fundamental questions about what is truly good. I do not believe that this is a judgment which someone such as Plato or Aristotle would endorse.

The thoughtful reader suspects that the Talmudic judgment here rests upon certain assumptions about the nature and circumstances of man and of the proper relation between the human and the divine.³⁵ In any event, the probing of the truly good bears upon what it is proper to

33. See LEO STRAUSS, THOUGHTS ON MACHIAVELLI 299 (1958):

It would seem that the notion of the beneficence of nature or of the primacy of the Good must be restored by being rethought through a return to the fundamental experiences from which it is derived. For while 'philosophy must beware of wishing to be edifying,' it is of necessity edifying.

See also, George Anastaplo, *First Impressions*, 27 POL. SCI. REVIEWER n.2 (forthcoming 1997); see also *supra* note 23, *infra* notes 36, 46 and 76.

34. EMIL BERNHARD COHN, THIS IMMORTAL PEOPLE: A SHORT HISTORY OF THE JEWISH PEOPLE 74 (Hayim Perelmuter trans., 1985). See also *infra* text accompanying note 77.

35. Is there not something of the spirit of this Talmudic observation in an intriguing volume about medical practices, *Forgive and Remember?* See CHARLES L. BOSK, FORGIVE AND REMEMBER: MANAGING MEDICAL FAILURE (1979). It was reflected as well in the conferences on morbidity and mortality that I have been privileged to attend at the Department of Surgery, Michael Reese Hospital, Chicago, Illinois. See ANASTAPLO, THE AMERICAN MORALIST, *supra* note 15, at 389.

do in the service of human life, an issue that doctors and lawyers confront every day in ministering to desperate patients and clients.

IV.

Consider, also, the implications of the very term, *ethics*. It is derived, the linguist would remind us, from a word for habituation. The ethical practitioner, we know, is one who is well-grounded in, and respectful of, the practices established by his profession. We know that routines are critical here, such as those of the surgery team, and instruction in them is essential to sound practice.

But we also know that routines can be, and sometimes should be, deliberately departed from. Thus, the habits which can and should guide us most of the time must themselves be guided by an overall understanding of things in the practitioner who depends upon them. Certainly, we cannot expect any practitioner to be trained specifically for all contingencies. Rather, he needs to be so shaped as to be able to set aside in a responsible manner the routine response. He who is best able to do this has in view a reliable notion of what a human being should "look" like—that is, of what is truly human. Thus, the best guide to action depends upon an understanding of what is most worth doing and knowing.

Doing and knowing are not the same, however much each may depend upon the other. How one chooses ultimately between doing and knowing can affect whether one makes more of the community (and hence of the social and the political) or of the reason (and hence of the philosophical). This is the tension evident in the career, and fate, of Socrates.³⁶ Law, like medicine, tends to side with those who make more of the life of action; the philosophical approach, on the other hand, has to take seriously such "impractical" questions as whether the human being is the highest thing in the universe aside from the divine.

A proper philosophical approach would tend to discourage that sentimentality which is sometimes evident in the elevation of the attorney-client or the patient-doctor relation at the expense of legitimate community toughmindedness. We should not lose sight of the ultimate subordination of doctoring and of lawyering to political judgment (and hence to law and the common good).

36. See GEORGE ANASTAPLO, *HUMAN BEING AND CITIZEN: ESSAYS ON VIRTUE, FREEDOM, AND THE COMMON GOOD* 8 (1975) [hereinafter ANASTAPLO, *HUMAN BEING AND CITIZEN*].

V.

To seek out certain books primarily for utilitarian (including ethical) purposes is to assume certain things about the universe (and about the human being) which are open to question. But having said all this, it is salutary to make this concession to ethical concerns: the comprehensive view of things we have been deferring to does make possible, or at least helps develop, the fullest range of prudence, that virtue which is the key to right action in unexpected circumstances. Indeed, one can dare suggest with Socrates, he who truly *understands* the good will *be* good.

I have counselled here against—perhaps I have made too much of—the waste of so reading the greatest books as not to study them primarily for themselves alone. This risk is run when excerpts of such books are relied upon in training programs or when they are treated principally as parts of a sequence (the sequence not being that which their authors had determined), or when they are systematically mined only for solutions to the practical questions one happens to be interested in. These approaches share one thing: they tacitly write a new book, second-guessing and probably misunderstanding the authors of the books they happen to exploit. I presume to suggest that one should not be able to tell from the reading list of a serious seminar discussing the Classics what kind of group it is, whether it is made up of lawyers, of doctors, of judges, or of the public at large.

VI.

No doubt, concessions must sometimes be made in tailoring appearances to the circumstances, whether in law schools or in medical schools or in judicial conferences. This kind of accommodation can be central to statesmanship. If one can get people interested in certain great books only if it can be made to seem practical or useful to read them for a professional purpose, perhaps one should take what one can get. One can hope that the perennial charm of a book will make itself felt, thereby leading the practical-minded reader beyond his initial purpose.

Even so, this reservation should be kept in mind when one is encouraged to approach the great books only in a practical manner, as in seminars on medical, legal, or judicial ethics. Does not such an approach suggest that these books are not of much use to the practitioner's family, or that they are not of much use when the practitioner is, as so many usually are, already soundly ethical, or that they are not of much use when one retires from the practice of one's profession?

VII.

Be all this as it may, if the soul is well-shaped, problems of professional ethics fall into place. To separate out professional ethics as an isolated discipline does run the risk of depriving morality of the nourishment it needs in an awareness of the highest things. It may even take morality less seriously than it should be taken, not least because it tends to separate the moral from the true and the beautiful.³⁷

Of course, specialization in ethics, as in other matters, does have its attractions and uses. But it can also permit the gravest folly, not least the folly of losing sight of that whole which permits human life to be recognized as truly meaningful for however long it may happen to be available to any one of us.

5. *Professional Ethics and the Bible*

A "classic" is something enduring, that is solid and always challenging or instructive. Nature somehow asserts herself through a classic in a particularly compelling way. The most obvious classics for us are those masterworks that have come down to us from ancient Greece and Rome.³⁸

Also "classical" (and hence somehow natural?) is much of the Bible. That is, the Bible presents characters and their stories in such a way as to make them recognizable and memorable. We can learn from the Bible how people feel, think, and act about both eternal things and mortality. We are instructed thereby in how to conduct ourselves as, say, lawyers.

The Bible is, therefore, a great (now largely untapped) resource. It is especially important because so much in the life of the West has long been keyed to the Bible. The Biblical mode of thinking and feeling permeates Western civilization. It is for us, therefore, "natural" to turn to the Bible in order to come to know ourselves better.

II.

It is not implausible to argue that Abram (or, as he comes to be known, Abraham) is the first human being in the Bible to be taken

37. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, app. A. at 275-78 (on the good, the true, and the beautiful). See also *supra* note 33. A salutary review of the bearing of classical education upon professional ethics may be seen in Harrison Sheppard, *American Principles & the Evolving Ethos of American Legal Practice*, 28 *LOY. U. CHI. L.J.* 237 (1996). See also John Van Doren, *Poetic Justice*, in 1996 *THE GREAT IDEAS TODAY* 258 (1996).

38. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, app. C. at 284-300 (on what is a classic). See also *supra* note 31.

seriously as what we would call a "personality". His famous predecessors tend to be types. (Adam, for example, is Man.)

Abraham is in the ninth generation after the Flood. Human beings, it can be said, are by then firmly reestablished on their new footing, a footing which can seem to us to be very old, permanent, even natural. Human beings, therefore, can now be provided for in a new, enduring way, and for this a community (or people) has to be worked with, not just individuals and families, however much a people has to build on extended families.

Abraham's character is indicated in a variety of related settings. (Perhaps we have to be prepared thus for his culminating deed, The Binding of Isaac.³⁹) We notice, first, his dealings with the dispute between Lot's herdsmen and his own as to the lands to be grazed by their respective flocks. Abraham will not quarrel with Lot.⁴⁰ It has been said of the way that Abraham conducts himself on this occasion that he "shows a natural magnanimity in the largesse of his reply" to Lot.⁴¹ Does this self-abnegation on Abraham's part prepare the way for The Binding, where we see him prepared to sacrifice his own for the sake of something higher?

Lot chooses, and ends up among the vulnerable Cities of the Plains, pitching his tent near Sodom. (Later we find him living in a house in Sodom.) Abraham settles for what is left (that is, Canaan), which "happens" to be the place that God had intended for him.

Does Lot's choosing as he did suggest that Canaan is not "naturally" attractive? (One can still get that first impression about much of Israel today.) Or is it that Lot had heard of the promise made by God to Abraham with respect to Canaan?

III.

Does Abraham's bargaining with Lot prepare him for his bargaining with God about the fate of Sodom?

Abraham is quite deferential in talking to God, but he does press his case. He is concerned about the fate of the handful of just men in the doomed city. That ten just men could not be found shows how bad off things must have been there.⁴²

39. See Genesis 22:9.

40. See Genesis 13:5-12. See also George Anastaplo, *Slavery and the Constitution: Explorations*, 20 TEX. TECH L. REV. 677, 783 (1989).

41. See Robert Sacks, *The Lion and the Ass: A Commentary on the Book of Genesis*, in 9 INTERPRETATION: A JOURNAL OF POLITICAL PHILOSOPHY 1, 10 (1980).

42. See Genesis 18:32. Why ten? Does this anticipate the *minyan* which now serves among Jews as the irreducible core of the worshipping community?

It has been noticed that Abraham asks for justice, not mercy. It has been suggested that Abraham learned on this occasion "the divine art of accommodation . . . through the true art of questioning."⁴³ But, it should be remembered, Abraham had already exhibited a spirit of accommodation in his dealings with Lot.

Were there a few just men in Sodom aside from Lot, who is provided for specially? If so, those few evidently perish along with the wicked majority. Perhaps this is intended to remind us of how dependent we all are upon a community, benefitting from it much of the time and suffering with it once in a while.

IV.

What is Abraham moved by in this "exercise"? Is it by a concern for the few just men in Sodom, even if he does not know them personally? He, as a just man, speaks up for justice. (His justice, as well as a sense of kinship, may be reflected in how he had dealt with Lot, who *was* responsive.)

Is Abraham also trying to learn what God is like? For example, what does God's sense of the just lead to? Ultimately, Abraham may be learning not only what justice is, but also what the fate can sometimes be of good people in the world. Does all this suggest that the just are not "automatically" protected? Self-interest, as well as a respect for justice generally, should move the just to make the community better.

It can be said that Abraham is as confident, and otherwise as impressive, as he is because of his faith. There is something reliable at the core of his being. One can see, as his story unfolds, why he was chosen by God. We are told, when we are introduced to Abraham, that he *is* chosen, but not why. Nor are we ever told how he got to be the way he is. That can be a mystery, especially when one notices again and again vital differences between parent and child, between siblings, and between cousins. (We shall see that Abraham's father may have had natural inclinations that bore fruit in his son.)

V.

We have worked just now with one strand woven in the account of Abraham. But there is, along with this milder strand, a tougher strand as well. This may be seen in how Abraham mobilizes for war when Lot and his people are captured. Abraham is impressive in his response. He is vigilant in saving his kinsman. He overcomes an

43. See Sacks, *supra* note 41, at 56, 63.

enemy which had been victorious before, winning thereby the respect of leaders elsewhere and perhaps serving his self-interest in other ways as well.

Yet he is not foolhardy in how he conducts his affairs: he can figure out the odds. On occasion he can miscalculate, as may be seen in the episodes in which Sarah is identified as only his sister in dealings with Pharaoh and with Abimelech. Although Abraham is shown here to have limitations, these episodes nevertheless prove to be productive for him.⁴⁴

Does Abraham's toughness make his compassion and justice more responsible and effective than it might otherwise be? What serves to weave the mild and tough strands together in a proper combination? The Classical, especially Socratic, answer to this practical question would have been prudence and the Idea of the Good.⁴⁵

VI.

This practical question is critical to any effort to understand that supreme show of toughness exhibited in *The Binding*. The Abraham who had moved vigorously to save one kinsman is now willing to sacrifice another. He is, it can be said, now fully "Abraham."

Why did not Abraham try to bargain here with God (arguing with Him, "man to man"), as he had with respect to the impending destruction of Sodom? Did he expect things to work out somehow? Was this implicit in his faith—and in *the* Promise that had been made to him? Is there not something dreamlike about this episode, which may even mean that Abraham is somehow in control?⁴⁶

The way has been prepared, by the author, for all this. If *The Binding* had been given first or had been all or almost all that we were told about Abraham, it would have been simply, perhaps impossibly, monstrous. Even so, it colors everything we do have about him. This time the testing is of Abraham by God, whereas during the Sodom episode it can be said to have been the testing (or investigation) of God by Abraham.

Somehow, the provision of the ram as an alternative to Isaac is not anticlimactic. The decisive testing had been accomplished. Nothing

44. See *Genesis* 12:10-20, 20:1-18. We see again and again that wealth, or a concern for the goods of this world, is not disparaged among the Patriarchs.

45. See ANASTAPLO, *THE AMERICAN MORALIST*, *supra* note 15, at 618 (on prudence); *supra* note 23 (on the Idea of the Good).

46. See George Anastaplo, *On Trial: Explorations*, 22 *LOY. U. CHI. L.J.* 765, 854-68 (1991) [hereinafter Anastaplo, *On Trial*]. Central to the issue of the possibility of control in these matters may be the status of the Idea of the Good. See *supra* note 33.

would be gained, and much would be lost, by going even further with the sacrifice. More anticlimactic is that we are told later on, almost in passing, that Abraham begat seven other sons after Isaac. Perhaps this points up the importance of Sarah, if not of women generally, in the entire story of the people of Israel, something that becomes quite evident in the career of Rebecca.⁴⁷

VII.

When all is said and done, does there not remain something "unnatural" about Abraham's willingness (even if only apparent or "verbal") to sacrifice Isaac? Does this remind us of the ultimate divergence between Revelation and Reason?⁴⁸

The unnaturalness of what Abraham undertakes is reflected in the total absence of Sarah from this part of the story of Abraham. Isaac, when he marries, replaces the by-then dead Sarah in his life.⁴⁹ Rebecca proves to be the only woman in his life thereafter, unlike the way his father and both of his sons conducted themselves.

Even so, nature manifests herself in these characters and these stories, just as nature helps shape (that is, helps civilize) a long-established religion. Moral standards are adjusted to, especially when immorality or amorality proves destructive of life or subversive of enduring happiness.

Nature may be reflected as well in the decision of Terah, Abraham's father, to leave his home to move to Canaan, even though he does not make it all the way.⁵⁰ Is something more needed, at least in these circumstances, to carry natural promptings through to their proper end, especially since human beings are limited by their mortality? The relation between mortality and morality is an age-old problem, something that is investigated, for example, in the career and thought of Socrates, the founder of one way of life, just as Abraham is the founder of another way of life.

47. See *Genesis* 25:1-4, 27:1-46. See also *infra* the text accompanying note 79.

48. Leo Strauss suggested that the vitality of the West may be in part due to the tension between Reason and Revelation that is so much a part of the life of the West. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 249-72 (on Leo Strauss). See also *infra* note 56.

49. See *Genesis* 24:67.

50. See Sacks, *supra* note 41, at 5.

6. *Professional Ethics and Shakespeare*

I.

The background, if not the immediate point of departure, for liberal education in the West is the Bible.

Until recently, Biblical teaching and influence permeated our way of life. Even today, in a determinedly secular age, language and imagery shaped by the Bible are still very much a part of our heritage.

Biblical influence, especially in its Christian form, tends to be otherworldly. This can have both good and bad effects on political order and community spirit.

II.

The Biblical element (which came out of the Holy Land, with its “naturally” intense religious fervor) has tended to be moderated among us by the Classical teaching, which is both philosophical (that is, detached) and prudential (that is, not simply otherworldly).

Such moderation may be seen in Thomas Aquinas, especially when he is compared to Augustine.⁵¹ But, for one reason or another, the Classics have become old-fashioned, if not even obsolete. Is this partly because of Christianity, especially with its emphasis upon equality and a good will? Is this also partly because of the natural sciences, which reduce the influence of the Bible as well? (And yet has not the origination of the natural sciences in the West, and only in the West, been made possible because of conditions shaped by both the Classics and the Bible?) Christianity and Science may each tend to reinforce individualism, while the Classics tend to make more of the community and of enduring ethical and political standards.

Is the Classical teaching not seen to be as critical as it once was, now that religion is less potent and hence less to be reckoned with? The Classics could once be used as a counter to the Biblical, as well as an aid to understanding that variant of the Greek language in which the New Testament was written.

III.

Each of these—Classical literature and the Bible—is worth studying on its own. They are brought together, if not reconciled, in the

51. For Thomas Aquinas, it seems, grace perfects nature. That is, nature *is* needed but it must be built upon or completed. See also ANASTAPLO, *THE AMERICAN MORALIST*, *supra* note 15, at 139; *infra* note 57. See, on Augustine, Anastaplo, *Teaching, Nature and the Moral Virtues*, *supra* note 23, Pt. II.

modern world by the most thoughtful artists. These artists recognize the passions and appeal of the Bible along with the sensibleness and challenge of the Classics.

Shakespeare is one such artist, providing an important vehicle in which both the Classics and the Bible are carried into the English-speaking world. It is he who has shown us how we should live (with an awareness of Biblical precepts) as well as how to understand things in general (which the Classics are a guide to). This is related to Shakespeare's use of the law, with which he seems to be remarkably familiar and toward which he tends to be respectful.

Particularly instructive is what may be seen in Shakespearean tragedy about who or what prevails—or, rather, what it is that is likely to do one in.⁵²

IV.

Is the full, or the principal or major, dramatic effect of a Shakespeare likely to be dissipated when the artist does not have either Biblical power to counteract or the Classical heritage to draw upon?

Some critics of Shakespeare, with perhaps George Bernard Shaw the most gifted, tend to dismiss him as merely adept in his language. Shaw himself may have been too "liberated" or too "enlightened" to appreciate the political-theological problems that Shakespeare dealt with. Nor did he appreciate how much Shakespeare contributed to modern republicanism and constitutionalism.⁵³

It remains to be seen what the long-run consequences will be when artists such as Shakespeare lose their influence. (Milton, whose *Paradise Lost* is discussed in the Appendix to this Article, has already lost much of his once-considerable influence. We can see in that Appendix the attention and care in reading which fundamental texts require and invite.)

V.

In order to understand what Shakespeare means it can be useful, if not even necessary, to consider how well he understood the Classics.

52. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 15-28. See also SHAKESPEARE AS POLITICAL THINKER (John Alvis & Thomas G. West eds., 1981); John Alvis, *Book Review of The Artist as Thinker: From Shakespeare to Joyce*, in 1 *LAW AND PHILOSOPHY: THE PRACTICE OF THEORY* 558, 558-59 (John A. Murley et al. eds., 1992); *infra* note 74.

53. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 75-76. Shaw's Joan of Arc, however, is better than Shakespeare's. On the musicality of Shakespeare's language, see MARK VAN DOREN, *SHAKESPEARE* 69 (1953).

His grasp of Ancient Rome and its problems can be impressive. He was sensitive to both the attractions and the risks of republicanism. He also made considerable use of classical mythology, such as stories about the gods and about the Trojan War, however information about these things was acquired by him.

But what about the philosophical tradition? It has been argued that "he had no such clear notion of the Greeks as he had of the Romans."⁵⁴ Did he understand on his own something of what philosophy has to offer, or was it with the help of those Christian theologians and perhaps the Stoics who *were* more familiar with Plato and Aristotle? Did Shakespeare seem to have, or believe himself to have, a better grasp of Greek thought than he really did?

He did have a reliable sense of the Biblical. This evidently came directly, more so than with the Classics, from the original texts (albeit, as with most of us, in translation). Shakespeare can be understood to purify our passions and to raise our sights. Does this help us better to *see* and hence to appreciate the Classics—as well as to read the Bible politically?⁵⁵

VI.

Art can have a wide appeal, unlike philosophy or the Classics (except for the Classical dramatists in *their* day). Do the most effective artists create new religions, with a kind of revelation (or inspiration)? Statesmanship, or a school for statesmen, can be on display in the greatest art.

The Bible, too, has a wide appeal. Is prophecy a special form of poetry? Can only the artist be as effective, especially if he adapts what the Bible offers to the circumstances of his people?

Another way of putting our inquiry is to ask whether Shakespeare uses mythology and an approach to "the gods" that are purged as much of misconceptions as Socrates wants them purged in Plato's *Republic*?

54. J. A. K. THOMSON, *SHAKESPEARE AND THE CLASSICS* 222 (1952). In a way, Shakespeare is our Homer, although we know more of Shakespeare's predecessors than we do of Homer's. Milton was much more of a classical scholar than Shakespeare. Another way of considering Shakespeare's limitations is to ask whether he understands Socrates and appreciates Odysseus.

55. Did Shakespeare make more of the erotic than Socrates? Thomas More knew the Greek and Latin classics better than Shakespeare, it seems, but this did not keep him from being more obviously a devout Christian than Shakespeare. Somewhat the same can be said of Thomas Aquinas. See Anastaplo, *On Trial*, *supra* note 46, at 950-69; ANASTAPLO, *THE AMENDMENTS*, *supra* note 3, at 256-58 (on Thomas More). Even so, it should be noticed that Shakespeare's Falstaff displays, in his modes of thinking and dying, several Socratic features.

VII.

What is the proper relation between Revelation and Reason?⁵⁶ Is Poetry naturally allied with the Bible, say, rather than with Philosophy?

At a time when the English were bitterly divided between Roman Catholicism and Anglicanism (or Protestantism), Shakespeare so conducted himself that scholars still find it difficult to determine where he stood in that great controversy. Certainly, it makes one wonder what he truly thought about the Faith and its implications for both how the world is to be understood and how one should live.⁵⁷

Where Shakespeare stood in another controversy, which has become more acute in our day, is much clearer: he did seem to prefer a people's sturdy self-reliance instead of what we have come to tolerate, if not even to encourage, as self-expression and personal privacy.

7. *Self-Help in a Telephone Booth*

I.

We have observed that Shakespeare reflected and reinforced a general ethos, a deeply-accepted set of moral principles and common ends. We have also observed that these principles and ends go back, in the Western World, to the Classics and the Bible.

When there is such an authoritative ethos, some things are regarded as "unthinkable." A critic in a respectable British newspaper has recently argued, however, in discussing a proposed movie, "There are no impermissible subjects, only unacceptable treatments."⁵⁸

II.

A subject or its treatment may be recognized as "unthinkable," "impermissible," or "unacceptable" when it is generally understood that "it is not done." In these circumstances, public opinion is reinforced by recourse to various forms of self-help in order to make sure that certain things do not get far or last long even when someone

56. An early treatment of the problems here may be seen in Aristophanes' *Clouds*. See ANASTAPLO, *THE THINKER AS ARTIST*, *supra* note 23, at Chapter VII, Part Three. See also ANASTAPLO, *HUMAN BEING AND CITIZEN*, *supra* note 36, at 21-22; *supra* note 48.

57. How did Shakespeare regard that association between Platonism and Christianity which troubled Thomas Jefferson? See ANASTAPLO, *THE AMENDMENTS*, *supra* note 3, at 112-20. That association may be seen in theologians such as Augustine. Thomas Aquinas, on the other hand, makes more use of Aristotle. See *supra* note 51.

58. David Sexton, *Lolita: Still a Taboo Subject?*, *DAILY TELEGRAPH* (London), Aug. 12, 1996, at 13.

is either thoughtless or rash enough to attempt them. This depends, in part, upon how the community at large regards itself and its authority, aside from any legislation or other official action that may be resorted to.

Consider, in the opening paragraphs of the following report from London, the problems a community may face when public opinion ceases to be authoritative with respect to the morality of the day:

Having tried for years to persuade prostitutes to stop littering telephone kiosks with small cards advertising their services, Britain's telephone company, in partnership with London's largest borough, Westminster, has decided to crack down on the likes of "Domination Mistress Nancy" and "Cuddly Elana."

Starting next month, a new task force of inspectors will note down the telephone numbers of prostitutes who post sexually explicit notices in central London's 700 telephone booths, enter them into a computer, and issue the prostitutes an order to stop displaying their numbers. A week later, any prostitute still posting the ads will have his or her incoming calls blocked.

The Government-controlled telephone company, British Telecom, figures that no incoming calls will mean no customers and therefore cut down on the kiosk cards.

Prostitution is legal in Britain and advertising of sexual services will probably continue in other outlets, such as community newspapers.⁵⁹

Further on in this report we are told of some troublesome features of this infestation of cards:

. . . British Telecom says that the sexually explicit cards, many of which are illustrated, discourage some people from using the bright red telephone booths that have become London landmarks. Teachers complain that schoolchildren have been found collecting and trading the cards.

. . . Clean-up teams, working as early as 6 A.M. each day, pick up 150,000 of these cards on an average week. But no sooner do the sanitation people depart than the so-called "vice carders" are back making sure the view is again blocked with more ads. . . . In some places the infestation is so thick, it is impossible to see out of the booth.⁶⁰

It happens that I have made my own surveys of this phenomenon. I found it much more intense in the summer of 1996 than it was the last time I had been in Central London (during the winter of 1988-89).

59. Youssef M. Ibrahim, *In Kiosks of London, Card Game Gets Dirty*, N.Y. TIMES, Aug. 17, 1996, at 4.

60. *Id.*

There can be as many as sixty four-by-six-inch cards in a booth, affixed by dabs of gum which permit easy removal by potential customers. My 1996 survey included collecting (but not trading) more than a hundred cards from three telephone booths.

The authorities do not sound hopeful that their measures will do much good, partly because of the persistence of the obviously well-organized distributors of these professionally-printed cards.⁶¹ A few cards are handwritten, perhaps by amateurs on their own. And a few others advertise purveyors who are evidently so well-established that they can display credit-card logos.

It is bad enough that there are both purveyors of, and customers for, the services advertised here. This does seem to be big business, if one can judge by the report that each year "as many as seven million [cards] are removed throughout London" by sanitation teams.⁶² Perhaps the most distressing feature of this pervasive cultural pollution is that these highly offensive cards are usually permitted to remain posted for many hours at a time by the dozens of Londoners who use each of these pay phones daily.

I know from experience that one can easily strip a booth of all its cards while one is making a single phone call. (One can thereby be a minor-league Superman, stripping for action in a phone booth.) This public service could routinely be done as well by those passersby who are reported to be so upset by these postings that they are "dissuade[d] from using pay phones." If civic self-reliance were in better shape, there would be no need for the authorities to devise measures to counter this relentless advertising campaign by prostitutes and their exploiters.

III.

A people's good nature is also exploited, as well as perhaps a misguided respect for the "property" or "freedom of expression" of others. Or is it that most people no longer find such plastering of telephone booths to be offensive?⁶³

61. I mention in passing one obvious problem with the proposed method of curbing the posting of these cards that is not mentioned in the *New York Times*: will British Telecom have to prove that the cards they discover hereafter are *not* posted by prostitutes displaying their competitors' telephone numbers in order to induce the company to drive those competitors out of business by cutting off their telephone service?

62. Ibrahim, *supra* note 59, at 4.

63. Still, one does not notice such plastering outside of Central London. Nor is it conspicuous in places such as Central Glasgow. This suggests that local public opinion, with respect to such matters, may still make a difference in some communities.

Paralysis by citizens in the face of aggressive corruption raises questions about the ethical standards and the self-respect, as well as the moral self-confidence, of the community at large. The fear of being condemned as “judgmental” contributes, all too often, to a steady decline in the quality of our life together.

We can be thankful that the barons who rose against King John in 1215 and the patriots who rose against King George in 1776 did not feel helpless in the face of degradation. They did not wait upon “government,” or upon the established procedures, to remedy the evils they confronted.

Have we become either so unimaginative or so dependent upon bureaucracy that we can no longer be moved to take direct action, even if only in the form of a gesture, to suppress obvious nuisances? Have lawyers contributed to this paralysis? Or is our inaction as citizens due to an ever-growing desire to be left alone, to be able to “do one’s own thing”?

In any event, it has always been recognized that a regime such as ours cannot have everything possibly questionable regulated only by law, lawyers, and judges. People of a certain character and self-reliance are also depended upon.⁶⁴ Otherwise, the aggressive and shameless will lower standards for everyone—and when this happens everyone suffers, including those who may believe that they profit from vice and exploitation. Critical to the redevelopment of a people’s moral self-confidence is the inculcation, by the arts and by moral instruction, of the ethical standards and the community ends grounded for us in the Classics and in the Bible.

CONCLUSION

Professional ethics cannot operate in a vacuum. The professional, in order to serve properly, needs a community and people of a reliable character. What the community is like is determined, in large part, by its Constitution. Constitutional documents such as Magna Carta help shape the community at large and its citizens. Liberty is critical to the Anglo-American system, but liberty itself both depends upon and permits morality.

We have considered the special problems that one particular profession, the legal profession, faces with respect to morality. Our

64. See Anastaplo, *On Freedom*, *supra* note 8, at 490-91 (on Montesquieu and the spirit of liberty). Of course, sensible measures should be preferred in response to provocations. See Anastaplo, *On the Sacred and the Profane: The Flag Desecration Amendments*, 141 CONG. REC. E1965 (Oct. 12, 1995) (entered by Rep. Andrew Jacobs, Jr.).

own constitutional system still takes the Biblical heritage for granted. Biblical standards tend to be reinforced by the Classics. Blendings of the two traditions for the community at large, as the modern world emerged in the West, may be seen in poets such as Shakespeare and Milton. Also to be seen in the West is the tension between the two traditions, tension which has been a source of both conflict and vitality.

When a people are in good shape the loss of moral confidence is not likely—and doubt is fairly easily dealt with when it threatens paralysis. But when the professional is on his own, it is hard for him to be both effective and respected. At a time when so much competes for our attention, the professional can profit from the advice offered by a woman who is the most prudent character in what may be Shakespeare's first play, "Gaze where you should, and that will clear your sight."⁶⁵

APPENDIX. A RETURN TO *PARADISE LOST*⁶⁶

And the Lord God took the man, and put him into the garden of Eden to dress it and to keep it. And the Lord God commanded the man, saying, "Of every tree of the garden thou mayest freely eat. But of the tree of the knowledge of good and evil, thou shalt not eat of it: for in the day that thou eatest thereof thou shalt surely die." And the Lord God said, "It is not good that the man should be alone; I will make a help meet for him."

—*Genesis 2:15-18*

I.

John Milton's *Paradise Lost*, which was completed more than three centuries ago, was recognized, until the Twentieth Century, as "the book which all subsequent books in English take for granted."⁶⁷ Sometimes this epic poem has even been put to perverse use, as may

65. WILLIAM SHAKESPEARE, *THE COMEDY OF ERRORS* act 3, sc. 2, ln. 57 (T.S. Dorsch ed., Cambridge Univ. Press 1988) (Luciana is the speaker). Consider Pompey's speech, quoted in text accompanying *supra* note 1.

66. George Anastaplo, Remarks at the Sunday Platform Meeting of the Ethical Humanist Society of Chicago, Evanston, Illinois (Mar. 26, 1995). All of the citations in the text of this Appendix are to the 1957 Odyssey Press edition of John Milton's *Paradise Lost* (Merritt Y. Hughes, ed.). See ANASTAPLO, *THE CONSTITUTIONALIST* 818 (Southern Methodist Univ. Press 1971); ANASTAPLO, *HUMAN BEING AND CITIZEN*, *supra* note 36, at 328; ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 494 (on John Milton). See also *infra* notes 68, 71, 89.

67. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 234.

be seen in Mary Shelley's *Frankenstein* story: Shelley's monster takes *Paradise Lost* as its guide to spiritual rebellion; it sees itself both as the fallen Adam and as the rebellious Satan, appropriating from Satan the motto, "Evil thenceforth become my good."⁶⁸

Thomas Macaulay, the distinguished Nineteenth Century historian, could refer to Edmund Burke as "[t]he greatest man *since Milton*."⁶⁹ *Paradise Lost* was completed in 1665, a generation before the Glorious Revolution of 1688, which was so critical to Anglo-American political developments.⁷⁰ This grand poem provides what could be called the theological underpinnings of our constitutional system. Milton, a public-spirited man of Christian inclinations, is probably the best English-language poet ever to have been active at the highest levels of politics in his country.⁷¹ This combination of poet and politician entitles him to be regarded as a prophet. (Milton, upon the Restoration in 1660, was arrested and held briefly. He was deprived thereafter of public offices.) Although hierarchical relations are recognized in *Paradise Lost*, the poet's republican sympathies are also apparent. (See, for example, XII, 63-74.)

The plot of *Paradise Lost* works from the Garden of Eden story in *Genesis*. It adds, however, the rebellion of Satan and his allies against God, which preceded the Garden story; it also adds accounts of human history, as told to Adam, which go down to the Flood and thereafter to the coming both of the Israelites and of Jesus as the Messiah. Thus, there are both an explanation of how Satan came to plot the fall of Adam and Eve and an anticipation of the divine plan for redeeming the fallen human race. In this and other respects, all this is a decidedly Christian account. At the midpoint of the poem, Adam has just been told of Satan's expulsion from Heaven; this warning is intended to help Adam withstand the assault that Satan would now make upon Eve and him.

We see in all this the poet as prophet as well as the prophet as poet.

68. See *id.* at 118; see also Anastaplo, *On Trial*, *supra* note 46, at 767 (on the trial of Adam and Eve).

69. See Anastaplo, *Lessons for the Student of Law*, *supra* note 32, at 84 (emphasis added).

70. See ANASTAPLO, *THE AMENDMENTS*, *supra* note 3, at 259-68.

71. See George Anastaplo, *The Founders of Our Founders: Jerusalem, Athens, and the American Constitution*, in HARRY V. JAFFA, *ORIGINAL INTENT AND THE FRAMERS OF THE CONSTITUTION 184* (Regnery Gateway, 1984) [hereinafter Anastaplo, *The Founders of Our Founders*] (on Milton's *Paradise Regained*).

II.

Much of the learning of the West is taken for granted and drawn upon throughout this story: that learning includes the Bible, of course, the Greek and Roman Classics, much of Western politics and history, and the received opinions of Milton's day about theology, psychology, and science. The reader is told, in effect, that he is, and should be, familiar with these matters. Thus, all this is a tribute to Milton's readers as well as to his own learning and talents.

We can sense what we have lost when we notice the many things in *Paradise Lost* that we can no longer grasp. But, all too often, rather than feel deprived upon so noticing, we may feel liberated. Even so, the Garden story can remind us of what we have been or, perhaps the same thing, of what we somehow or other aspire to. The Platonic counterpart to this may be the institution of the philosopher-king, which is keyed to the Idea of the Good. There has been, almost from the beginning, a philosophical element in Christianity—at least once it began to express itself in Greek with its uses of *logos* and *phusis* (*nature*).⁷²

Vital to our striving, if not also to our enduring equanimity, is some sense in us of the Best. A tribute to Milton's talents as poet-prophet is the extent to which he conceals, even as he recognizes, the tension between the secular learning of the Classics and the sacred teachings of the Bible.

III.

Why do we no longer read this and like books? And why are they no longer written? We do not have the desire to consult or the capacity to enjoy such books in part because we no longer believe that much either of interest or of use is to be found there. This contributes to our inability to read them.

What have we forgotten, and what have we learned, that books such as *Paradise Lost* are no longer significant in our lives? The effects upon us of modern science are considerable. Astronomy, biology and geology have all taken their toll. Modern astronomy, for example, reveals to us millions upon millions of galaxies, promoting among us the opinion that we have to be deluded to consider ourselves of much importance, lost as we are in so vast a universe. The human mind

72. Even so, philosophy is warned against by Paul in *Colossians* 2:8. See ANASTAPLO, THE THINKER AS ARTIST, *supra* note 23 (on the Idea of the Good).

permits us both to welcome the sense of importance we naturally have and to recognize the puniness of our existence.⁷³

The scientific revolution has contributed to, and has been reinforced by, revolutionary changes in social conditions and opinions. The status of the traditional interpretation of Biblical revelation has had to be adjusted to the teachings of the new sciences. Among the changes in social conditions have been those governing the relations between male and female, changes which can make *Paradise Lost* seem hopelessly old-fashioned. It is taken for granted throughout the poem that Adam is naturally superior to Eve. It is also taken for granted that it is in the interest of both Adam and Eve that this superiority be recognized and acted upon. (See, for example, IV, 297-99, 481, 91, 634-38, IX, 1155-61, X, 144-56, 888 sq., 973, XII, 594 sq.)

These are hardly teachings that would either attract or reassure modern readers, male and female alike.

IV.

At the heart of the teaching of *Paradise Lost* are lessons which we are both in need of and suspicious about, lessons with respect to free will, to the cosmos and the divine, and to enduring standards of good and bad.

It is not fate or chance or predestination which accounts for the awful things that happened first to Satan and his allies and then to Adam and Eve. (The complete foreknowledge of God is distinguished from predestination. See, for example, III, 93-128.) Rather, these rational beings had free will, which permitted them both truly to choose and justly to be punished. (See, for example, III, 98-102, IV, 16, 80, VIII, 335-36, IX, 351-55.) Servitude, we are taught, comes from not obeying reason, that reason which permits human beings to distinguish freedom from license. (See XII, 89.)

A settled opinion about the nature of the cosmos and of God is relied upon throughout *Paradise Lost*. Because of this opinion, things somehow make sense—or, at least, they are presented in the poem as if they make sense. Even so, the ultimate relation between philosophy and revelation is left somewhat obscure in the poem. Certainly, not all knowledge is good (for example, the knowledge of astronomy). (See VII, 166-89.)⁷⁴

73. See George Anastaplo, *Subrahmanyan Chandrasekhar (1910-1995)*, THE FREE PRESS, (The University of Chicago), Feb. 1996, at 4; Anastaplo, *Thursday Afternoons*, in S. CHANDRASEKHAR: THE MAN BEHIND THE LEGEND (Kameshwer Wali, ed., London: Imperial College Press, forthcoming 1997).

74. See also John Alvis, *Philosophy as Noblest Idolatry in Paradise Lost*, 16

Particularly important for the modern reader can be the question whether there is in *Paradise Lost* any indication of standards of good and bad independent of the existence or the commandments of God. It is perhaps significant that God is shown justifying himself to his Son in the way he has conducted himself toward both the rebellious angels and the human race. This divine self-justification suggests that there are standards by which even God may be judged.⁷⁵

To have such standards, or to have them accessible to human reason, suggests in turn that *nature* provides a guide. We are told, in this epic, that "God and Nature bid the same." (VI, 176. See V, 519-528, XI, 490.)⁷⁶ We are also told, but not authoritatively, that Nature creates, and this just after the Divine creation has been described. (See II, 1037-38, VIII, 26. See, as well, III, 49. See, on the workings of Nature, II, 624-25, 910 sq., V, 505-11, IX, 782, 914, 955-59, XI, 523-25. See, on the limitations of the pleasure that Nature gives rise to, XI, 593-607.)

It was only natural, *we* are tempted to say, that human beings should have been moved to eat the forbidden but physically-attractive fruit, especially since that fruit represented (or opened the way to) moral knowledge. Indeed, it seems to be suggested in the poem that the best for human beings is yet to come, that the new Paradise will be better than the original Paradise. (See XII, 456 sq.) There then is heard perhaps the most startling observation in the poem, when Adam ("replete with joy and wonder") responds in this fashion to the Archangel Michael's glowing account of the new eventual Paradise (XII, 469 sq.):

O goodness infinite, goodness immense!
 That all this good of evil shall produce,
 And evil turn to good; more wonderful
 Than that which by creation first brought forth
 Light out of darkness! full of doubt I stand,
 Whether I should repent me now of sin
 By mee done and occasion'd, or rejoice
 Much more, that much more good thereof shall spring,
 To God more glory, more good will to Men
 From God, and over wrath grace shall abound.

INTERPRETATION 263 (1988-89); *supra* note 52.

75. See Anastaplo, *The Founders of Our Founders*, *supra* note 71, at 196; ANASTAPLO, *THE AMERICAN MORALIST*, *supra* note 15, at 139.

76. Consider, as well, the reference in the Declaration of Independence to "the Laws of Nature and of Nature's God." See *supra* notes 21, 33.

It could be said, of course, that God would have provided in His own way for this enhanced Paradise if Adam and Eve had never sinned. (See, for example, VII, 154-61.) Or is such enhancement to be possible, by way of comparison, partly because of the misery and despair that fallen mankind will have suffered? Be that as it may, Michael does not respond to the suggestion by Adam that perhaps he should not continue to repent of his sin. (The angels who converse with Adam do undertake to correct him on other points that he has taken amiss.)

We are left, then, with the possibility that Adam should repent only for his original intention, not for the ultimate result following upon his sin.⁷⁷ Eventually, we are also told, "Satan with his perverted World" will be dissolved, and then there will be raised

From the conflagrant mass, purg'd and refin'd,
New Heav'ns, new Earth, Ages of endless date
Founded in righteousness and peace and love,
To bring forth fruits Joy and eternal Bliss.

(XII, 548-51. See also, III, 335). Thus, Michael's silence, after Adam's pointed inquiry, leaves us with a mystery—and it may be considered the basis upon which modern man (if not also pre-modern man) has concluded that Fallen Man is truly superior in critical respects to the innocent creature in the Garden of Eden.

This mystery is related perhaps to several others with which we are left. Why should someone who had been given as much as Satan was, and who recognized that he had no just complaint against God, be as resentful and rebellious as Satan is shown to be? We *are* shown thereby how corrosive envy can be. Still, there remains something fundamentally mysterious (if not, in principle, impossible) about anyone who, truly knowing the good, deliberately chooses the bad. (That one-third of the angels fell may suggest that the appetitive third of the soul had been involved here. See II, 692, IX, 140.)

There is less of a problem in this respect about Adam's choice of the bad: the bad *he* chooses is not intrinsically or obviously bad; it is bad only because of the prohibition that God had issued. No reason is ever given for this particular divine prohibition, a prohibition which is keyed to the rationality (to the desire to know) that seems essential to human nature. Considerable emphasis is placed in *Paradise Lost*, beginning with the opening line, upon *disobedience*. A kind of

77. See the 1957 Odyssey Press edition of *Paradise Lost*, at 465 n.1. See also *supra* text accompanying note 34.

positivism is at work here: the will of God is displayed as decisive, at least with respect to man's conduct.

Does it matter, however, what the basis of God's prohibition was? If it had been a prohibition that human beings could figure out for themselves, then it would not have been a matter of simple disobedience and so it would not have been a test of man's fidelity. (This is to be contrasted to Satan's sin: in *his* case there were *reasons* enough to conduct himself other than the way *he* did.) The divine demand throughout the Hebrew Bible is for the radical subordination of the human being to God—and for that purpose the critical test could depend upon an arbitrary (even unreasonably-seeming) restriction, something that would not otherwise occur to one as a prohibition.⁷⁸ The decisive corrective to Adam in his disobedience is the career of Abraham, whose unquestioning obedience (even in response to the most irrational-seeming and unnatural request by God concerning Isaac) permits him as “one faithful man” to be the source of a redemptive people. (See XII, 111-13.)⁷⁹

Does the failure to have reasons given for God's critical prohibition for Adam and Eve help us recognize that there is ultimately a critical element of arbitrariness in any political and social order? Such arbitrariness may be seen, for example, in the designation of who is “in” and who is “out” in any political community or ethnic association. That is, where are the spiritual as well as the physical borders to be drawn, and who is to be considered a “citizen”? An alternative is the universal brotherhood of the human race, an association which can seem natural—but it can be doubted that this kind of association is able to provide the kind of knowing and caring that productive human lives seem to require for most people.⁸⁰

For the Christian, the overarching mystery here is that of Jesus' combining in the Incarnation two quite different natures. (See III, 280-304, where God explains to his Son, “Nor shalt thou by descending to assume / Man's Nature, lessen or degrade thine own.”) It is here, perhaps, that the joinder, in Christianity, of philosophy with revelation is put to its severest test. The very best, it sometimes seems in *Paradise Lost*, is not accessible through philosophy alone. (See, for example, IX, 271-84.)

78. See George Anastaplo, *Rome, Piety, and Law: Explorations*, 39 LOY. L. REV. 1, 48 (1993) (on Tertullian on absurdity).

79. See Anastaplo, *On Trial*, *supra* note 46, at 854 (on Abraham and Isaac). See also *supra* Part 5, Section VI.

80. See PLATO, REPUBLIC 414b. See also note 1, *supra*; note 91, *infra*.

V.

Milton's elaborations of the Garden of Eden story runs the risk of making the original *Genesis* account seem less persuasive. Milton's account reveals in effect what he considered problems in *Genesis* that had to be addressed about the fate of human beings. For example, the warnings spelled out at length in *Paradise Lost*, by the angels who advise Adam and Eve, are much clearer, with considerable emphasis upon Satan's diabolical intentions, than anything seen or even implied in *Genesis*. It is made clear by God in *Paradise Lost* that such warnings are necessary so that there should be no question about God's justice.

Another elaboration is with respect to the Serpent's motivation upon becoming Satan's vehicle. Milton's Satan is presented as having, with his allies, the doing of ill as his "sole delight." (I, 160.) We sometimes hear the excuse, "The Devil made me do it." But what makes the Devil want it done? That is, who is Satan's Satan? Or, to put this another way, is Satan believable? Can *he* be accounted for? What is he truly in quest of?⁸¹ Does the virtual impossibility, if not the impossibility, of Satan (however heroic he at times seems in *Paradise Lost*) leave us with fundamental doubts about the entire account?

Still, it should be noticed, humanity's experiences with the Nazis during the Second World War have made *Paradise Lost* once again "relevant." For we were reminded by the Nazis of the enormity of the mindless evil which human beings (or the Satanic element in human beings) can produce, thereby leaving the radically-liberating Enlightenment under a cloud. Consider the reports from death-camp survivors of how they were taunted by their SS guards:

However this war may end [said the death-camp guards], we have won the war against you; none of you will be left to bear witness, but even if someone were to survive, the world will not believe him. There will perhaps be suspicions, discussions, research by historians, but there will be no certainties, because we will destroy the evidence together with you. And even if some proof should remain and some of you survive, people will say that the events you describe are too monstrous to be believed: they will say that they are the exaggerations of Allied propaganda and will believe us, who will deny everything, and

81. Is not Milton's Satan like Othello's Iago in this respect? See ANASTAPLO, THE ARTIST AS THINKER, *supra* note 1, at 20. See also THOMAS AQUINAS, SUMMA THEOLOGIAE, Q. 49, A. 3. Is pure evil impossible because it would destroy itself? Would it be total negativity and hence non-existent?

not you. We will be the ones to dictate the history of the Lagers.⁸²

Consider also this report from a survivor of Dachau:

The SS guards took pleasure in telling us that we had no chance of coming out alive, a point they emphasized with particular relish by insisting that after the war the rest of the world would not believe what happened; there would be rumors, speculations, but no clear evidence, and people would conclude that evil on such a scale was just not possible.⁸³

It is instructive to consider as well how and why the Nazis were wrong—and whether they sensed this, even as they went about their sadistic ways in their desperation. The relevance of *Paradise Lost* is also indicated by the experiences of the Twentieth Century with the worst features of Stalinism.⁸⁴ Rationalism, or the Enlightenment, has led to our being cut loose from our moorings to Nature as well as to Revelation—and our consequent distress leads to desperate measures (such as cults and weird experiments).

In any event, *Paradise Lost* is instructive here, even though neither the Stalinists nor the Nazis, in their depravity, could ever exhibit the heroic elements that Milton's Satan sometimes did.

VI.

The philosophical life to which I have referred is something that relatively few are both drawn to and capable of. However things look to the philosopher, what does the world look like to the generality of mankind, at least in the Western World with its traditions and expectations? What does the world look like without Satan, the Fall, the Expulsion, and the Promise? Does it become a meaningless universe, especially if the very existence of God is doubted?

That is, what if human life is really no more than an accidental, transitory episode in a corner of a vast universe—and with no afterlife or permanent monuments or memories of even the entire human race? That is not the way human life is described in *Paradise Lost*, of course; the decisive importance of mankind is evident throughout the poem.

It has been said that James Joyce's *Ulysses* is the book that has replaced *Paradise Lost* as "the book which all subsequent books in

82. PRIMO LEVI, *THE DROWNED AND THE SAVED* 11-12 (1988).

83. TERRENCE DES PRES, *THE SURVIVOR: AN ANATOMY OF LIFE IN THE DEATH CAMPS* 35 (1977).

84. See ANASTAPLO, *THE AMERICAN MORALIST*, *supra* note 15, at 161; Anastaplo, *On Trial*, *supra* note 46, at 977; Anastaplo, *The O.J. Simpson Case Revisited*, *supra* note 27, Appendix A.

English take for granted.”⁸⁵ We have in Joyce’s book a variation upon the old story of a homecoming first told (so far as we know) in Homer’s *Odyssey*. The differences between the two accounts include the modern denial that there is any whole to yearn for or to return to. Significant here perhaps is the fact that there is a considerably greater affinity between the language (and hence the thought) of Homer and that of Milton (almost three millennia apart) than there is between the language of Milton and that of Joyce (less than three centuries apart). We seem to place the emphasis now *not* upon a whole by which we might take our bearings, but upon constant activity and constant change, with stability regarded as stultification if not even as tyranny. It is partly for this reason that the more sensitive spirits of the past century see an abyss opening up before most human beings, something which can be terrifying, unnerving, and hence paralyzing.

This is, I have suggested, the fate of the more perceptive among us. Most of us, however, tend to remain unaware both of what was once believed (if not known) and of what has taken its place and why. Are we somehow secure or more content than the perceptive minority in part because we are more or less insensitive both to the old attractions and to the new emptiness? We no longer grasp what the issues and possibilities are.

Considering all this, what way out do we have? Does the Classical alternative have to be taken more seriously than it has been for centuries, especially now that the Biblical way has been subjected to the severe critiques that it has? The Classical alternative, it can be said, is at the foundation of the scientific developments that have made traditional revelation less persuasive, especially as a science-based technology has permitted peoples dependent upon quite diverse revelations to make extensive contact with one another. Even so, one feature of the Classical approach (as seen, for example, in the career of Cicero) was that it knew how to make prudent use of the revelation that happened to be available from time to time. May not this be seen as well in Milton’s combination of the Biblical with the Classical (and especially with a form of the Platonic) in *Paradise Lost*?⁸⁶

VII.

Is there a way out—or, better, a way in, that is to say, a way back? What can be done? Nothing will happen, or at least nothing good is

85. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 234.

86. See *supra* notes 5, 23 (on natural right). See ANASTAPLO, *THE AMERICAN MORALIST*, *supra* note 15, at 83 (on Cicero).

likely to happen, if we are content with our "situation." Perhaps all that can be expected, in the short term, is that further deterioration may be slowed down if not stopped if we should become properly informed, beginning perhaps with a recognition of what has been lost by people even as they believe that their lives have become ever richer.⁸⁷

In a sense, Satan (albeit a somewhat worn-out Satan) has prevailed among us. His ascendancy is reflected in our receptivity (and not only among intellectuals) to a creed that makes much of rebelliousness, freedom, and art. This may be seen in Joyce's *A Portrait of the Artist as a Young Man*, where the heroic young poet adopts Satan's maxim, *I will not serve*.⁸⁸ In *Paradise Lost*, where disobedience is featured, Satan in his pride presents himself as nobly resisting tyranny. (See, for example, I, 124, II, 59.) This is so despite Satan's recognition of how much he does owe to his Creator. (See, for example, IV, 32 sq.) The culmination of Satanic self-determination is his insistence, "Better to reign in Hell, than serve in Heav'n." (I, 263)

Some speak of Milton as "culture-bound," but is he not, rather, "culture-sensitive"? That is, he *is* aware of the thought of his day. It is prudent for an artist to be so, especially for someone devoted as Milton was to the political life of his country. This sensitivity on his part is related to piety, or a respect for the received opinions of one's community. Certainly, Milton's polemical works (on such topics as divorce and the status of Roman Catholicism) are in response to both personal and political circumstances.⁸⁹ Such circumstances, although they do not validate the arguments Milton makes, help account for their being made when they are. These, and like arguments, stand or fall on their own merits, however, and as such are or are not of continuing relevance.

One form that Milton's topicality takes may be seen in his *Areopagitica*, the stirring argument he makes for liberty of the press. This is in the service of the *rational liberty* championed in *Paradise Lost*. (See, for example, XII, 82-101.) Liberty, as well as law, is identified by Milton with the ability to reason. (See, for example, IX, 654-55, XII, 80-100.) Satan can be portrayed as the false patron of liberty. (See IV, 935 sq., X, 387.) Particularly to be guarded against

87. Intimations of what has been lost may be detected in our openness to such distractions as Star Trek films and UFO fantasies, which sometimes dress traditional yearnings and modern apprehensions in scientific garb. See Anastaplo, *Lessons for the Student of Law*, *supra* note 32, at 187.

88. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 226.

89. See Anastaplo, *On Freedom*, *supra* note 8, at 560-61.

is the plea of Necessity which tyrants are inclined to invoke. (See IV, 394.) Also to be guarded against is the sort of fatal thoughtlessness exhibited by Eve, who insists (with dire consequences) that she must be free if she is to be happy. (See IX, 481.) For us this desire for freedom can leave us intolerant of the imperfections which all human governments are apt to exhibit, leading us to resent any restraints by lawful authority.⁹⁰

Milton's doctrine of liberty of the press may be more solidly grounded than is ours. (Compare, for example, our addiction to self-expression as an end in itself.) Freedom of speech, Milton recognizes, does not guarantee virtue. After all, even Satan and the other demons in *Paradise Lost* engage both in philosophical speculation and in an extended "grand consult." (I, 798. Also, Satan, in addressing Eve, is likened to "some Orator renown'd / In Athens or free Rome," [IX, 670-71] The music of the demons can be beautiful as well.) Still, Milton does offer us a reliable guide for modern liberal democracy, the sensibleness of which depends in part upon the reading of the great books so vital to that spiritual and intellectual heritage of the West by which we have been shaped and to which we all need to return.⁹¹

90. See George Anastaplo, *Freedom of Speech and the Silence of the Law*, 64 TEX. L. REV. 443 (1985). See also G. ANASTAPLO, *CAMPUS HATE-SPEECH CODES AND TWENTIETH CENTURY ATROCITIES* (1997).

91. See ANASTAPLO, *THE ARTIST AS THINKER*, *supra* note 1, at 284 (on what is a classic). See my articles on non-Western classics for the Encyclopedia Britannica annual volume, *The Great Ideas Today* (Confucian, 1984; Hindu, 1985; Mesopotamian, 1986; Islamic, 1989; Buddhist, 1992; North American Indian, 1993; African [including Egyptian], 1995). See also George Anastaplo, *On the Use, Neglect, and Abuse of Veils: The Parliaments of the World's Religions, 1893, 1993*, in 1994 *THE GREAT IDEAS TODAY* 30 (1994).

