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"TO SECURE THE BLESSINGS OF LIBERTY"  
LIBERTY AND AMERICAN FEDERAL DEMOCRACY

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Daniel J. Elazar

The Preamble of the Constitution of the United States lists six ends to which the Constitution is addressed: union, justice, domestic tranquility, defense, general welfare, and liberty. The last is presented most fully, to wit, "secure the blessings of liberty to ourselves and our posterity." Taken together, those six define the ends of republican government. To best achieve those ends the American founders recognized that simple

republicanism was not enough, that what was required was a compound republic, what we today call a federal system. The history of the founding generation of the United States of America is in no small measure a history of finding the way to such a compound republic, what the preamble refers to as a "more perfect union," the first item on the list.

For the founders, republicanism meant popular government, what Daniel Webster and Abraham Lincoln were later to define as "government of the people, by the people, and for the people." Almost immediately most of them began to see that republicanism of that kind had to be democratic republicanism. Hence, once the Constitution was established, the thrust of the American political experience has been in the direction of strengthening the democratic aspects of the American compound republic.

Let us look at the six ends of the preamble once again and read them as a list, placed in a certain order by design. I am not claiming that the framers did so deliberately. I simply do not know whether they did or not. But whatever their intention, what emerges is a certain hierarchy of ends. The first step in the achievement of the substantive ends is forming a more perfect union. That will make it possible to establish justice, which in turn will ensure domestic tranquility. Domestic tranquility makes it possible to provide for the common defense and a country both tranquil and secure by definition promotes the general

welfare at one level and can devote itself to further efforts to that end. The highest of these ends is not simply liberty but the blessings of liberty, that encompass justice, tranquility, security, and welfare. The ends presented in the Preamble represent, in a sense, a rephrasing of the ends presented in the Declaration of Independence -- life, liberty and the pursuit of happiness -- greater detail.

Union -- a compound republic -- is thus a means to larger ends, but so important a means that it becomes an end in itself. Lincoln was to emphasize this at the time of the Civil War when he spoke of "the constitution, the Union, and the liberties of the people" and argued that it was first necessary to preserve the Union in order to preserve the other two. Lincoln well understood that for Americans the blessings of liberty depended upon the more perfect Union, that is to say, the compound republic.

Our task is to examine the relationship between liberty and American federal democracy as reflected in the Constitution of the United States. We begin with two fundamental questions: What kind of liberty is to be fostered in order to bring blessings? How is it best fostered? We must begin our inquiry by understanding that, as Donald Lutz has persuasively argued, the Constitution of the United States is an incomplete document in that it rests on the constitutions of the individual states.<sup>1</sup>

Thus any consideration of the larger question of the Constitution and liberty is connected with the more specific question of this paper because the United States is a compound republic and its constitutional system is built accordingly.

### What Kind of Liberty?

The American founders certainly did not confuse liberty with anarchy. Their writings are peppered with comparisons between the two whose conclusions were unequivocal. Indeed, fear of anarchy was one of the major propellants toward constitutionalism for most of the American leadership, Federalist and Anti-Federalist alike. This fear was enhanced by the very fact that they were making a republican revolution and historically both revolutions and republics had been noted for bringing about anarchy.

Just as they rejected anarchy, so too did they reject natural liberty. Elsewhere I have discussed natural liberty as one of the basic myths of the American experience, the idea that in this new world of nature, humans are also freed from the shackles of society to become "natural men."<sup>2</sup> For the most part, the hidden or not so hidden assumptions behind the myth of natural liberty were that human society is corrupting while human nature is unequivocally good and therefore what needs to be done is to

emancipate humans from the chains of society so as to enable their better natures to flourish unimpeded. Although this myth was presented most systematically by Jean Jacques Rousseau, it can be found back at the very beginning of the age of the discovery and exploration of the Western Hemisphere. There were those who saw in the native Americans natural men and, hence, happily living in paradise. It was not difficult for them to take the next step and to hope that Europeans arriving on the shores of the New World could emancipate themselves from the bonds of society and regain their true natures as well.

A variant of this myth with a somewhat less optimistic view of human nature accepted that humans were not totally good by nature but saw in the human confrontation with the challenges of nature the true testing ground for "real men." This version of the myth allowed first barbarism and even savagery, treating them as part of the process of winnowing the wheat from chaff or separating the gold from the dross. Perhaps the archetypical mythical expression of this view was to be found in the myths of the voyageur and the mountain men, individuals who set out for the wilderness, leaving civilization far behind, who had to survive by honing their skills as men. Failure to do so almost inevitably meant death at the hands of nature, while success produced the hero who, by being in harmony with nature, rose above the constraints of human law to a loftier morality. This myth developed into the larger myth of the Western hero, who,

honed in the wilderness, could then come back to civilization to restore and do justice beyond the limits of the law.<sup>3</sup>

In the 20th century, after the land frontier was closed and opportunities for natural men to venture forth into vast stretches of truly wild nature no longer existed, the myth of the natural man took two turns. For the first half of the century, aviators who were aviation pioneers or test pilots were viewed as carrying on the natural man tradition. In a sense, Chuck Yeager and his colleagues were the last of these natural men. After them, as Tom Wolfe points out, came the astronauts who were more pampered gladiators. (His book, The Right Stuff ±Bantam 1983ij, is a wonderful study in contrast and conflict between the natural man test pilots of Edwards Air Force Base and the pampered astronauts).<sup>4</sup>

More recently there has been a reversion to the first variant of the myth, with individuals in society seeking to return to nature not by confronting wilderness but by dropping social conventions and by "doing what comes naturally" and "letting it all hang out." The first represented a mild expression of the attack on surviving Victorian conventions at the time of World War II, that was part of the move to loosen the forms of society in the first post-war generation, while the latter was one of the mottos of the student revolt of the 1960s which sought to abandon social convention altogether.

I repeat, natural liberty was not what the founders had in mind. Even Jefferson, who was much closer to assuming the natural goodness of man than the vast majority of his colleagues, believed that the people had to live together in community in order to develop civilization which, if simple enough, was a good thing. Others, John Adams for example, drawing upon their Puritan heritage, had no confidence in the innate goodness of humans, even if they no longer believed in their innate depravity. They could see the "old Adam" in all people and viewed their task as building a political order that would contain those human passions which led to depravity, and where possible, channel them into more productive lines of activity, thereby strengthening what Lincoln was later to call "the better angels of human nature."

One of the basic tensions underlying the American experience is between the myth of natural man and the countermyth of fallen man, brought to American shores by the Puritans. The Puritan view was summed up by the old couplet taught to children in Massachusetts schools, "In Adam's fall, we sinned all." For some, this view was fully Calvinist in its emphasis on total human depravity except for the few elect, chosen of God by predestination. For others, "the old Adam" was less than total. Rather, humans had to know that they were swept by passions that lead them to evil inclinations and that those inclinations were

all too easily translated into behavior appropriate to them.

In the Puritan view, humans had to be curbed by, not released from social bonds. Rather than viewing nature as redeeming and society as corrupting, they saw nature as corrupt and a properly religious society as having the potential to, if not to redeem (since only God could do that), at least to keep corruption within bounds. Thus the laws of Massachusetts and other Puritan commonwealths provided that no citizen should be allowed to settle beyond the reach of civilization, ere he lapse into savagery. It was the obligation of the polity to enact legislation to preserve and strengthen morality and the task of the magistrates to enforce that legislation.

In a sense, the American Constitution was the product of a reconciliation of these two views, achieved in part through their synthesis. Rejecting both myths, the founders saw humans as mixed in their natures, having both good and bad inclinations. The difference between them was the difference between Jefferson and Adams, with some following Jefferson in expecting man to be indefinitely perfectable if he lived under the right institutions, and others viewing man as being of limited perfectibility but capable of improvement through the right institutions. In both cases there was a convergence around the necessity for proper institutions. That is why Martin Diamond could refer to the American revolution as "a revolution of sober



expectations."<sup>5</sup>

What emerged out of all of this was an understanding of liberty as what, following John Winthrop and James Wilson, we may refer to as federal liberty. Federal liberty, in the modern sense, is the liberty to be a partner in establishing the covenant founding civil society (hence federal, from foedus meaning covenant) and then the liberty to live according to the terms of the covenant. Both dimensions of the definition are important. Totalitarian societies, both religious and secular, have emphasized the second half alone. That is to say, in claiming their citizens are free people, they define freedom or liberty as the liberty to obey the rules of the church or polity which are unilaterally imposed, in some cases in the name of God, and in others in the name of some other transcendent historical authority, power, or force. True federal liberty requires that humans be partners in making the covenant which defines right and wrong and the rules of the game that flow from that definition before they can be expected to live according to them and that processes be provided for reexamination of the terms of the covenant and, if necessary, to change the rules. Even in those cases where God is considered a partner or guarantor, that must be so. That is what constitutionalism is all about.

In the American political tradition, federal liberty has taken two forms. One, first enunciated by John Winthrop, deals with

the relationship between individuals and civil society, and the other, first defined by James Wilson, deals with the relationship between the states and the federal government under the Constitution of the United States. (In another sense, Winthrop and Wilson define the range of possible understandings of federal liberty -- from a highly fluid sense of what is permitted under Divine law to a quite fluid sense of being free to act within a broad, agreed-upon framework.)

Winthrop, one of the founders of Puritan Massachusetts, enunciated his famous doctrine of federal liberty in 1645.

There is a two-fold liberty, natural (I mean as our nature is now corrupt) and civil or federal. The first is common to man with beasts and other creatures. By this, man, as he stands in relation to man simply, hath liberty to do what he lists; it is a liberty to evil as well as to good. This liberty is incompatible and inconsistent with authority and cannot endure the least restraint of the most just authority. The exercise and maintaining of this liberty makes men grow

more evil and in time to be worse than brute beasts: omnes sumus licentia deteriores. This is that great enemy of truth and peace, that wild beast, which all of the ordinances of God are bent against, to restrain and subdue it. The other kind of liberty I call civil or federal; it may also be termed moral, in reference to the covenant between God and man, in the moral law, and the politic covenants and constitutions between men themselves. This liberty is the proper end and object of authority and cannot subsist without it; and it is a liberty to that only which is good, just and honest. This liberty you are to stand for, with the hazard

(not only of your goods, but) of your lives if need be.<sup>6</sup>

Developed in the 17th century, Winthrop's full definition reflects a republican pre-democratic understanding of the political order. Recognizing this, we still can draw upon its essence to understand the federal liberty of the individual in a democratic civil society.

James Wilson, one of the delegates to the Constitutional Convention from Pennsylvania, Scottish-born and educated, was a product of the Scottish Enlightenment. In other words he came out of the same Reformed Protestant tradition as the Puritans, but identified with its more secularized expression as developed in Scotland in the mid-18th century. In defining the appropriate relationship between the states and the federal government, he drew upon the same concept of federal liberty, for a secular setting. (Wilson himself was a believer who saw natural law as from God and at least partially revealed in the Bible).

For Wilson, federal liberty was the means of sharing the attributes of sovereignty, with both the states and the federal government deriving their powers by delegation from the sovereign people through constitutional compacts in such a way that each remained an instrument of the people, while at the same time checking the other. His argument was that just as individuals entering a political compact gained greater liberty by

surrendering part of their natural rights in exchange for a limitation on the liberty of others to do them harm, so too did the constituent states gain more by surrendering part of their freedom of action to a general government in return for being partners in a larger whole. "Federal liberty then is the liberty to enter into a covenant or compact through which each party surrenders certain of its natural liberties in order to gain more from the new partnership created, to whose rules the parties are then obliged to follow."<sup>7</sup>

A complete definition of federal liberty requires a synthesis of Winthrop and Wilson to include the two dimensions of morality and interest. American constitutionalism rests upon that synthesis. This is not immediately apparent in reading the Constitution of the United States.

#### Two Constitutional Traditions

It is well accepted that one of the great goals of the Constitution was to establish an extended commercial republic. This, indeed, is the essence of the Federalist theory of

constitutionalism. With<sup>in</sup> the context of a shared public philosophy, commerce is presented as an alternative to republican virtue as a means of maintaining republican government. Self-interest rightly understood is presented as the motivation for the self-restraint necessary to maintain

republican government and "ambition countering ambition" (in the words of The Federalist), the basis for controlling the excesses of human energy within an ordered public realm. The original Constitution provides substantive protection for only a very few liberties, relying instead on the procedural guarantees built into the system of government it establishes. The protected liberties are of three kinds, those involving the physical liberty of the person, such as the right of habeas corpus; those involving the freedom of the marketplace, such as the guarantees of the right of contract and protections of patents and copyrights and provision for a uniform rule of bankruptcy; and those emancipating individuals from the effects of family and religious ties such as the bans on bills of attainder and religious tests for office. The Bill of Rights further extended this effort to use the federal constitution to protect individual rights and liberties, with nine of the ten amendments being exclusively devoted to that subject.

All told, the federal constitution is oriented toward creating and protecting a national marketplace, both political and economic, and is oriented toward protecting that marketplace and

access to it on the part of all citizens as individuals. This thrust has been continued in almost every subsequent constitutional development whether by formal amendment or U.S. Supreme Court interpretation. The Civil War amendments were designed to open both marketplaces to blacks and, by extension, other non-white groups. Most of the other amendments deal with



terms of suffrage and are also designed to extend access to the marketplace -- to women and, most recently, to late teenagers. To participate in the marketplace, one only need subscribe to the rules of the game which, in the federal constitution, are political rather than moral. The Constitution goes so far as to specify that no religious test shall be used in connection with federal office-holding and that what is required is that every state, as well as the federal government, maintain a republican form of government.

Were the federal constitution to stand alone, one could conclude that morality and government were entirely separated in the new American constitutional order. This is not, in fact, the case. Since the federal constitution and the government it creates are both incomplete and need the states to be complete, we must also look at the state constitutions to see what kind of liberty they are committed to protecting and fostering. Certainly in the revolutionary period most of the state constitutions were designed to foster commonwealths rather than marketplaces, that is to say, polities that were both republican and committed to a shared moral vision. It is not unfair to say that the federal constitution could emphasize individualism and the marketplace precisely because the founders could count upon the state constitutions to emphasize community and commonwealth.

The idea that a proper republic should be a commonwealth grew out

of the Whig tradition developed in Britain and British North America in the late 17th century and which reached its apotheosis in the states at the time of the American revolution. The original American state constitutions also followed the Whig model. It was only after the adoption of the federal constitution that there slowly developed a synthesis between the Federalist and Whig constitutional models which began to influence state constitutional development. Jacksonian ideas of democracy were democratic adaptations of Whiggism rather than deviations from it. It was only in the post-Civil War period that the synthesis began to reshape state constitutions, most particularly the constitutions of the newly-admitted Western states.<sup>8</sup>

Liberty, under the commonwealth model, was concerned not simply with individual rights but also with the preservation and fostering of community. Thus communal liberties, while never as important in the New World as in the Old, had a place within the commonwealth model along with individual liberties. The federal constitution, while making no such provision directly, tacitly recognized the importance of communal liberties by leaving the states free to protect and foster them as they pleased. The New England and Southern states did so unequivocally. Even in matters of religion and state, Massachusetts and Connecticut went so far as to maintain established churches into the 19th century and New Hampshire did not stop its last religious tests until

the end of the Civil War generation. In other aspects of life, the New England states continued to use the authority and powers of government to maintain a certain moral order -- where they can and there is consensus they still do. The Western states settled by New Englanders reproduced a limited version of the New England pattern.

In the Civil War, the Southern states, whether original or new, were organized to maintain what Abolitionists called "slavocracy" and rule by the "slave power" -- social systems resting on slavery and concentrating power in the hands of a plantation-centered elite. After the war and Reconstruction, the political systems of the Southern states were used to reinstate as much of the old system as possible through "Jim Crow" segregation and disenfranchisement of the freed slaves and their descendents. In the end, the revulsion of the majority of Americans against that system was a major factor in overturning the rights of the states to maintain their own social systems. As Abraham Lincoln repeatedly suggested, all Americans would have to pay dearly for their "original sin" of black slavery and so it has been.

The Middle States, on the other hand, were already well on their way toward a redefinition of their commonwealths as marketplaces, hence the Federalist approach suited them. They and especially the new states in the West settled by Middle Staters, were the

first to embrace the Federalist model. Over time, more states moved away from clearcut moral visions of their commonwealths, making that model even more attractive.

On the other hand, on those few occasions when it was tried, the federal constitution proved to be a very poor bulwark for commonwealth goals. Its worst failure was in connection with the prohibition of the consumption of alcoholic beverages, a moral goal written into the Constitution through the 18th Amendment which had the effect of encouraging alcoholic consumption, while at the same time promoting organized crime. Repealed within half a generation, those negative aspects of its legacy are still with us.

### How is Liberty Best Fostered?

Thus the American political system and its constitutional tradition provide for the two great orientations of American political culture -- marketplace and commonwealth -- and the liberty associated with each through the maintenance of a compound republic -- what we now call a federal system. The marketplace is the clue here. Federal liberty is best fostered through ordered rules of the game. These include fixed elections, separation of powers, guaranteed rights of access, due process, and federalism. Here it is not necessary to elaborate

on these ordered rules of the game, the idea behind them should be clear. Fixed elections are necessary to assure that the governors will always be responsible to and dependent upon the governed for their offices. Guaranteed rights of access assure that the marketplace is kept open to all legitimate participants. Due process is necessary to maintain the people's standing in the marketplace and to adjudicate their claims upon each other and the marketplace as a whole. Separation of powers is designed to prevent the overconcentration of power in any one individual or institution. Bicameralism is designed to provide a possibility for second thoughts in political decision-making, to foster prudence and control enthusiasms.

Federal liberty is necessary to prevent the disasters of anarchy and the diseases of natural liberty. Federal liberty is possible without lapsing into totalitarian tyranny only when it is constitutionalized so that there are ordered rules of the game established by agreement among the participants in accordance with prudence and reason. As we all know, the founders believed that liberty could only survive if proper republican institutions were established to both contain and foster it. Federalism offers the means for combining the marketplace and the commonwealth, allowing for fostering both individual and communal liberties in appropriate ways.

Summarizing the Argument

The United States as a whole is built upon two contrasting conceptions of the political order, both of which can be traced back to the earliest settlement of the country. In the first, the political order is conceived as a marketplace in which the primary public relationships are the product of bargaining among individuals and groups acting out of self-interest. In the second, the political order is conceived to be a commonwealth -- a state in which the whole people have an undivided interest -- in which the citizens cooperate in an effort to create and maintain the best government in order to implement certain shared moral principals. These two conceptions have exercised an influence on government and politics throughout American history, sometimes in conflict and sometimes complementing each other. They are particularly important in defining the relationship between power and justice, the two poles of politics that between them encompass the basic political concerns of all civil societies, namely "who gets what, when and how" (power) and who should in order to develop a good society (justice).

The major continuing task of every civil society is to shape the relationships between these two faces of politics in a manner that best fits its situation. Indeed its character as a civil society is in large measure determined by the relationship between power and justice that shapes its political order.

Consequently a particular civil society's conceptions of the uses of power and the nature of justice are vital. Americans seek the efficient use of power in the pursuit of liberty, equality and happiness.

We may conceptualize power and justice as two poles connected by a four-cell matrix as shown in Figure 1. The top two cells of the matrix represent the universal political demands, that is to say, in every polity there is a close relationship between efficiency and power and legitimacy and justice in the sense that power is designed to be exercised according to the polity's accepted conception of efficiency and used to advance what that polity considers the legitimate ends of government. In the United States, efficiency means government that is energetic and efficacious with the least wasteful or minimum necessary expenditure of resources, while legitimacy is determined by American understandings of liberty, equality and happiness.

The lower two cells reflect the definitions of efficiency and legitimacy of any given polity. In the United States, efficiency is measured in predominantly commercial terms, as befits a great commercial republic. Commerce in this sense embodies the exchange of goods, services and ideas. The federal republic has adhered quite closely to the original purpose of the U.S. Constitution to advance and protect commerce. Commerce is particularly valued because it is an efficient means of

organizing, harnessing and diffusing power in light of American values through the marketplace. Americans characteristically rely upon various kinds of marketplaces (political, economic, the marketplace of ideas) to protect and foster liberty, as well as to protect property and promote enterprise.

Americans have changed their conventional definition of what is efficient in government as the organization of their commercial enterprises has changed. In the 18th century, efficiency meant first and foremost the efficiency of competition among small-scale, relatively equal political entities within a political-economic framework that provided protection for the marketplace through active imposition of ordered rules of the game. All this reflected the political economy of the time which rested upon many small enterprises. In the late 19th century it came to mean the hierarchical organization of enterprises in monopolies or oligopolies reflecting an economic system of large corporations built by great entrepreneurs. Governmental reformers, in turn, sought to build a power center to replace the existing noncentralized system in the name of efficiency.

During the first half of the 20th century those corporations became complex bureaucracies governed by executive teams specializing in management and finance and American definitions of governmental efficiency changed in the direction of bureaucratized power pyramids. More recently there is a change



in the direction of the decentralized conglomeration of synergistic organizations and work groups controlled on the basis of measures of their output. This has led to a new interest in decentralization in the name of more efficient government. In every case, both efficiency and commerce are primarily related to the concerns of power, its organization and management.

Legitimacy, on the other hand, is given meaning in the United States by the particularly American complex of values and aspirations associated with liberty, equality and happiness, which I have elsewhere termed "agrarianism."<sup>9</sup> The agrarian ideal envisions the United States as a commonwealth of self-governing freeholders, each with a tangible stake in his community and hence in American society as a whole, raised to new heights of human decency through the general diffusion of knowledge, religion and morality. This agrarian ideal provides for the protection of individual liberties, the maintenance or fostering of equality, and the achievement of no small measure of happiness.

American agrarianism stems from both the Puritan and Jeffersonian roots of American life and has also undergone adaptations to the changing circumstances of American history from the days of the 17th century Puritan village to late 18th century Jeffersonian ward republic to 19th century commonwealth of homesteads to 20th century suburb or exurb of free-standing homes. As the

embodiment of the nation's social and political mystique (a future-oriented myth), it is the major source and test of legitimacy in the United States. Both legitimacy and agrarianism are related to the problem of the attainment of justice and are expressions of the continuing effort to create a more just society in the United States.

Each of the four cells in the matrix is modified by every other one. Thus in every form it has taken, American agrarianism has had a strong commercial aspect, beginning with the Americans' desire to make a profit from the use of the land even while valuing closeness to it for moral reasons. Unlike feudal or peasant agrarianism, it has represented the effort to create a moral commonwealth of religiously inspired freeholders actively engaged in commerce in its various manifestations. By the same token, the values of agrarianism modify commercial efficiency at crucial junctures so that maximizing profits is not the only measure of efficiency in American life, even as those values themselves are tailored at some points to meet the demands of efficiency. The politically-defined limits of commerce in America are set by the demands of agrarian legitimacy. Periodically the commercial aspects of American society have run wild only to be pulled back in line sooner or later on the grounds that they have been set free illegitimately. For example, most monopolies are considered illegitimate even if they are efficient from a commercial point of view. This common sense

illegitimacy is defined in terms of liberty, equality and happiness.

### The Situation Today

In the 20th century, particularly since the end of World War II, there has been a shift away from the earlier synthesis between marketplace and commonwealth in two ways. On one hand, increasingly the states have been denied their historic constitutional powers to support any particular moral order other than that of the marketplace within their boundaries, by decision of the U.S. Supreme Court. The Court has consistently interpreted the federal constitution in such a way as to extend the marketplace into the commonwealths. Thus the powers of government, particularly the state governments, have been denied in matters connected with transcendent moral issues, whether in the relationship between religion and state, obscenity and pornography, abortion, Sunday closings, and required days of rest, to name a few of the major issues.

In the case of segregation, this was a necessary and appropriate exercise of the Court's responsibility under the Constitution. In certain other cases, while constitutionally more dubious (e.g., pornography), the Court's decisions reflected changed public opinion about the proper role of government in society, away from

the idea that government should support a shared moral consensus to a greater emphasis on individualism and the right to privacy. In still other cases, the Court imposed its new understanding of the Constitution against the wishes of the states and of the people (e.g., abortion, school prayer), but even in these cases, the latter have been sufficiently divided so as to prevent reestablishing state powers in any specific area in which the moral issue predominated.

On the other hand, at least from the New Deal onward, the federal government undertook to establish a new morality of equality for the nation as a whole. It was supported in its efforts by the U.S. Supreme Court and, sooner or later, by the people. In terms of liberty, it can be said that the trend for the past 50 years has been to limit traditional individual liberties, especially in connection with property rights and freedom of association, on behalf of equality, while expanding individual liberties in matters of privacy and due process.

All of this has tended to emphasize the marketplace at the expense of the commonwealth, in the sense that the federal interventions in areas that have taken on moral dimensions on closer look are designed to improve rights of access of all to the various marketplaces of American life or to protect their rights once in the marketplace. It seems to be a morality based upon raising the ordered rules of the game from morally

sanctioned means to a moral end.

Most of the issues in question rest upon conceptions of morality that transcend the ordered rules of the game and may even require their partial suspension to achieve some higher end. That is what the Court has rejected. One need not reject the substance of the Court's decisions to recognize their effect on the body politic. They have contributed mightily to creating a new and very different moral climate in the United States, one in which the older expectations of commonwealth and community are now treated as oppressive examples of government intervention into private lives and interference with individual liberties. Thus the balance between marketplace and commonwealth upon which American federal democracy rested and through which the liberties of Americans were preserved, fostered and contained, has been dealt a severe blow. It remains to be seen whether the United States can survive that blow and remain the same kind of country that it has been, or better yet, the country envisioned by its founders.

NOTES

1. Donald S. Lutz, "The Purposes of American State Constitutions," Publius, vol. 12, no. 1 (Winter 1982), pp. 27-44.
2. Daniel J. Elazar, "Pluralism, Federalism, and Liberty," Chapter 2 in The American Constitutional Tradition (Lincoln: University of Nebraska Press, 1988).
3. Cf. Dixon Wecter, The Hero in America
4. Tom Wolfe, The Right Stuff (New York: Bantam, 1983).
5. Martin Diamond, A Revolution of Sober Expectations (Washington: American Enterprise Institute, 1976).
6. John Winthrop, History of New England, 1630-1649, ed. Sam Savage (Boston, 1853), II, 279-282.
7. Wilson at the Pennsylvania ratifying convention as quoted in J.B. McMaster and F.D. Stone, Pennsylvania and the Federal Constitution, 1787-1788.
8. Cf. Publius, vol. 12, no. 1 (Winter 1982), a special issue on state constitutional design, especially the Introduction and Part

One.

9. Cf. Daniel J. Elazar, Cities of the Prairie (New York: Basic Books, 1970), esp. Chapters 4, 5 and 6.