

The Philosophical Foundation of the US Constitution

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To the memory of my beloved professor *Michael Uhlmann*.

Abstract

This paper explores the philosophical underpinnings that guided the Framers of the *US Constitution* in establishing a government unlike any in history. Central to their concerns was the protection of individual rights, a concept deeply rooted in Western political thought. These rights, including freedom of speech, belief, and private property, were essential to safeguard against government overreach. It also explains why it is important to protect the Constitution against the threats for the potentially unlawful alterations. The alteration is allowed within the Law, not without. Recently, we have observed a wave of new assaults to the *Constitution*, including the presidential blind immunity from the law being argued in the Supreme Court. The concern is about the tools envisioned and implanted by the Founders to protect the Law and the Republic. Are they still working?

Introduction

The debates surrounding the concept of rights were crucial in the quest to establish a mechanism for the right to vote. These discussions focused on individuals' connections to freedom, particularly in the colonies where people were categorized as either free or enslaved. The distribution of suffrage in the national legislature became a central point of contention – whether it should be extended to all people, only the freemen, men of wealth, or to women. The inclusivity or exclusivity were one of the two major philosophical subjects in the debates for drafting the *Constitution*. Additionally, the natural rights of slaves were unequivocally violated, turning the discourse on their suffrage from a moral standpoint to a political argument based on the political economy of the South.

By examining the philosophical foundation of the Constitution or the Law of the Land, two critical questions arise: How ethical is the law? How well does it recognize and protect people's natural rights? Additionally, the inclusivity of the Law becomes a focal point. This consideration intertwines philosophy and law, suggesting that the more ethical the law, the more philosophical it becomes. Law, as the actualization of Reason in a political society, follows a developmental trajectory that can be traced back to Plato.

The influence of (western) philosophy shines through the concepts such as fairness, equality, right, wrong, private property, and freedom. The question is about how these concepts

were represented and introduced in philosophy that consequently they found their way to the Document. Hence, the main influencing branch of western philosophy would be ethics. Ethics is also the building block of political philosophy (the way Aristotle viewed politics) and philosophy of law, both are built on philosophy of ethics or moral philosophy. Therefore, I focus on the few key thinkers in the western tradition who have undeniable impact for the creation of the Document.

The prominence of the majority is not only celebrated within the American political system but also regarded with apprehension, often referred to as the "tyranny of the majority." Preserving the rights and interests of the minority alongside the dominance of the majority is considered a fundamental American value. This objective is achieved by dismantling the monolithic concentration of power into multiple facets. Power should not be allowed to accumulate in the hands of any single individual or within any particular interest group, be it small or large. Plato, in his work "*The Republic*," cautions us about the potential deterioration of a government, highlighting the risk of deteriorating into a contrary form from within. Concentration of power generally would lead to the platonic deterioration.

I posit that James Madison and/or Alexander Hamilton, among the other framers of *The Constitution*, deliberately designed the Document to address Plato's concerns and prevent such degeneration. *The Federalist Papers*, particularly 51, can be seen as a response to Plato's worries. Article I has its limits and boundaries, as well as Article II and Article III. Each has been defined and given certain duties to watch and if needed apprehend the other. The fragmentation of power is exclusively designed to address Plato's concern. So that the American Republic will not crumble and turn into a tyranny of any sort.

Drafting the document was influenced by two primary camps: federalism and unionism. It can be argued that Hobbes's ideas align more closely with the concept of absolute authority within unionism, whereas the proponents of a more decentralized government, often associated with Locke's philosophy, were the driving force behind the confederate viewpoint. It seems likely that the anti-federalists leaned towards Locke's ideas, given their persistent opposition to *The Constitution*.

As a response to the vehement objections raised by the anti-federalists against *The Constitution*, the First Ten Amendments were promptly added to the document, forming the *Bill of Rights*. This *Bill of Rights* is dedicated to safeguarding the inalienable rights of citizens against the potential encroachment of government, effectively creating a dual sovereign structure within *The Constitution*. These rights are a direct reflection of natural rights that were considered common knowledge at the time, encompassing freedoms such as the right to worship, speak, and own property. There are a significant number of public figures and political thinkers that contributed the idea of natural rights to the fabric of American political thinking. Among them I briefly mention Richard Bland (1710-1776). In one of his pamphlets, *An Inquiry into the Rights of the British Colonies (1766)*¹, in which he lays out his argument against the taxation to be adopted during the revolutionary era.

Men in a State of Nature are absolutely free and independent of one another as to sovereign Jurisdiction,⁶ but when they enter into a Society, and by their own [10] Consent become Members of it, they must submit to the Laws of the Society according to which they agree to be governed; for it is evident, by the very Act of Association, that each Member subjects himself to the Authority of that Body in whom, by common Consent, the legislative Power of the State is placed.²

This excerpt of Bland is quite Hobbesian. In essence, *The Constitution* can be seen as a virtual battlefield where the philosophical ideas of Hobbes, Locke, and Montesquieu converge and compete for influence.

Bland asserts a right that he calls “Happiness.” To him this right is natural. This concept directly comes from Aristotle and finds its eternal place in the *Declaration of Independence*. He utilizes “Happiness” for citizens to move elsewhere, (getting into a different society or establishing one) if not happy.

so long as they remain Members of the Society, yet they retain so much of their natural Freedom as to have a Right to retire from the Society, to renounce the Benefits of it, to enter into another Society, and to settle in another Country; for their Engagements to the Society, and their Submission to the publick Authority of the State, do not oblige them to continue in it longer than they find it will conduce to their Happiness, which they have a natural Right to promote. This natural Right

¹ Charles S. Hyneman and Donald S. Lutz, eds., *American Political Writings During The Founding Era 1760-1805*, vol. I, 2 vols. (Indianapolis, Indiana: Liberty Fund Inc. Kindle Edition., 1983), www.libertyfund.org.

² Hyneman and Lutz. *Richard Bland*, “An Inquiry into the Rights of the British Colonies,” Williamsburg, 1766. Location. 1607. Kindle ed.

remains with every Man, and he cannot justly be deprived of it by any civil Authority...³

There is another piece of writing of the era called *Britannus Americanus* by an anonymous author in Boston, 1766. Presenting an excerpt from this piece is useful to show how these ideas were a quite common knowledge at the time of American Revolution.

When the first settlers of this country had transplanted themselves here, they were to be considered, either as in the state of nature, or else as subjects of that kingdom from whence they had migrated: If they were in the state of nature, they were then entitled to all the rights of nature; no power on earth having any just authority, to molest them in the enjoyment of the least of these rights, unless they either had or should forfeit them by an invasion of the rights of other: If the Crown and people of England had at that time, no right, property or claim to that part of the earth, which they had fix'd upon to settle and inhabit, it follows, that in the suppos'd state of nature, neither the crown nor people of England had any lawful and equitable authority or controul over them more than the inhabitants of the moon: they had a right to erect a government upon what form they thought best...⁴

When reflecting on their legacy, it's crucial to recognize that liberalism and conservatism are interlinked in the American political landscape. Liberalism emerges against the backdrop of conservatism, while conservatism gains its legitimacy through critical engagement with liberalism. There exists a dynamic tension within the American political heritage: liberalism gains meaning by considering the impacts of conservatism, and conversely, conservatism gains significance by acknowledging liberalism's existence. In this sense, they do not negate each other; rather, they complement and enhance each other.

However, the American solution to this dynamism lies in the fusion of two distinct forms of government: the national and the federal. The national government presents itself as a strong, monolithic power to its citizens, while the federal government embodies a more fragmented, non-monolithic structure. The United States Constitution was crafted to incorporate both of these systems, creating a delicate balance that has endured for more than two centuries.

³ Ibid.

⁴ Hyneman and Lutz, *American Political Writings During The Founding Era 1760-1805*. Anonymous, "Britannus Americanus," Boston, 1766. Location 1885. Kindle ed.

The pursuit and preservation of justice are regarded essential in preventing the undue concentration of power within the U.S. government, whether it be one branch dominating others or an individual, such as the President, exerting excessive privilege over the entire system.

In shaping the minds of the framers in the 18th century America, several influential philosophers played a pivotal role. These philosophers include Plato with his works "*The Republic*" and "*Laws*," Aristotle's "*Politics*," and "*Nicomachean Ethics*," Cicero's "*The Laws*," Hobbes's "*Leviathan*," Locke's "*Second Treatise of Government*," and Montesquieu's "*The Spirit of the Laws*," to name a few.

I will begin by elucidating Hobbes's potential influence on the Founding Fathers, followed by an examination of the contributions of other thinkers. It's important to clarify that this paper does not follow a chronological order but rather explores their ideas, thematically. Starting with Hobbes is apt due to his emphasis on the absolute authority of government, a concern that held great significance in late 18th century America as it sought to break away from the rule of British monarchy.

The insistence of Madison and the federalists, in general, on the government as the exclusive arbiter of rights and as the enforcer of justice to maintain peace bears a resemblance to Hobbesian thought.

2 – The US Constitution and its Philosophical Underpinnings

2.1 - *Leviathan*

Hobbes's primary concern revolved around the specter of violence, informed by his own experiences during the English Civil War. His proposed solution to avoid this violence was for individuals to relinquish certain natural rights and powers to a sovereign authority, which he famously referred to as the Leviathan. By surrendering these inherent rights and powers, individuals could no longer engage in perpetual conflict with one another. Peace, according to Hobbes, emerged when individuals were divested of their natural powers, a process achievable only within the civil society. In this civil society, no one possessed any authority to wage war on others for personal gain or any other reason. Hobbesian civil society, in essence, existed to

prevent the descent into chaos, and the mechanism for achieving this was the establishment of supreme power (*Leviathan*, Chapter 17, paragraph 13).

This supreme power, the Leviathan, could take the form of either a single individual or a group of individuals. However, its authority extended over all members of society. Notably, Hobbes did not address concerns about the potential for tyranny or the emergence of corrupt oligarchic governments. Instead, he argued that all types of governments essentially functioned the same way, despite historical variations in terminology. He claimed that various names like tyranny and oligarchy, found in histories and political writings, did not denote fundamentally different forms of government but rather different labels for the same inherently disliked form of government. As Hobbes succinctly put it, "There be other names of government, in the histories, and books of policy; as tyranny, and oligarchy: but they are not the names of other forms of government, but of the same formed misliked..." (*Leviathan*, Part II, Chapter 19, paragraph 95).

The Founding Fathers were concerned that the Leviathan, in their context, had the potential to transform into a tyrannical entity. It is important to note that Hobbes's concept of the Leviathan itself did not equate with tyranny, as it did not necessitate the complete relinquishment of all natural rights of the people. However, within Hobbes's framework, tyranny was akin to the state of nature where a ruler acted against the interests of the populace, prioritizing their own desires above all else. A tyrant, in this context, acted in defiance of the natural rights and natural laws of the people under their rule.

Hobbes acknowledged an exception to the absolute sovereignty of the Leviathan. He argued that individuals were not obligated to surrender themselves if the Leviathan violated their inalienable natural rights. We read Hobbes's words:

Covenants, not to defend a man's own body, are void. Therefore, if the sovereign command a man (though justly condemned) to kill, wound, or maim himself; or not to resist those that assault him; or to abstain from the use of food, air, medicine, or any other thing without which he cannot live; yet hath that man the liberty to disobey.

-*Leviathan*, Chapter 21, Paragraph 12

In Hobbes's words, "The RIGHT OF NATURE, which Writers commonly call *Jus Naturale*, is the Liberty each man hath, to use his own power, as he will himself, for the

preservation of his own Nature; that is to say, of his own life; and consequently, of doing anything, which is his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto" (*Leviathan*, Part I, Chapter 14, paragraph 64).

Indeed, according to Hobbes, individuals possess the natural right to protect themselves and preserve their own lives by the principles of natural law. This raises the question of why one would willingly surrender this right to a sovereign authority. Hobbes's perspective is that in forming a social contract and submitting to a sovereign, individuals seek the assurance of protection and security that the sovereign can provide. However, if a sovereign were to transform into a tyrant, the situation changes fundamentally. He makes this point clear in *Leviathan*, Chapter 14, paragraph 1. And he re-emphasizes this point in the following paragraph 7.

We need to read his words here:

The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished."

- *Leviathan*, Chapter 21, paragraph 21

Hobbes contends that when a sovereign becomes a tyrant, the subjects effectively lose the protection they had sought by relinquishing their natural power to preserve their lives. In this scenario, tyranny is not considered sovereignty but rather a return to the state of nature, characterized by insecurity and the absence of protection. The tyrant, by acting against the interests and natural rights of the subjects, abdicates his duty to protect them, thus negating the essential purpose of the commonwealth (*Leviathan*, Chapter 18, paragraph 7).

Hobbes is clear in asserting this dual stance, emphasizing that the sovereign has a profound duty to provide protection to the citizens, which is manifested in the establishment of the commonwealth. In the absence of this protection, the commonwealth itself ceases to exist. Consequently, when a sovereign devolves into tyranny, the subjects are released from their responsibilities and duties toward that tyrannical ruler. Hobbes articulates this nuanced position in his work (*Leviathan*, Part II, Chapter 21, paragraph 114). Therefore, Hobbes does recognize an exception to the absolute authority of the Leviathan, which is the violation of natural rights of the citizens when the sovereign transforms into a tyrant.

2.2 – Locke’s contribution

Locke, in contrast to Hobbes, offers a broader perspective on safeguarding the natural rights of citizens within his envisioned commonwealth and rejects the idea of absolute authority vested in the Leviathan. In Locke's framework, the consent of the people bestows authority (whether held by one or many) to execute people’s rights on their behalf. People do not relinquish their rights. Those rights are the trust. Hence, the authority is not absolute; it is conditional. The sovereign remains legitimate as long as he upholds and protects those trusted natural rights of the people. Should these rights be violated, that consent evaporates, immediately (*Second Treatise of Government*, Chapter XIX, section 222). This underscores that the legitimacy of governmental authority is conditional upon its respect for and protection of the natural rights of the people. Should the government violate these rights, the people are justified in revoking their consent and resisting the authority.

Locke goes further by advocating for the right of citizenry to rise against a tyrannical authority in order to restore the commonwealth to its proper function and rescue it from the state of nature. He firmly asserts that "every man has property in his own person" (*Second Treatise of Government*, Chapter II, section 27), emphasizing the inalienable nature of this ownership. According to Locke, no government has the authority to deprive individuals from this inherent ownership of themselves. We will revisit Locke's ideas later in the context of the state of nature.

2.3 Cicero’s Contribution

Cicero's philosophical framework provides a foundation for understanding fundamental concepts essential for the establishment of laws and civil society. He posits that the universe operates under the guidance of a rational providence, as articulated in "*The Laws*" (Book I, paragraph 21). According to Cicero, human beings occupy a unique position between God and animals. While humans share physicality and physical needs with animals, they possess the extraordinary capability of reason. Through this power of reason, they shape and manipulate their environment, engage in complex activities, and create intricate tools (*The Laws*, Book I, paragraph 25).

Furthermore, Cicero contends that humans possess a soul that endures beyond death, drawing a connection between humanity and divinity. This resemblance to the divine inspires the enactment of wise laws, reflecting the attributes of a creator (*The Laws*, Book I, paragraph 35).

Cicero's philosophy recognizes that nature can be associated with both lower beings (humans and animals) and higher beings (gods). He asserts that human potential is most fully realized within communities, emphasizing that humans are a distinct species separate from other animals. Lastly, Cicero underscores that the foundation of law is rooted in nature rather than mere opinion. Here, "nature" refers to the state of humanity as it exists within the broader cosmos (*The Laws*, Book I, paragraph 24).

According to Cicero's philosophy, citizens have a moral obligation to obey a law unless that law contradicts the natural order. This principle is rooted in the ancient understanding of citizens within commonwealths or city-states, where the recognition of specific rights was grounded in natural laws. These rights were derived from the inherent condition of humanity in the natural world. Consequently, the concept of citizenship was established based on the practical application of these natural rights.

Cicero asserts that humanity is a unique species endowed with a share of divine reason, and this shared quality forms the foundation of a collective commitment to justice. He further contends that law is the highest form of reason, an intrinsic aspect of nature itself, which prescribes what should be done and prohibits its opposite. Cicero believes that our minds have been bestowed upon us by a divine entity, implying that the concept of justice emanates from the very fabric of nature (*The Laws*, Book I, paragraphs 16-35).

Cicero ardently defends the concept of justice as something inherent in nature, rooted in the fundamental condition of humanity. He firmly believes that self-interest undermines the principles of justice. Cicero challenges the notion that everything decreed by the laws of a particular country should be deemed just. He raises the critical question: What if those laws are the creations of tyrants? To illustrate his point, he cites the example of the "Thirty's rule" in Athens, asserting that even if the entire city accepted their laws, these laws were unacceptable due to their inherent injustice. Cicero emphasizes the existence of a single, universal justice,

established by a single law—the law that embodies right reason in commanding and forbidding (*The Laws*, Book I, paragraph 42).

In a community, Cicero argues, any law, regardless of popular acceptance, cannot be considered a true law if it does not distinguish between what is just and unjust. Thus, the essence of law lies in drawing a clear line between these two moral categories. Cicero firmly asserts that without the support of nature, every virtue, including justice, would cease to exist (*The Laws*, Book I, paragraph 43).

For Cicero, the first crucial task is to differentiate between right and wrong laws, with the measure of this judgment being nature itself—the true condition of humanity according to its proper reasoning. Following this distinction, the role of law is to implement and enforce this differentiation between what is just and unjust (*The Laws*, Book II, paragraph 13). Consequently, Cicero's philosophy makes it clear that popularity, often equated with the majority's opinion, does not necessarily equate with justice, and a law established by a tyrant does not serve the cause of justice.

Cicero's influence on the Founding Fathers runs deep and has left an indelible mark on the American legal and philosophical landscape. His impact is particularly evident in the concept of "common sense" that underpins American law. Cicero's ideas directly and indirectly influenced thinkers like Locke and Montesquieu, whose writings had a profound effect on the American legal mindset, as well.

Thomas Jefferson, one of the Founding Fathers, directly cited Cicero in his writings and demonstrated how Cicero's teachings influenced his understanding of "public right."⁵ In crafting *The Declaration of Independence*, which was a collaborative effort involving multiple authors, Jefferson drew upon Cicero's teachings on natural rights as a foundational concept. The influence

⁵ A letter to Henry Lee dated May 8, 1825: You will have seen that we have had to encounter from the beginning a faction deeply and hereditarily infected with the doctrines of passive obedience, non-resistance, and absolute monarchy, men who were Samsons in the field and Solomons in the council, but who had to contend against the selfish, the corrupt, the insidious, the factious, the vindictive, the desperate, who were inferior to them in nothing but the energy and perpetuity of their opposition, and who made that opposition ceaseless and unyielding until they were overpowered by the force of public opinion... I am not indeed satisfied with the substitution of even our own authorities for the reason and public right which the essential character of our own government requires. It is not the consolidation, nor the entireness of the authority, but the wisdom and reason of the choice, which makes it rightful or wrongful. Cicero's writings also had an influence in forming the early character of our republic.

of Cicero on *The Declaration of Independence* is reflected in several key ideas and principles that Thomas Jefferson, the primary author, incorporated into the document. Although Jefferson does not directly cite Cicero in the Declaration, the philosophical underpinnings are evident. Cicero's writings on natural law, the rights of individuals, and the justifications for overthrowing tyrannical government can be seen in the Declaration's language and concepts.

Natural Rights: Cicero's belief in natural law and rights, as described in his work *De Re Publica* and *De Legibus*, aligns with the Declaration's assertion that individuals have inherent rights. Cicero wrote about the universal and unchangeable law that applies to all people; a principle reflected in the Declaration: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Government by Consent: Cicero advocated for a government that derives its authority from the consent of the governed, a foundational idea in the Declaration. In *De Re Publica*, Cicero wrote about the importance of the public good and the role of the state in serving its people. The Declaration echoes this by stating that governments derive "their just powers from the consent of the governed."

Right to Overthrow Tyranny: Cicero argued that it is justified to overthrow a government that fails to protect the rights of its citizens and becomes tyrannical. This is mirrored in the Declaration's justification for the American colonies' separation from Britain: "That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness."

These parallels indicate that Cicero's ideas on natural law, the role of government, and the right to resist tyranny had a significant influence on the philosophical foundation of *the Declaration of Independence*, even if not explicitly cited. Jefferson, well-versed in classical philosophy, drew on these ideas to articulate the American colonies' case for independence.

John Adams⁶ and James Wilson, two other influential Founding Fathers, also referenced Cicero's writings, particularly his ideas about "the principles of nature and eternal reason." James Wilson played a crucial role in the success of the Constitutional Convention of 1787 and the subsequent ratification of the *U.S. Constitution*. Wilson was a prominent advocate of Cicero's philosophy of law, and his teachings had a significant impact on other key figures of the era, including George Washington, John Adams, and Thomas Jefferson, who often attended his lectures. Wilson's emphasis on Cicero's ideas regarding natural law contributed to the intellectual underpinnings of the American legal and political system (Nicgorski).

James Wilson⁷ in his book, *Lectures on Law*, cites Cicero multiple times. On natural law, on the foundations of law, and on the social contracts and civil society. We find those remarkable references in *Lectures on Law*, Part I, Chapter II and *Lectures on Law*, Part II, Chapter XII, respectively (the first two subjects are covered in Part I, Chapter II, and the third in part II, Chapter XII).

2.4 Plato's Contribution

In Book VIII of "*The Republic*," Plato delineates five types of constitutions⁸, which can be understood as forms of government in modern terms: aristocracy, timocracy, oligarchy, democracy, and tyranny. Plato's central premise is that the nature of an individual's soul is intimately intertwined with the character of the city or state in which they reside. He posits a reciprocal relationship between the constitution and an individual's character; one shapes the other, and they are mutually reflective. According to Plato, a corrupt system begets corrupt individuals, and corrupt individuals, in turn, establish and sustain a corrupt constitution.

⁶ In a letter to his friend and fellow Founding Father, Thomas Jefferson, dated November 15, 1813, John Adams writes: "As you justly observe, the moral principles and precepts found in the writings of philosophers, of antiquity, are the same with those of the writers of the Christian era. An everlasting foundation of righteousness and truth in nature, which no political structure, no temporal contrivance, can destroy. I could fill volumes with quotations from the Stoics and from Cicero to prove the truth of these observations." This letter shows Adams's acknowledgment of Cicero's influence on his thinking about natural law and moral principles.

⁷ James Wilson, *Collected Works*, 2 vols. (Indianapolis, Indiana: Liberty Fund, Inc., 2007).

⁸ Explaining constitution in platonic context: That it is politeia. It is regime. It is government. It is commonwealth. It is city (*polis*).

Plato in, *The Laws* Book III, firmly asserts that constitutions are not the product of inanimate objects like oak trees or rocks; rather, they emerge as a result of the collective character and values of the people who comprise a city (681c).

In Plato's words, "Then, if there are five forms of city, there must also be five forms of the individual soul" (544e). This concept underscores his belief in the profound connection between the political order and the moral and ethical qualities of its citizens, highlighting the reciprocal influence of society on the individual and vice versa.

Plato posits that human nature tends towards corruption, with individuals often inclined to commit acts of injustice without facing consequences. He observes that the constitutions he outlines tend to deteriorate in a manner reflective of the declining character of the people within them (546a).

Plato's preferred form of government is aristocracy, characterized by rule by virtuous individuals possessing wisdom. In this system, the philosopher-king, who possesses the ability to discern truth and acquire knowledge, is rightfully designated as the ruler. The governance of this state is founded on the principles of wisdom and virtue. To prevent personal desires and the potential for corruption, the king and the soldiers (known as auxiliaries) are forbidden from owning property. Meanwhile, the general populace is permitted to own property and engage in economic activities and production. In this arrangement, the philosopher-king holds the responsibility of governance, the auxiliaries maintain order, and the citizens pursue their everyday lives, driven by their desires, ambitions, and follies. However, Plato acknowledges the impermanence of such a system, as aristocracy tends to degenerate into timocracy.

In timocracy that follows the degeneration of aristocracy, the government is overseen by individuals who are considered inferior compared to the philosopher-king. The auxiliaries, too, are not as well-qualified or virtuous as they were in the aristocratic state. In this form of government, those in power are permitted to pursue their personal interests, and the ruling class is composed of people who value honor and recognition, although they may not possess the sophistication and virtue seen in the philosopher-kings of an aristocracy. This constitution is marked by a mixture of both commendable and less virtuous elements. As the moral standards of

the populace continue to decline, this timocracy eventually gives way to an oligarchy (550a-551b).

In the oligarchic constitution, governance is vested in a small elite of wealthy individuals who exercise control over the impoverished majority. The majority of citizens possess little or no wealth, with the state's resources concentrated in the hands of a tiny fraction of the population. As a result, the rules and regulations of the state are imposed upon the majority to maintain their control, leading to a corrupt system that also corrupts the souls of those within (555c-d).

This situation eventually gives rise to democracy, a form of government that Plato does not hold in high regard. In an oligarchy, living conditions deteriorate to an unbearable level, prompting the impoverished masses to revolt against the corrupt elite in power. This revolt leads to the establishment of a democracy, a constitution characterized by the rule of the poor. However, in such a state, there is often a lack of order and organization. Under the previous oligarchy, people had not received a proper education, and this lack of education exacerbates the challenges faced in a democracy, making the lives of the citizens even more difficult (556e-557a).

In Plato's view, a democracy grants its citizens absolute freedom, allowing them to do as they please. However, this unrestricted freedom leads to the erosion of order within the state, eventually resulting in anarchy. Life in such chaotic conditions is marked by disorder, with everyone vying for power. Eventually, one individual manages to overpower everyone else, ushering in the emergence of a tyrant. Tyranny, in Plato's perspective, is the means by which chaos is suppressed. There exists a hierarchical order among these different constitutions, with each degenerating from the previous system, leading to a deterioration in the overall state of affairs (560d-e).

However, Plato acknowledges in "*Laws*" that in the real world, the ideal of a philosopher-king is unattainable. To address this practical limitation, he devises a compromise that seeks to achieve the highest level of virtue and excellence within the realm of the possible. Plato considers elements of democracy and incorporates them into an oligarchic framework to establish a mixed form of constitution as a solution. This mixed constitution is aimed at achieving the greatest degree of virtue and excellence in human society. According to political

philosopher Ernest Barker, “In ‘*Laws*,’ Plato strives to construct a middle ground between the theoretical ideal and the practical reality. Here, the ideal is not held as an unattainable standard that judges actual states, but rather, it is adjusted and modified to a degree that permits a reciprocal adjustment of real-world states to meet its demands” (Barker, §4.183).

Plato's perspective on law is that it serves as a practical alternative to the ideal of the philosopher-king, which he acknowledges as impractical in the real world, as detailed in "*Laws*." Among various types of governments, Plato considers unconstitutional class tyranny to be the worst and democracy the least dangerous, adhering to the principle of "*corruptio optimi pessima*," as noted by Grube (Grube 282-4).

Plato argues that law is essential because no individual possesses the comprehensive knowledge required to govern. He views lawlessness as a form of savagery, akin to living like animals. Laws are necessary to maintain order in society, and individuals must obey them. Plato recognizes that no one person can both discern what benefits society in its collective existence and be perpetually ready to put that knowledge into practice. One significant impediment to achieving this ideal is that individuals must understand that the primary objective of true political skill is the promotion of the public good, as opposed to personal interests. While private interests tend to fragment a state, law and regulation, founded on general principles, ensure the preservation of the public interest (*Laws* 875a-e).

Furthermore, Plato emphasizes that the lawgiver should aim to obtain the consent of fellow citizens rather than mere sullen obedience. Laws should be viewed as akin to a parent, guiding and nurturing, rather than as tyrannical impositions (Grube 285).

Lastly, in "*Laws*," Plato expresses a major concern: the avoidance of the perfect form of the state. This avoidance stems from the recognition that such a state is susceptible to the worst abuses if it fails to succeed (Grube 287) (*Laws* 711b-d). This highlights his pragmatism and the belief that the pursuit of the best possible state must account for practical realities and potential pitfalls.

2.5 Aristotle's Contribution

Aristotle, in his work "*Politics*," offers a solution to the problem of system deterioration by advocating for a "mixed form of government" that prevents the concentration of power in the hands of a single individual or a specific group. He argues that in such a system, all segments of society with various socioeconomic interests should participate in shaping the government, ensuring that everyone has a stake in the governance of the state.

Aristotle recognizes that there are multiple types of democracies and oligarchies (*Politics* IV.6, 1292b1), and these two forms of government represent opposite ends of the spectrum. However, before discussing "polity," Aristotle categorizes two additional types of government: monarchy and aristocracy. "Polity" or constitutional government, according to Aristotle, is a fusion of democracy, oligarchy, and aristocracy. This concept forms the basis of an Aristotelian mixed form of government, where various elements are combined to create a well-rounded and sustainable system of governance.

Aristotle believes that the distribution of government offices based on merit is a defining characteristic of aristocracy, as virtue is for aristocracy what wealth is for oligarchy and freedom is for democracy. In Aristotle's view, all these elements—virtue, wealth, and freedom—are essential for effective and just governance. Within this mixed form of government, the authority rests with the majority who participate in the government, and decisions are made based on what is deemed good by this majority.

Aristotle's notion of "polity" or constitutional government aims to strike a balance by combining the freedom of the poor, as seen in democracy, with the wealth of the rich, often represented by the nobility. As individuals can claim an equal share in government based on freedom, wealth, and virtue, Aristotle asserts that the blending of these two elements—the rich and the poor—constitutes a polity or constitutional government (*Politics* IV.8, 1294a8-9). Ultimately, Aristotle emphasizes the importance of obeying good laws to establish and maintain a just and effective government.

Aristotle refers to constitutional governments as democracies due to a historical development. He writes, "When cities increased and heavy-armed grew in strength, more had a share in the government; and this is the reason why the states, which we call constitutional governments, have been hitherto called democracies" (*Politics* IV.13, 1297b11). Aristotle

identifies three essential elements that define all states, and any modification in these elements results in a change in the constitution. These elements are: (i) Deliberation about public affairs. (ii) Concerns related to the magistracies, their authorities, and the electoral process. (iii) The possession of judicial power. Any alteration in these elements can lead to a shift in the type of democracy or oligarchy that characterizes a state (*Politics* IV.13, 1298a2).

Equality plays a pivotal role in distinguishing between democracies and oligarchies according to Aristotle's perspective. He espouses the concept of proportionate equality, where individuals are considered equal or unequal based on specific criteria. In democracies, those who are equal in any aspect are treated as equals in all aspects, whereas in oligarchies, individuals deemed unequal in certain respects are considered unequal in all respects. This understanding of proportionate equality introduces a degree of fluidity within these systems.

Aristotle further posits that both democracies and oligarchies have the potential to transform into each other from within. The transformation depends on the unbalanced increase in power favoring one group (either the rich or the poor) over the other (*Politics* V.1, 1301a3). This highlights the dynamic nature of political systems and their susceptibility to change based on shifts in power dynamics within society.

Aristotle introduces the notion of combining different forms of government to enhance political stability. He suggests establishing a government that comprises elements of democracy, oligarchy, and aristocracy, aiming to create a more balanced and enduring system. Aristotle assigns specific tasks and missions to each of these elements based on their inherent characteristics. He envisions three key offices in states: guardians of the law, *propuli* (administrators or managers), and councilors.

According to Aristotle's vision:

- i. Guardians of the law should be entrusted to aristocrats, individuals who possess virtue and wisdom and are best suited to uphold the laws.
- ii. *Propuli*, responsible for the practical administration and management of the state, should be controlled by oligarchs, those who have a vested interest in the economic and social aspects of governance.

- iii. The council, which plays a central role in decision-making, should be composed of and controlled by democrats, representing the interests of the general population (the masses) (*Politics* VI.1, 1317a1-10).

Aristotle believes that in the past, when the number of virtuous individuals in society was limited and city-states were small, a single ruler could suffice. However, as societies grow in both population and size, they tend to reject the rule of a single individual and instead seek a commonwealth governed by a shared constitution. This reflects Aristotle's recognition of the evolving nature of political systems and the need for balanced governance in larger and more complex societies.

3. The State of Nature

The state of nature represents the condition in which humans lived without any external supervision or authority. In this state, each individual was essentially the ruler of themselves, possessing natural power and absolute freedom. This freedom was universal, meaning that every person had the same natural power to do anything allowed by the law of nature. Consequently, in this state, there was no inherent concept of justice. This perspective aligns with Hobbes' view of the state of nature.

However, John Locke presents a different perspective. Locke argues that in the state of nature, individuals are bound by the law of nature, and acting in accordance with this law is just, while violating it is unjust. As a law, Locke asserts that the law of nature must be enforced, and since all individuals are equal, they all have an equal entitlement to take measures to uphold and enforce this natural law. However, this enforcement in the state of nature is not necessarily reliable or impartial, which underscores the need for the establishment of civil society.

In the state of nature, due to the absence of a central authority, any person could potentially take actions against another individual, whether to acquire their possessions or even to threaten their life. This lack of security and the potential for violence made the state of nature an unsustainable and undesirable environment. Consequently, individuals voluntarily chose to leave this state by their own will, which entailed relinquishing some of the powers granted to them under the natural law. This voluntary departure from the state of nature marked the

beginning of the transition to civil society, where a more organized system of governance could provide security and justice for all members.

Locke and Hobbes indeed differ in their views regarding the extent of abandonment of natural rights in the transition from the state of nature to civil society. Locke's perspective involves a more limited relinquishment of natural rights compared to Hobbes, who advocates for a more comprehensive withdrawal of these rights.

Locke emphasizes that the establishment of political society depends on the consent of individuals who come together to form a single society. In this society, they have the authority to set up the form of government they deem suitable (*Second Treatise of Government* §106). Locke goes further to assert that even in older societies that had monarchies, there were occasions when the monarchy was elective. This electoral perspective is a crucial point that distinguishes Locke from Hobbes. Locke's vision is one that allows for greater individual participation and consent in the governance structure.

On the other hand, Hobbes' theory of the original institution of a sovereign involves the voluntary agreement of each citizen with every other citizen to recognize a specific entity (X) as sovereign, whether that be a King, a minority assembly, or a democratic assembly of all citizens. Hobbes' approach places a more centralized and potentially authoritarian power structure at the core of the government.

In American political thought, the acknowledgment of conditional consent by the people to government authority is a foundational principle. This American tradition emphasized individual rights, limited government, and the idea that government should serve the people rather than the other way around. We observe this notion in the *Preamble* of the *Constitution*:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

This preamble encapsulates the idea that government authority is derived from the consent of the governed ("We the People"), and it emphasizes the purpose of government as serving the interests and welfare of the people, consistent with the notion of conditional consent mentioned earlier. Additionally, the principles of individual rights, limited government, and the idea that

government should serve the people are implicit in the preamble and are further elaborated upon in various provisions of the *Constitution*, such as the *Bill of Rights* and the separation of powers among the branches of government.

4. Natural Law and Natural Rights

4.1 Montesquieu

Montesquieu, in "*The Spirit of the Laws*," presents a compelling argument regarding the significance of laws. He acknowledges the essential role of laws for intellectual beings and provides a broad perspective on the concept of laws.

Montesquieu states that laws, in their most abstract sense, are the necessary relationships that arise from the nature of things. He suggests that all entities, whether divine, material, intelligent, or even beasts, have their own set of laws. This implies that laws are inherent to the functioning of the universe and all forms of life.

Furthermore, Montesquieu emphasizes the primacy of the laws of nature, stating that they precede all other laws. These laws of nature are foundational because they derive from the fundamental essence of human existence. To discover these laws, one must consider the condition of human beings before the formation of any society. These laws, which Montesquieu refers to as the laws of nature, serve as a basis for understanding the principles that govern human behavior and interaction in the absence of organized society.⁹

Montesquieu proceeds to categorize these natural laws that govern human behavior. He identifies several fundamental laws that guide human conduct, reflecting the inherent characteristics of individuals in the state of nature.

The First Law: The recognition of an omnipotent entity, often associated with God, is considered the first law. While this may not be universally recognized as the first law by all individuals, it represents an acknowledgment of a higher power that governs human existence.

⁹ It should be noted here that Montesquieu's ideas are founded on the Greek natural philosophy, as are Plato's and Aristotle's. In fact, Montesquieu articulates and restructures what has been said over the past two millennia.

The Second Law: In the state of nature, humans have an intuitive knowledge that their physical well-being is paramount. This instinctual understanding leads to the Second law, which is the innate drive to protect oneself from bodily harm. In this state, individuals are vulnerable and cautious, prioritizing their physical safety.

The Third Law: Another essential natural law is the inclination to fulfill one's basic needs, particularly the instinct to seek nourishment. Montesquieu identifies this as the third law, highlighting the innate drive to satisfy one's fundamental requirements for sustenance.

The Fourth Law: The sexual desire between individuals of opposite sexes is recognized as the fourth law.

Alongside the senses, which enable individuals to perceive and understand the external world, human beings possess the capacity to acquire knowledge. This knowledge provides individuals with a reason to come together and form communities, leading to the desire for social life. These laws, according to Montesquieu, are intuitive and divine in nature. They are fundamental to our survival and well-being and should be considered as inherent rights.

These natural laws reflect the foundational principles that govern human behavior and interactions in the absence of organized society. Montesquieu's categorization helps illustrate the innate instincts and needs that shape human conduct in the state of nature.

Montesquieu provides a guidance on how to recognize these natural laws. He suggests that to understand and identify them, one should reflect on the era when there was no organized society and no external influences. In this state of nature, these natural rights were present and fundamental to human life.

Importantly, Montesquieu asserts that these rights recognized by natural laws should not be taken away by governments. Instead, the role of the government is to ensure and guarantee these rights. No positive law or constitution should override these natural laws. This perspective aligns with the principles reflected in the *Bill of Rights* in the U.S. *Constitution*.

4.2 Locke

Locke's concept of a legitimate government is deeply rooted in the notions of natural law and natural rights. To understand his perspective, it's important to clarify his understanding of natural law:

- a. The nature of Natural Law: Locke's idea of natural law differs from scientific laws that describe physical phenomena. Instead, he views natural law as governing human behavior within a society. It pertains to the normative principles that guide human interactions in a social context.
- b. Aspects of Natural Law: Locke identifies two key aspects of natural law: (i) The first aspect relates to certain elements of reason and conceptual understanding that are necessary to establish a natural law. This implies that natural laws are grounded in rational thought and moral principles. (ii) The second aspect pertains to the specific characteristics that define natural law according to Locke's unique perspective. These characteristics encompass principles of individual rights, liberty, and justice that are inherent to human beings in a state of nature.

Locke's conception of natural law serves as the foundation for his argument regarding the legitimacy of government. He contends that governments derive their legitimacy from their ability to protect and uphold these natural rights and natural laws, rather than arbitrarily infringing upon them. Locke's political philosophy revolves around the idea that legitimate governments are those that respect and safeguard the natural rights and natural law of individuals within a society. Locke's perspective on natural law can be summarized in several key points, according to Lloyd:

- a. Independence and Legitimacy: Natural law is a set of principles that are independent of human society. It does not require society's approval or recognition to be valid. Instead, its legitimacy is derived from God. Furthermore, whether positive (man-made) laws align with natural law is a significant consideration.
- b. Law of Reason: Natural law is often described as the "law of reason." It consists of actions that can be rationally determined and are in accordance with our conscience. Acting in accordance with natural law is essentially an act of reason.
- c. God's Expectations: Locke believes that natural law reflects what God expects us to adhere to. While one can consult religious scriptures to gain insight into natural laws,

Locke sees a harmony between natural law and divine wisdom. He asserts that God's will cannot contradict reason and wisdom.

- d. Universality: Natural law is universal in scope. It applies to all human beings, regardless of their location or the time period in which they live. Everyone is bound by natural law, and individuals must treat each other in accordance with these principles. This universality extends to all laws, whether they pertain to countries, social groups, political parties, or societal behaviors—they should all align with natural law.

Locke's belief in the primacy of natural law forms the basis of his political philosophy. He argues that because natural law exists independently of government, all individuals are equal in their natural rights. These rights include the right to life, liberty, and property. Locke contends that the law derived from nature applies universally to all of humanity, and any deprivation of these rights would result in harm and suffering. Thus, the recognition and protection of natural rights become fundamental principles in Locke's political thought.

Locke's justification of natural law by reason indeed has utilitarian elements, as it serves the practical purpose of ensuring the well-being and preservation of humanity. His perspective can be seen as a blend of secular and theological considerations. While Locke's reasoning is secular and humanistic in nature, he also acknowledges the theological dimension by referencing the law of nature as a declaration of God's will. In Locke's view, the fundamental law of nature is aligned with God's will, and human-made rules or laws must conform to this fundamental law of preserving mankind. This theistic foundation, where the law of nature is seen as an expression of God's intent, underscores the moral and ethical basis of natural law (*Second Treatise of Government* §135.)

Locke's division of government into legislative and executive branches is a foundational idea that influenced the design of the American system of government. The expansion of this concept to include the judiciary branch, as embraced by the Founding Fathers, reflects their commitment to a system of checks and balances. This arrangement was put in place to prevent any single branch from acquiring too much power and potentially leading to tyranny. The concept of separated powers and the idea that each branch should be independent and equal to the others became a cornerstone of American political thought and the U.S. Constitution. It

reflects the American solution of creating a mixed form of government that blends elements of democracy, republicanism, and constitutionalism to protect individual rights and ensure the stability of the state.

4.3 St. Thomas Aquinas

Aquinas, as it is well known, is a devout Christian (Dominican) and an Aristotelian. He mixes the philosopher's works (especially *Politics*, and *Nicomachean Ethics*) with his faith. In the first section of the second part of *Summa Theologica*¹⁰ (or *Summa Theologiae I-II*, Questions 90-108) which is about law, he defines law in general and then gives us the specific definitions of each law that he structurally sub-divides them in an hierarchical order.

He distinguishes between *actus humani* (human acts) and *actus hominis* (acts of a man). Copleston¹¹ (p.201) dissects the two. It is only the former which is the free-willed act of man. This is the act that aims at an end. This process requires reason, hence the moral world and the moral value of Good and Bad. A purely reflexive act is not considered a human act, in Aquinas' terminology. "Moral acts and human acts are the same" (*S.T., Ia, IIae, I, 3*)¹². On this account comes Aquinas' definition of law and the sub-divisions of law.

This is clearly adopted from St. Augustine: "According as their end is worthy of blame or praise so are our deeds worthy of blame or praise" (*De Mor. Eccl. et Manich. ii, 13*). This is a quote that St. Thomas relies on upon his answer to Question I in Article 3. It is extracted from St. Augustine's *De moribus ecclesiae catholicae et de moribus Manichaeorum*¹³.

Aquinas shares the view with Aristotle that it is the reason which distinguishes man from animal. Thus, it is the reason that enables him to act according to comprehension of an end, consciously. Man is capable to act above instinctive behavior. Every man can act, rationally. An act for an end is an act for a good. Now it is not clear that every act of man for a good is necessarily compatible with the objective good for man. This is the filter Aquinas implies to distinguish

¹⁰ Thomas Aquinas, *Summa Theologica (Complete & Unabridged)*, trans. Fathers of the English Dominican Province (Coyote Canyon Press. Kindle Edition., n.d.).

¹¹ F. C. Copleston, *AQUINAS* (Pelican Books, 1955).

¹² First part of the second part of *Summa Theologica*, Question 1, Article 3: Whether Human Acts Are Specified by Their End?

¹³ *The Customs of the Catholic Church and the Customs of the Manichees* [387/389]. FC. A general apologetic treatise comparing the two ways of life (O'Donnell).

between man's rational acts. He raises the concept of 'right reason'. The reason for directing man's act to the attainment of the objective good for man. Here St. Thomas distinguishes between the rational act of a burglar and a hard-working man's act. Both men act, rationally, but only one serves the objective good of man. Therefore, the act of a burglar is not within the 'right reason' realm.

"Right reason" is another terminology for "reason" among the pre-Socratics and its continuation among the Stoics (Cicero); and "virtue" for Socrates, Plato, and Aristotle, indeed. What we have observed throughout history (up until Aquinas) is mainly the change in language, not the subject and the content. Now, Aquinas' objectification of the law is a fresh development in our quest. That the theory of natural law will be transformed into actual law.

Following this development is 'obligation' and the concept of law. Aquinas divides the concept of law into two: law in general, and its parts. He makes three points concerning law in general: (i) its essence, (ii) the different kinds of law, (iii) its effects. He makes four points of inquiry: (1) whether the law is something of reason, (2) concerning the end of the law, (3) its cause, (4) the promulgation of the law. This is the bulk of his argument (*I-II, Q. 90, Art. 1-4*).

The First Article is about something about the reason. His response is, "I answer that, Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for *lex* (law) is derived from *ligare* (to bind) because it binds one to act. Now the rule and measure of human acts is the reason, which is the first principle of human acts, as is evident from what has been stated above (*Q. 1, A. 1, ad 3*); since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher (*Phys. ii*)."

Law is something about the reason. The reason as mentioned earlier, in accordance to Aristotle and Aquinas, is the right reason which leads to virtue to objectify good for man, whether in his person or his community. This is the subject of the second Article. The last end as the object of the practical reason is of the human life to be bliss or happiness. The law must provide man happiness (quite Aristotelean). This should lead to universal happiness. Here Aquinas relies on Aristotle again and refers to (*Ethics v. 1*), that the universal happiness embodies the body politic since the state is a perfect community (*Polit. i, 1*). The law is chiefly responsible for the common good (this is the development of the second Article).

4.4 Aristotle

The word *nomos* has some connection with commanding, as it is evident in Greek literature. Aristotle attributes a character of order to law, “Law (*nomos*) is a system of order (*taxis*), and good government (*Eunomia*) must therefore involve a general system of orderliness (*eutaxia*)” [*Politics* 1326a25].¹⁴

Aristotle, in his *Ethics*, reiterates the same notion when he says, “This is why we do not allow a *man* to rule, but *rational principle*, because a man behaves thus in his own interests and becomes a tyrant [1134a32].¹⁵ In the *Athenian Constitution*, he praises Solōn for ruling according to the law and not taking personal advantage.

The importance of *telos*

The concept that clearly links politics and ethics together is what Aristotle called *telos*. The word *telos* means something like purpose, goal, or final end. According to Aristotle, everything has a purpose or final end. If we want to understand what something is, it must be understood in terms of its end. What concerns us is the *telos* of human beings. What is it, then, that human beings are meant by nature to become in the way that knives are meant to cut, and acorns are meant to become oak trees? According to Aristotle, we are meant to become happy. Living happily requires living a life of virtue. Someone who is living a life that is not virtuous or morally good is not living a happy life, no matter what they might think. They are like a knife that does not cut.

The three Aristotelian components all possess individual characteristics. The understanding of *Arête*, *Eudaimonia*, and *Phronesis* all vary from agent to agent. Is there any universal definition of rules derived from *Arête*, for instance? Excellence in what we do will have specific results that may and more likely will differ from another individual’s (agent) act. Moreover, these two agencies may conflict with each other. Any agent can uniquely define *arête*. This raises a question for us. Can we develop any rule applicable to all based on *arête*? It seems we will require implementing selection among the traits concerning *arête*. Al Capone was the best in what he did.

¹⁴ Aristotle, *Politics*, trans. Sir Ernest Barker (Oxford University Press, 1995).

¹⁵ Aristotle, *The Nicomachean Ethics*, trans. David Ross (Oxford University Press, 1998).

The second component (*Eudaimonia*) also bears an individual trait or characteristic; hence there is subjectivity in this concept. There is a problem in generalizing this component to make a universal law. Whose happiness is to be considered, and whose happiness is more just than the others'?

However, *Phronesis* (the third component) is about moral or practical wisdom. It provides somewhat of a groundwork on the goodness in a social platform because the practical wisdom of doing good or doing the right thing implies avoiding harm. This could be considered an objective component in virtue ethics for constructing a universal principle. *Phronesis* makes the process of constructing universal rules vibrant and organic. It will grow and evolve as the society of humankind evolves. We will be connecting Aristotelian *Phronesis* to the concept of the "mixed form of government," which is also an Aristotelian term. This development serves the *telos* for the *polis* to Aristotle, hence, the direct connection of his ethics to his politics.

We, in our inquiry, are concerned about human *telos*. It should be connected with *politeia*. Aristotle would articulate this concept of human *telos* in his *Politics* to establish a balanced and sustainable political community. Happiness requires virtues, and a person needs them for his or her happiness. He further articulates that human happiness is possible only in a *politeia*, hence the connection between his ethics and politics.

There is also another key concept, which is *logos*. It means both speech and reason. We believe Aristotle considers both meanings of the word simultaneously. *Logos* is the sole ability that makes us unique in nature. No other animal possesses this power. We can discover what is right and what is wrong. This *logos* defines and shapes our *telos*. It helps us to discover virtues and become virtuous. Moreover, it helps us incorporate our *telos* into the *politeia* that Aristotle advocates. Aristotle believes certain conditions are required for things in nature to fulfill their *telos*.

We observe in the *Ethics* [1103a30]: "We become just by the practice of just actions, self-controlled by exercising self-control, and courageous by performing acts of courage ... Lawgivers make the citizens good by inculcating [good] habits in them, and this is the aim of every lawgiver; if he does not succeed in doing that, his legislation is a failure. It is in this that a good constitution differs from a bad one." We can see how his ethics and politics are connected or perhaps intertwined, meaning they necessitate each other. Virtue ethics teaches and prepares

people to act in the political community in a way to be virtuous to build such a political community or *politeia*. Establishing a constructive connection with Aristotle's ethics is vital to understand his special *politeia*.

Aristotle begins *Politics* by defining its subject, the city or political partnership. Doing so requires him to explain the purpose of the city. Aristotle says, "It is clear that all partnerships aim at some good, and that the partnership that is most authoritative of all and embraces all the others does so particularly, and aims at the most authoritative good of all. This is what is called the city or the political partnership" [1252a3].

The purpose of the city (*polis*)

Aristotle defines the political community as a partnership, and as partners, citizens seek the common good. The most authoritative and highest good of all, for Aristotle, is the citizens' virtue and happiness and the city's purpose.¹⁶ In the city, each individual as a citizen achieves excellence. Each one fulfills his *telos*, and collectively they help to fulfill the city's *telos*, as well. That is the partnership.

Aristotle further distinguishes people from each other, "One who is incapable of participating or who is in need of nothing through being self-sufficient is no part of a city, and so is either a beast or a god" [1253a27]. We cannot be gods, but indeed, we can become beasts: "For just as man is the best of the animals when completed, when separated from law and adjudication he is the worst of all" [1253a30]. There are two conditions that aid us in avoiding becoming beasts. One is the law, and the other is adjudication. Moreover, these two means are only available in the city (*polis*).

Aristotle makes an analogy. Our relationship with the city is comparable to the relationship of a part of the body to the whole body. Death or destruction of the body would also mean the destruction of each of its parts. Aristotle says, "If the whole body is destroyed, there will not be a foot or a hand" [1253a20]. It means if the city is destroyed, all its citizens will be

¹⁶ Clayton, Edward. "Aristotle: Politics." *Internet Encyclopedia Of Philosophy*. Accessed November 27, 2022. <https://iep.utm.edu/aristotle-politics/>.

destroyed or ruined but not the other way around. The city can survive without some of its citizens.

Aristotle believes the city is natural. He gives a history of how cities come into being, by individuals pairing and making families. Families out of natural necessities and needs get together for their betterment, hence the creation of villages. Moreover, the collection of some villages makes cities provide for man whatever he needs. He says, “Every city, therefore, exists by nature, if such also are the first partnerships. For the city is their end.... [T]he city belongs among the things that exist by nature, and ...man is by nature a political animal” [1252b30-1253a3]. If the history that he has described is correct, Aristotle points out, and then the city is natural and not purely an artificial human construction since we have established that the first partnerships which make up the family are driven by natural impulses.

Logos is the natural means given to us to make a living together (family, village, city) possible, and the key to such purpose is the partnership. *Logos* helps us to make laws. Aristotle writes, “[The virtue of] justice is a thing belonging to the city. For adjudication is an arrangement of the political partnership, and adjudication is judgment as to what is just” [1253a38]. We make the right laws. We act with justice and exercise the virtues that allow human society to function.

Cities are preserved not by complete unity and similarity but by “reciprocal equality.” In such cities, “all cannot rule at the same time, but each rule for a year or according to some other arrangement or period of time. In this way, then, it results that all rule...” [1261a30]. This topic, the alternation of rule in cities where the citizens are free and equal, is an integral part of Aristotle’s thought (Clayton).

In order to observe a sense of the concept of the Republic, one needs to consider the notion of the citizen to Aristotle, “The citizen in an unqualified sense is defined by no other thing so much as by sharing in decision and office” [1275a22]. Later he said that “whoever is entitled to participate in an office involving deliberation or decision is, we can now say, a citizen in this city; and the city is the multitude of such persons that is adequate with a view to a self-sufficient life, to speak simply” [1275b17]. Aristotle then claims a citizen is more likely in a democracy, “above all in a democracy; he may, but will not necessarily, be a citizen in the others” [1275b4]. This participation is direct in the assembly. Just voting for representatives is not enough.

Citizenship, to Aristotle, requires direct involvement in politics. All citizens are responsible for upholding the laws by serving on juries and also by holding offices.

Of the hallmark of Aristotle's most important points: "[W]hen [the regime] is established in accordance with equality and similarity among the citizens, [the citizens] claim to merit ruling in turn" [1279a8]. This rotation of holding offices by the citizens and the mixed groups of people of all walks of life shape and form his desired *politeia*, which in essence, is the mixed form of government, and that is the foundation of republicanism.

To Aristotle, the correct regimes are monarchy, aristocracy, and polity. All these regimes have a purpose or *telos*: the common good. On the other hand, flawed or deviant regimes are tyranny, oligarchy, and democracy because they are for the interests of one, the few, or the many by violating the interests of others. Now we understand what tyranny of the majority means and what the filibuster law means.

It is interesting to note that "the common good" is different from the "interest"; even the interest of the many does not correlate with the common good necessarily because the nature of interest is exclusive. Even in a democracy, the interests of the many are considered exclusive, hence not the common good.

Aristotle says the oligarch and democrats offer judgments about justice, but they are not correct because "the judgment concerns themselves, and most people are bad judges concerning their own things" [1280a14]. We see now that the common good is different from the interest to Aristotle.

Another crucial point that Aristotle makes is about the law. He invests heavily in the notion of the rule of law. "One who asks the law to rule, therefore, is held to be asking god and intellect alone to rule, while one who has asked man adds the beast. Desire is the thing of this sort, and spiritedness perverts rulers and the best men. Hence law is intellect without appetite" [1287a28]. Thus, whatever regime is in power should, to the extent possible, allow the laws to rule. He emphasizes law and the rule of law to the degree that without laws, we do not have a regime or *politeia*. "For where the laws do not rule, there is no regime" [1292b30]. Without laws and government, all we have is the master and slave relationship. There is no citizen, either.

Aristotle explains and emphasizes polity as a desired form of widely attainable government, “Simply speaking, the polity is a mixture of oligarchy and democracy” [1293a32]. Polity is one of the correct regimes, and it occurs when the many rule in the interest of the common good of the political community as a whole. Aristotle believes the problem with democracy as the rule of the many is that they rule in their own interest regardless of the common good. They exploit the wealthy and deny them political power. Nevertheless, a kind of democracy in which the interests of the wealthy were taken into account and protected by the laws, as well as the many, would be ruling in the interest of the community as a whole, and it is this that Aristotle believes is the best practical regime.

As one of the essential elements of creating a polity, Aristotle's advice is to combine the institutions of a democracy with those of an oligarchy. It is a mixed form of government he is after. “The defining principle of a good mixture of democracy and oligarchy is that it should be possible for the same polity to be spoken of as either a democracy or an oligarchy” [1294b14]. The regime must be said to be both, and neither, a democracy and an oligarchy, and it will be preserved “because none of the parts of the city generally would wish to have another regime” [1294b38].

5. Madison and the Structure of the Constitution

Madison's ideas in *The Federalist 51* are indeed heavily influenced by Montesquieu's concept of the separation of powers, which Madison often referred to him as the "oracle." Madison's aim was to establish a system of government that would effectively control and limit the abuses of government while recognizing the inherent self-interest of individuals and institutions within it.

Madison's core principle in *The Federalist 51* is the concept of checks and balances, where each branch of government is designed to have its own self-interest in protecting its constitutional powers and preventing encroachment by other branches. By creating this system of interlocking interests, Madison believed that ambition could be made to counteract ambition, ultimately serving as a safeguard against tyranny.

Madison's emphasis on the need to control government abuses reflects his understanding of human nature and the potential for those in power to overreach. He recognized that a

government must have the authority to govern and enforce laws, but it should also be constrained by the same Constitution that grants it power. This dual nature of enabling and obliging the government to control both the governed and itself is a central theme in his thinking.

In the American system, Madison saw a delicate balance between the national and federal governments. While the national government possesses certain powers over citizens, the federal system also recognizes the sovereignty of individual states and their role in the broader constitutional framework. This mixture of national and federal elements was designed to prevent the concentration of absolute power in any one government entity and to ensure that both levels of government serve as checks on each other.

Madison's ideas in *The Federalist 51* continue to be integral to American political thought and are reflected in the structure and functioning of the U.S. government, which is characterized by its system of separation of powers and checks and balances.

Institutional devices that are embedded in the *U.S. Constitution* are instrumental in achieving and maintaining the foundational principles of the American government. These mechanisms help prevent the concentration of power, safeguard individual liberties, and ensure the effective functioning of the government:

1. **Bicameralism:** The division of Congress into two chambers, the House of Representatives and the Senate, reduces the risk of legislative dominance by any one body. Each chamber represents different constituencies and has distinct powers, promoting a balance of interests and viewpoints.
2. **Presidential Veto:** The President's ability to veto legislation passed by Congress provides a check against potential overreach by the legislative branch. It allows the President to defend their priorities and ensure that proposed laws align with the nation's best interests.
3. **Senate's Role in Appointments and Treaties:** The Senate's role in confirming presidential appointments and ratifying treaties serves as a vital check on the executive branch. This process ensures that key officials and international agreements have broader support and scrutiny.

4. Judicial Independence: The Constitution guarantees federal judges' independence by specifying their tenure during "good behavior" and securing their "compensation." This independence is crucial for judges to make impartial decisions without fear of political repercussions.
5. Judicial Review: The power of judicial review, established through landmark cases like *Marbury v. Madison*, allows federal courts to determine the constitutionality of laws and executive actions. It empowers the judicial branch to check and potentially invalidate actions by the other two branches that violate constitutional principles. However, it must be noted that this mechanism was not originally envisioned; rather, it grew organically as the result of Section 2 of Article III of the *Constitution*. It is Chief Justice John Marshall's legacy and contribution.
6. Impeachment Power: Congress's authority to impeach and remove presidents, federal judges, and other officials provides a mechanism for rooting out corruption and abuse of power within the government. It ensures accountability and upholds the rule of law.

These institutional devices, among others, reflect the Founding Fathers' commitment to creating a government that is both effective and restrained, protective of individual rights and liberties, and capable of adapting to the challenging needs of the nation. They continue to be integral to the functioning of American democracy and the preservation of its core principles.

Interpreting *The Bill of Rights* ensures individualism within the government framework and structure. This individualism is the key to interpret issues within the Law. They are to guarantee the moral principle of fairness within the government to protect the individual rights. I believe the 14th Amendment also should be considered as an extension of The Bill of Rights. It is directly linked to the concept of citizenship under *The Constitution*. Such protection is provided by the western moral philosophy. In my view it is vested in Aristotelian Virtue Ethics. It asserts that citizens should live based on their virtues in the *Politeia*. *The Constitution* endorses this Aristotelian position. Knowing the fact that to Aristotle ethics and politics are intertwined, *The Bill of Rights* and the 14th Amendment can be better understood.

6. Conclusion

The Founding Fathers were indeed deeply concerned about the potential degeneration of government in the newly formed United States. Their understanding of political philosophy, drawn from thinkers like Hobbes, Locke, Montesquieu, Plato, Aristotle, Cicero, and Aquinas (to name a few) informed their approach to structuring a government that would prevent tyranny and abuse of power. As a result, they crafted a unique system of government designed to safeguard against the concentration of power and the erosion of individual liberties.

Madison's contributions (or Hamilton's as the other potential author), outlined in *The Federalist 51*, were instrumental in addressing the problem of power degeneration. He proposed a system of mixed government that combined elements of both national and federal governance. This approach was aimed at creating a balance of authority, where neither the central government nor the individual states would dominate completely.

Moreover, Madison's emphasis on the separation of powers and the independence of the three branches of government—executive, legislative, and judicial—played a crucial role in preventing the tyranny of a single branch. Each branch serves as a check on the others, ensuring that no single entity becomes too powerful and that the government remains accountable to the people.

By carefully crafting the Constitution with these principles in mind, the Founding Fathers sought to establish a government that would withstand the test of time and remain true to the principles of liberty, justice, and the protection of individual rights. Their wisdom and foresight continue to shape the American system of government and serve as a model for democratic governance worldwide.

Bibliography

1. A. Hamilton, J. Jay, J. Madison. *The Federalist Papers*. Prometheus Books. 2000.
2. Aquinas, Thomas. *Summa Theologica (Complete & Unabridged)*. Translated by Fathers of the English Dominican Province. Coyote Canyon Press. Kindle Edition., n.d.
3. Aristotle. *Politics*. Translated by Benjamin Jowett. Introduction, analysis, and notes by H. W. C. Davis. Dover Publications. 2000.
4. ———. *Politics*. Translated by Sir Ernest Barker. Oxford University Press, 1995.
5. ———. *The Nicomachean Ethics*. Translated by David Ross. Oxford University Press, 1998.
6. Barker, Ernest. *The Political Thought of Plato and Aristotle*. Dover Publications, Inc. 1959.
7. Cicero, Marcus Tullius. *The Laws*. Translated by Niall Rudd. Oxford University Press, 1998.
8. Copleston, F. C. *AQUINAS*. Pelican Books, 1955.
9. Clayton, Edward. “Aristotle: Politics.” *Internet Encyclopedia Of Philosophy*. Accessed November 27, 2022. <https://iep.utm.edu/aristotle-politics/>.
10. G. M. A. Grube. *Plato’s Thought*. Hackett Publishing Co., Inc. 1980.
11. Hobbes, Thomas. *Leviathan*. Edited by C.B. MacPherson. Penguin Classics. 1968.
12. Hyneman, Charles S., and Donald S. Lutz, eds. *American Political Writings During The Founding Era 1760-1805*. Vol. I. 2 vols. Indianapolis, Indiana: Liberty Fund Inc. Kindle Edition., 1983. www.libertyfund.org.
13. Jefferson, Thomas. “From Thomas Jefferson to Henry Lee, 8 May 1825” <https://founders.archives.gov/documents/Jefferson/98-01-02-5212>
14. Legal Information Institute [LII]. “US Constitution Annotated,” *Cornell Law School*. Accessed at <https://www.law.cornell.edu/constitution-conan/article-1/section-1/separation-of-powers-and-checks-and-balances#>, December 28, 2018.
15. Lloyd, D. A. Thomas. *Locke on Government*. Routledge. 1995.
16. Locke, John. *Two Treatises of Government and A Letter Concerning Toleration*. Edited by Ian Shapiro. Yale University Press. 2003.
17. Montesquieu. *The Spirit of the Laws*. Translated by Anne M. Cohler. Basia Miller. Harold Stone. Cambridge University Press. 1989.
18. Nicgorski, Walter. “Cicero and the Natural Law,” *The Witherspoon Institute*, 2011. Accessed at <http://www.nlnrac.org/classical/cicero>, December 12, 2018.

19. Peardon, P. Thomas. *An Introduction on Second Treatise of Government*. Prentice-Hall. 1953.
20. Plato. *Complete Works*. Edited by John M. Cooper. & Associate editor D. S. Hutchinson. Hackett Publishing Co., Inc. in 1997.
21. Shklar, Judith N. "Ideology Hunting: The Case of James Harrington." *The American Political Science Review* 53, no. 3 (1959): 662-92. DOI:10.2307/1951937.
22. Tuck, Richard. *Natural Rights Theories: Their Origin and Development*. Cambridge University Press, 1979.
23. Wilson, James. *Collected Works*. 2 vols. Indianapolis, Indiana: Liberty Fund, Inc., 2007.