

## *What Is the State of the American Regime: A Response*

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The three papers interpret the American regime in different ways. Stack thinks that the American regime is the best of available alternatives, and may even be fundamentally healthy. Shankman finds the regime presently in ill health, but suggests how a neglected thread of American political thought (natural law jurisprudence) could help to restore its health. Holloway, while silent on the direct issue of the American regime, argues that modernity is deeply flawed and thus suggests that the American regime is systemically unhealthy. Phillips addresses these papers in turn.

As I understand the papers, they are advancing the following arguments: Stack thinks the American regime is, at a minimum, the best of all viable alternatives, and, at its best, may even be fundamentally healthy. Shankman contends that, while presently unhealthy, it might be restored to health if we can recover a significant, albeit politically secondary, thread of American political thought. Finally, while Holloway is silent about the American regime, his paper leads one to wonder if the American regime was ever healthy.

I will begin with Stack. His attempt to defend Hamilton from the charge of encouraging Americans to become avaricious is partially successful. He clearly demonstrates that Hamilton was consistently and outspokenly opposed to the avaricious *public* servant. His argument is not convincing, however, that Hamilton does not wish to encourage avaricious behavior in *private* life.

Given its importance to our conversation, we must return to the disputed passage from *Federalist* 12:

The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares. By multiplying the means of gratification, by promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise, it serves to vivify all the channels of industry and to make them flow with greater activity and copiousness. The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer--all orders of men--look forward with eager expectation and growing alacrity to the pleasing reward of their toils.

Stack claims that Hamilton's reference to "the precious metals" as "those darling objects of human avarice and enterprise" should be understood as nothing more than "a statement of fact" which "he neither commends or condemns." Even if we accept Stack's interpretation, one cannot help but notice that Hamilton's evaluation of avarice has shifted from vice to fact. Moreover, it is a fact which clearly has important and beneficial consequences. Commerce is "useful", "productive" and a "primary object of their [the enlightened statesman's] cares." Indeed, it is precisely "avarice and enterprise" [which] "enlivens all the channels of industry," i.e., commerce. Since, as Stack correctly notes, Hamilton wished to increase national wealth, then it is reasonable to conclude that avarice, for Hamilton, may not always be condemnable and may even be worthy of praise, albeit *sotto voce*.

What explains Hamilton's reticence to explicitly either commend or condemn private avarice? On the one hand, Hamilton wishes to encourage the development of a commercial society to increase the nation's wealth. A commercial society, however, requires its citizens to be at least mildly avaricious, i.e., to want more than one needs. A commercial society depends upon consumers and producers alike who are dissatisfied with their material lot in life and wish to satisfy through their industry, labor and activity, their "desire to acquire." Minus this desire, the wheels of commerce would turn much more slowly and national wealth would not be increased as quickly.

Thus, Americans' mildly avaricious quest, both then and now, for such material possessions as better clothing, housing and transportation are both good for us (as it satisfies our desires) and the economy. On the other hand, however, Hamilton is well qualified to recognize the dangers of avaricious behavior. As Stack calls to our attention, Hamilton witnessed and was appalled by the avaricious behavior of merchants who wished to extract an exorbitant profit from the Revolutionary Army. And finally, Hamilton knew, as exemplified by his evaluation of the vices of rich and poor, that some, perhaps even many, men would practice the vice of avarice without encouragement from anyone. Given all of the above, I would argue that Hamilton knew he faced a delicate task. Aware of the dangers, but desirous of the benefits, Hamilton adopts a nuanced and politically defensible stance: He warns his fellow citizens of that which is always vicious and particularly destructive of republican government, while not unduly encouraging a behavior which might, if pursued to unseemly ends, harm the national interest.

If this is correct, we need to know how Hamilton hopes to keep his fellow citizens "mildly" rather than voraciously avaricious. Stack states that Hamilton is depending upon the commercial virtues [of] . . . diligence, thrift, foresight, sobriety, prudence and strenuous enterprise that would help to maintain 'a portion of virtue among mankind.'" If this is the extent of Hamilton's remedy,

contemporary America provides abundant evidence that it was not (nor could it be) sufficient.

Like Hamilton, contemporary defenders of the commercial society hope that these virtues will help to maintain a portion of virtue of humanity and are quick to defend them against the scorn heaped upon them by the intelligentsia. Further, they point to their continuing existence as evidence that Americans have not wholly abandoned traditional morality.

These points are not without merit or truth. Many adults try to cultivate these virtues and respect those who possess them. On a purely personal level, individuals who possess such virtues are typically more pleasant to know and work with than people who lack these virtues. (In fact, imagine how much more pleasant and easy life would be, especially in big cities, if everyone possessed these virtues alone!) Finally, a quick glance at our booming economy demonstrates that these virtues are not in short supply.

They do, however, possess two limitations. First, while avarice may undermine the practice of these virtues, none of them are necessarily opposed to avarice. Thus, while my desire to have more than I need may lead me to abandon the practice of thrift or prudence, prudence and thrift can just as easily assist me in satisfying my avaricious desires. Thus, I can either spend more than I make to satisfy my avaricious desires for a better house, clothes or car or I can formulate a prudent and thrifty financial plan which will enable me to buy a lavish home in ten years. Foresight, sobriety, prudence, thrift and strenuous enterprise can serve a variety of very different ends. Put bluntly, not only the priest or the produce manager, but the pornographer and the abortion doctor may possess these virtues.

If this is true, Hamilton as well as all contemporary defenders of the commercial society face a difficult challenge, which is: How can one encourage the practitioners of commerce to pursue moral rather than immoral ends? This challenge is made all the more difficult by the fact that commerce itself does and cannot help us meet this challenge. The questions commerce can answer are--how can the best product be made? or what is the potential market for this product? It can not, however, help us answer such questions as-- should I make this product? or should there be a market for this product? Such questions can only be answered by something which transcends the market, e.g., government or religion. A government may outlaw, for instance, certain markets, such as the one for human body parts. A religion may warn its adherents that certain professions place one's soul in danger. If the preceding is correct, then those who wish to have both a moral and a commercial society need to keep such institutions strong. This, however, is not an easy task, and it is made all the more difficult by the success of commerce. (In what follows, I will for the sake of brevity, consider only the relationship between commerce and government.)

The problem is that the success of commerce serves to undermine our attachment to government by encouraging us to view the latter through the lens of the former. That this happens can be illustrated through examining our political conversations. One common complaint made of government is its inefficiency. To solve this problem, the suggestion is made to run government as if it were a business. Those, such as Ross Perot's Reform Party, who advance this contention make a flawed but intuitively appealing argument. They claim government inefficiency can be explained by the fact that it does not have any competition. Lacking competition, it is not harmed in any way by its inefficiency and thus does not actively seek ways to improve its "product." A business, on the other hand, is subject to competition and thus must improve its product. To do this, it must find ways to improve the efficiency of its operation. In doing so, it delivers a better quality product at a more competitive price. If government followed the example, we would have a leaner, less expensive, yet more efficient government. Another common opinion in American politics is that government's primary task is to secure economic prosperity. As we heard repeatedly during President Clinton's impeachment, what mattered was not his immoral and illegal behavior, but the fact that he presided over a period of economic growth.

While these two opinions are quite different, neither attempts to employ government to guide commercial behavior. To the contrary, the former holds business as a model for government while the latter contends that government has done its job if it secures economic prosperity.

To return to Hamilton, there is no doubt that he would regard both opinions with alarm. As a serious statesman, he knew that government could not be judged as a success because it was either efficient or secured the conditions for economic prosperity. The question however, is first, whether Hamilton recognized that these were the potential dangers of the commercial society and second, what, if anything, he thought could be done to ward them off. It is to these questions that I believe Stack should next direct his attention.

Turning to Shankman, I will focus my comments upon her second "audacious" suggestion--that legal scholars and attorneys should take up Justice Thomas' plea and try to reinvigorate the privileges and immunities clause. This suggestion contains much which is appealing. Indeed, the quality of our jurisprudence would certainly improve if justices "discovered" rather than "made" law and thus began to think more prudently rather than abstractly. Likewise, it would certainly be a happy day indeed if the Court decided that the privileges and immunities clause mandated the protection rather than the destruction of life. And finally, I would not be so bold as permanently to rule out the possibility that the Court might even do as Shankman suggests. While not likely, the Court has surely taken stranger turns.

Yet, I do not know if this suggestion can be successful for two reasons. The first is that I am not convinced that the American founding is animated by the thought of *both* Aristotle and, by extension, St. Thomas *and* Hobbes and Locke. To be sure, one cannot argue with the fact that the Declaration does gesture towards prudence when it asserts that "governments long established should not be changed for light and transient causes." Furthermore, Shankman is correct that the "bulk of the Declaration is not taken up with the theoretical abstractions of the first three paragraphs; most of it encompasses the building of the case that the causes of the revolution were not light and transient." First, it is not at all clear that the Declaration's mention of prudence is meant to "temper" the right to revolution. After all, the right to revolution can be exercised *whenever* the government does not protect our rights to life, liberty and the pursuit of happiness. Thus, while it is true that human beings are prone to accept the abuses doled out by a repressive government, the Declaration states that we need not and, in fact, should not. Second, it is odd to enlist Aristotelian and Thomistic prudence in this situation, as neither thought human beings had a right to revolution. Finally, while Shankman is correct that the great bulk of the Declaration is not taken up with a discussion of our abstract rights, it is also true that what Americans remember of the Declaration is its discussion of our rights. This brings me to my second concern.

Even if a compelling case can be made that the founding does contain elements of both, we must still wonder why it has happened that the thought of Hobbes and Locke has all but obliterated the thought of Aristotle and Aquinas in American political practice. Why has "rights talk," to borrow from Mary Ann Glendon, driven out "prudence talk"?

While a full answer is clearly beyond the scope of this paper, I would suggest that part of the answer lies in the fact that a regime devoted to the protection of modern rights actively discourages its citizens from asking prudential questions. The question which we, following the Declaration, typically ask is--are my rights being protected?--not what is the best course of action in this particular set of circumstances? To ask and answer the latter question, we would need both experience and the willingness to engage in political speech. Without experience we will be unaware of some of the potential courses of actions which can be taken, as well as the potential harmful and helpful consequences inherent in each alternative.

Likewise, since the answer is not clear or immediately apparent, prudence requires that we be willing and able to engage in political speech. Thus, all of the participants in the debate must be willing to advance arguments and counter-arguments and be willing to revise their position according to the persuasiveness of these arguments. The question we ask, however, does not either require experience or encourage political speech. Because our rights are "self-evident," everyone can ask and answer this question. Further, the

invocation of a right is not designed to further political speech, but rather bring it to an end. The classic example of this is *Casey*, in which the Court practically begs pro-lifers to cease roiling the political waters and come to terms with the fact that abortion is a constitutional right.

If the above is at all persuasive, Shankman's proposal, to be effective, faces a much more difficult hurdle than convincing five judges to take up her suggestion.

Here is why. If I understand her argument correctly, Shankman hopes to encourage us, through the courts, to think prudently and thus moderate our dangerous attachment to abstract rights. While laudable, I am not certain that an injection of prudence into our political debates will help us very much because our devotion to rights will overpower any attempt to reinvigorate prudential thinking. Indeed, I am tempted to think that one can have either modern rights or prudence, but not both. In fact, Shankman's paper encourages such a thought. As she notes, prudential thinking was once a vital, if secondary, aspect of American political thought. However, as we became more and more concerned with first economic and then civil rights, our concern with prudence disappeared. Thus, to try and reintroduce prudential thinking without directly confronting our commitment to modern rights is perhaps to fight a battle one is almost certainly going to lose.

Having said this, however, I think Shankman's first suggestion--that Catholics (and other interested parties) construct an alternative political science--is not only worth pursuing, but stands a better long-term chance of success. Of course, many might find this hard to believe, but this suggestion has one clear advantage over the other and that is that it would require us to present a thorough and sustained critique of modern rights, which is not something which the courts are likely to do. Moreover, such a critique would provide a real alternative to the way in which we think about politics today.

My comments on Holloway's paper will not focus upon whether or not his interpretation of Hobbes and Locke is correct. There are two reasons for this. The first is that, to my mind, Holloway has presented a clear, compelling and coherent argument in defense of his claim that "[t]he seeds of the culture of death are contained in modern political philosophy." Contrary to what many, myself included, may have thought, Holloway has demonstrated that Hobbes and Locke do not provide a basis for the protection of life, but instead lay the intellectual groundwork for its destruction. The second is that I think that there are two questions: 1) Does Holloway overstate the influence of Hobbes and especially Locke on American political thought and practice? and 2) Assuming that Holloway is correct about Hobbes and Locke, should his argument make any difference to the way in which American Catholics present their public arguments for a culture of life?

As for the former, some might contend that Holloway's paper presents a very persuasive interpretation of Hobbes and Locke, but is weak in its understanding of the relationship between political philosophy and political practice. That is, one may reasonably argue that there are a number of other influences, including Christianity, which have helped shape American political thought and practice. As such, Hobbes and especially Locke can not have been as crucial in forming our thought and practice as Holloway contends. On one level, this is surely correct. American political thought is a menagerie of competing, even contradictory influences. Given this, the attempt to identify Americans as simply "Lockeans" is an attempt to reduce the irreducible.

This reasonable objection, however, should not obscure two important points. The first is that the Lockean idea of comfortable self-preservation appears to exert a considerable hold upon many Americans. As noted earlier, many Americans appear to regard America as a success if it simply secures material prosperity for the citizenry. Furthermore, even if one is tempted to think that the emphasis upon Locke is still overblown, it should be disconcerting to Catholics that our political thought, with the possible exception of life issues, is not informed by the teachings of the Church.

Two examples should illustrate this point. The first is how we think about wealth and poverty. One of the deepest and most widespread agreements in American politics today is we should seek continually to improve our material standard of living. Thus, if one's parents had a home and a car, their children should expect nothing less than a better home and a better car. Of course, Democrats and Republicans disagree as to how this goal should be accomplished, but neither question the validity or desirability of such a goal. Now, one need not even take a "hard line" approach on this matter and mention how difficult it is for a rich man to enter into the kingdom of heaven, but isn't this an idea that Catholics *as a matter of course* should at least subject to a rigorous critique? That "rank and file" Catholics have demonstrated not the least interest in questioning this assumption should give us pause.

The second is anecdotal, but telling. In a recent course on Catholic Social Thought, my students and I were reading Pope John Paul II's *On Social Concern*. While the students were quite open to the Pope's criticism of "superdevelopment," i.e., development which focuses almost exclusively upon material concerns, they were much less open to his argument that all nations should pursue "true development," i.e., a form of development which is concerned with the whole of the human person. Their hesitation was two-fold. First, they were uncomfortable with the idea that sin, both in its personal and structural forms, was a primary obstacle to true development. Second, they did not see why true development required that we love God as well as our neighbor.

As one might expect, a few objected to this idea on relativistic grounds. These students were outnumbered by those who were simply taken aback by the importance of sin and God to the idea of development. They asked in all sincerity, "What does God and sin have to do with development?" While one must be careful about drawing conclusions from such incidents, two appear inescapable. The first is that for many, the idea that such theological categories as "God" or "sin" are essential not only on Sunday or in purely personal matters, but for the whole of life is an alien idea to many young (and presumably, old) Catholics. Second, whatever other influences shape their worldview, the teachings of the Church are not one of them.

Turning to the second question, one can imagine the following response: While a convincing philosophical argument, it is unlikely that the paper has any practical significance other than serving as a pointed reminder that the struggle to institute a culture will be a long and uphill battle. As for whether or not it could or should influence our public arguments in defense of life, the answer would have to be a resounding "no" for many reasons. First, the proportion of the population who reads Hobbes or Locke is minuscule. Second, among those who have read them, most will probably continue to think they are defenders of the right to life. Since this error works in favor of life, what is to be gained from correcting it? Next, and closely related, what could possibly be gained from drawing even limited attention to early modernity's hostility to life? Even if the American bishops were to incorporate such a message, wouldn't the reaction be harmful to the culture of life? Some would surely rejoice at hearing the news that abortion is not a betrayal of liberal principles. Others would regard such a statement as evidence that the bishops are reverting to pre-Vatican II reactionary stance against modernity. In either case, however, the cause of life would not be helped. Fifth, the public arguments made in support of life do not draw upon Hobbes and Locke, but upon the Declaration of Independence and the latter unambiguously defends a right to life. Given all of the above, Catholics should continue to make the argument made most recently and forcefully by the bishops in "Living the Gospel of Life," namely, that abortion is not only contrary to the law of God, but is betrayal of the Declaration's guarantee that all possess a right to life.

This is clearly a reasonable argument. It's undoubtedly true that most Americans do not know Hobbes and Locke from Gilbert and Sullivan. It is also at least debatable that they have not influenced American thought as dramatically as Holloway contends. Further, it is a dead certainty that any such argument would draw a hostile reaction from the intelligentsia. However, there are two things wrong with the argument: It has not worked and, if Holloway is correct, it will never work.

That it has not worked seems fairly clear, if only because no one but the bishops makes the argument. Why it has not worked is, of course, open to

debate. It might be argued that explicit appeals to the Declaration no longer resonate, for reasons unknown, with the American public. Further, it might be pointed out that many Americans simply have not heard the argument. After all, the bishops' audience, even among Catholics, is not large. Thus, the argument might be politically successful, but it needs to be made and made repeatedly by someone with a much higher public profile.

While the latter is surely plausible, it is not entirely convincing, either. Even though the bishops do not command a large audience, one can say that they at least have the attention of our nation's political elites, of which a proportion are devotedly pro-life. Furthermore, on its face, this would appear to be the type of argument which would appear to be well suited for adoption by a pro-life politician who fears too close an identification with either the Church or the religious right. That is, this argument would appear to be much more difficult to dismiss as a "sectarian" appeal or an attempt "to impose one's personal, religious morality" upon the rest of the country. Yet, the argument remains an orphan.

Why this is the case is puzzling. Yet it would, perhaps, be a mistake not to consider the possibility that the Declaration of Independence does not speak as unambiguously on the right to life to today's Americans as the bishops imagine. To be sure, the Declaration of Independence does explicitly mention a right to life, but it also provides for the rights to liberty and the pursuit of happiness. Given our contemporary understanding of liberty and the pursuit of happiness, is it not at least plausible that many Americans think that the procurement of an abortion is simply a liberty necessary to the pursuit of individual happiness?

Of course, it might be argued that this is a blatant misreading of the Declaration. After all, whatever one may understand by liberty or the pursuit of happiness, it could not logically include the right to deny to another the right to life. Yet if Holloway is correct, perhaps we should not be surprised by this misreading. In his careful interpretation of *Evangelium Vitae*, he points out that the Pope argues that the choice for humanity is either love or murder. Modernity argues that the choice need not be so stark and tries to stake out the "middle ground" of self-interest. However, Holloway makes a compelling case that the middle ground of self-interest provides no reliable basis for the protection of life. If Holloway is correct, this middle ground has not held because it cannot be held indefinitely. Instead, it must sooner or later either collapse into murder or be transformed into love. Now, whatever else can be said in defense of the Declaration, its presentation of rights is not based on love, but self-interest. Therefore, the attempt to rouse the American public to support life by appealing to the Declaration may be doomed to failure.

In conclusion, Holloway's paper not only forces us to consider how deeply rooted the culture of death is in modernity's moral and political principles, but also leads us to wonder why the arguments which are made against it have been

so ineffectual. My hope is that the above comments will spark some debate among the readers of this journal as to what we, as teachers and scholars, can do to help build a culture of life.