

Commentary on "America, Modernity and the Culture of Death"

-by Gary D. Glenn
Northern Illinois University

The triumph of liberal secularism has insured that a culture of death has taken hold in modern America. Is this situation a necessary development from America's founding principles, or a departure from them? Holloway's argument that the culture of death is inherently rooted in modernity goes too far, because Stack and Shankman have shown how aspects of American foundational principles and documents can be used to support a culture of life. The problem is, as Holloway contends, a deep-seated one, but its seat may be human selfishness rather than philosophers' teachings.

The symposiasts and I share the love of our country, of our faith, and a worry about how long those loves can inhabit the same mind. Our American Catholic ancestors spent some two hundred years trying to become accepted into a not altogether accepting Protestant culture. But Catholic leaders in those times, from the Carroll family of the founding itself, to Orestes Brownson in the mid-nineteenth century, to the later John Ireland, stressed that Catholics had a home here largely because the principles of the Declaration of Independence and the Constitution protect all equally. They had to make this argument sometimes in the face of criticisms from Rome which saw American principles as not different from the rationalism, atheism, materialism, and anti-clericalism of the French revolution and its derivatives including the pitiless individualism of liberal ("Manchester") economics. Indeed, America alone among the nations holds the distinction of having had a doctrine carrying its name condemned in a papal encyclical.¹ Still, as late as the 1960s, John Courtney Murray, S.J., could argue the fundamental compatibility of Catholicism and America on the grounds that the principles of the Declaration of Independence were Catholic in inspiration.²

More recently, it has become necessary to reexamine to what extent we continue to be at home here.³ Over the last forty years, the old American Protestant culture has been significantly suppressed by judicial decisions and the old Protestant public life has been increasingly displaced by a new secular one. This has produced a new situation for Catholics, and not only for

Catholics, as the Christian culture of life has given way to the culture which is the theme of this symposium.

For present purposes the most relevant aspect of this new situation is that the Declaration's "all men," whom earlier generations understood to be included in the protections of our founding principles, has come to be understood, by the highest Court in our land and by formidable sectors of influential opinion, to exclude some formerly included--the unborn, those in intractable pain and the terminally ill--and the cutting edge of this progressive exclusion has now turned to the hopelessly comatose and the newborn physically impaired.

Moreover, advanced thinkers of the liberal secular world view which now dominates our public life and institutions (children and stepchildren of John Dewey and John Rawls) now maintain that the (not only) Catholic view that defends the humanity of the excluded is so far beyond the pale of reasonableness that it should not be permitted as a basis for public policy making.⁴ But this is no more than to express theoretically what the Supreme Court does practically when it declares laws that reflect our view of humanity to be "unconstitutional," for the Court thereby declares that our view of personhood is beyond the constitutional pale. Thus, what we believe about who is a human being is excluded allegedly by constitutional principle⁵ from the public policy of the country in which we live when that view disagrees with the secular world view of the Court and its theorists. To that extent we remain in, but no longer fully of, America. Not that we have left as much as that our moral convictions and what follows from them politically, have been, in a manner, thrown out by being declared illegitimate because inconsistent with the principles of the constitutional order.

The question is whether the triumph of liberal secularism's culture of death over the (not only) Christian culture of life is a necessary development from, or a departure from, our founding principles. Holloway's study addresses this question explicitly, and my primary assignment is to comment on his paper. I cannot, however, remain altogether silent about the implications of Stack's and Shankman's arguments for this issue.

I see a difference between the symposiasts about the question. The Stack and Shankman studies look to founding principles as supporting (Stack) and restoring (Shankman) the possibility of a culture of life. Holloway, however, apparently sees no distinction between American principles and those of modernity as articulated by the (non-American) political philosophers who founded modernity. Hence, he gives a wholly modern reading to our Declaration's inalienable rights to life, liberty and pursuit of happiness and to our Constitution's rights to life, liberty, and property (the fifth and fourteenth amendments) which can only be limited or taken away by "due process of law," i.e., for having committed some act that deserves such punishment. He

apparently finds no support in American regime principles for the culture of life.

Holloway thinks that modernity's natural rights teaching (Hobbes and especially Locke) is not Christian and I accept that view. I know that many Christian readers will disagree especially regarding Locke and this disagreement is of great moment for one's evaluation of both Holloway's argument and of my response. Unfortunately this matter cannot be settled here. But I will acknowledge that there are distinctly Christian elements in Locke's *Two Treatises*. In particular, for present purposes, in 2T, ch. 2, esp. para. 6, Locke teaches that human life is a gift of God, hence that we are stewards and not owners of our bodies and lives, and therefore neither our own nor others' lives are at our absolute disposal. Elsewhere I have made the most of these elements to show that Locke's teaching does not support either abortion on demand or an absolute right to suicide.⁶ But I do not think the distinctly Christian elements ultimately survive in Locke's final political teaching. They are absorbed into Locke's Hobbesian, materialist, and hedonistic understanding of the human good. Still, like almost everything in Locke, it tends to be a moderate hedonism. For instance, it justifies abortion but not abortion on demand.

More to the point of Holloway's argument, however, is that natural rights are capable of being understood in a Catholic way. "Natural rights" was the language of pre-modern Catholic thinkers like Suarez, Molina, Vittoria and Bellarmine before they were the language of moderns like Hobbes and Locke.⁷ Thus American Catholics could subscribe to natural rights language, albeit with important differences from Hobbesian\Lockean Americans. 1) For Catholics, natural rights are gifts of God implanted in human nature rather than (as Holloway rightly says and certainly Hobbes and arguably Locke would say) merely human constructs made in view of the requirements of civil peace; 2) for Catholics, natural rights are derivative from and no more than equally important (probably less) than our moral duties. Hence we can act so as to forfeit our claim to have them respected by others including government. Whereas for the moderns our duties are derivative from and secondary to our rights; hence rights claims are to be respected even if we fail to perform our duties. "Rights are trump," understood as meaning that others are obligated to respect our rights even if we have failed to perform the duties antecedent to those rights, is modern, not Christian.⁸ Thus Christians can affirm a right to life on the grounds that it is God's gift to all of us, even the unborn, the weak and the aged or infirm, who cannot threaten our own life or civil peace, while Hobbesian\Lockeans however affirm that right so that it only applies to those capable of such a threat.

The coming of modernity adopted the Christian natural rights language but did not immediately succeed in replacing the Christian with the modern meaning. After Hobbes and Locke, Burke still spoke of natural rights in the

Christian way, especially as belonging to man only in civil society.⁹ While he grants that one can speak in the Hobbesian/Lockean manner of “natural rights” which “exist in total independence of it [government,]” these are not “the *real* rights of men.” The reason is because “outside of civil society” men lack “a sufficient restraint upon their passions.” In order to live in society, those passions must be “brought into subjection--[and] this can only be done *by a power out of themselves.*”¹⁰ These Christian natural rights, though social, are not thereby depreciated in political importance: “. . . a conservation and secure enjoyment of our natural rights is the great and ultimate purpose of civil society; and that therefore all forms whatsoever of government are only good as they are subservient to that purpose, to which they are entirely subordinate.”¹¹

Note the striking verbal similarity of Burke here to our Declaration: “to secure these [inalienable] rights, governments are instituted among men” and “whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it.” But the pre-modern Catholic Bellarmine said as much: “it depends on the consent of the people to decide whether kings, or consuls, or other magistrates are to be established in authority over them; and, if there be legitimate cause, the people can change a kingdom into an aristocracy, or an aristocracy into a democracy, and vice versa. . . .”¹²

Our founding documents do not obviously privilege the modern, over the older Catholic, understanding of natural rights. The distinguished scholar Gaillard Hunt once said that “Jefferson derived from Bellarmine substantially the wording in which he stated these famous doctrines” (of government by consent of the governed and the right of revolution).¹³ This judgment must be weighed together with Laslett’s observation that certain passages in the Declaration are practically lifted from Locke.¹⁴ Jefferson himself, whom modern secularists claim as their patron saint (if it is proper so to speak), described the Declaration as resting on “the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, &c”¹⁵ thus suggesting its formulations to be inclusive rather than the opposite. There is a way that Jefferson, Hunt and Laslett could all be right but only if it is a mistake to read the Declaration as wholly modern, and as excluding the Catholic meaning.

Nevertheless, since *Roe v. Wade* (1973) the Catholic reading of natural rights has been so excluded by the contemporary Supreme Court, and by those theorists who justify its imposing on all Americans the modern secular world view. This exclusion permits the judicial legalization of the culture of death in the following way. The founding principles adopted a language of natural rights that glossed over differences between Catholic and modern understandings. The Court’s abandonment of the Catholic understanding since *Roe* removed the moderating effect of the Catholic understanding, thus freeing modernity to

become the culture of death. Otherwise stated, the Court has chosen to read the right to life not as one of Jefferson's "harmonizing sentiments" but as a weapon in a war to exclude (not only) Catholic views from public policy.

There is also a way to defend modernity as such against the charge that the culture of death is merely the full development of seeds planted in modern thought from the beginning. This defense is not full throated but it does seem to me at least to mitigate the charge. That is to distinguish between 1) modernity's *basis* for the kind of self-interested civil life it generates; and 2) what modernity *permits* to individuals and groups within that way of life. One could argue that modernity is not *essentially* a culture of death because it permits individual/groups to create sub-cultures of life within modernity. I have in mind things like the loving self-sacrifice of the nuns and single lay women who taught me, with great competence and loving commitment, in both parochial and public schools, for meager remuneration. The freedom modernity generates permits those whose lives are grounded in sacrificial love to live accordingly (this differentiates liberal modernity from its totalitarian counterpart). In this way, liberal modernity may be cold and indifferent to others' well being but permits its citizens not to be. This may not be the culture of life which Holloway and the Holy Father rightly say is what we Christians should strive for. But it is not nothing either.

One wonders whether the problem of the culture of death is not so much the principles of modernity, which admittedly are ultimately at odds with Christianity, as it is the failure of those of us who live in modern regimes but are supposed to live by something higher than mere self-interest, to utilize the freedom modernity gives us to generate and sustain sub-cultures of love. Starting with families, we first learn what self-sacrificial love means in our families, or else we probably don't learn it at all.

Moreover, nothing makes clearer the opposition between Christian love and modern political philosophy than what becomes of families in Hobbes and Locke. In Hobbes' *Leviathan* it simply disappears. One searches that whole long book in vain for any discussion of the implications of Hobbes' teaching for marriage and the family.¹⁶ Locke preserves a kind of family in order to raise the children. However, after they are raised, he sees no reason why the "conjugal society"(his phrase which covers what Christians would call marriage and family) need continue, unless the couple might calculate that doing so is a more efficient way of accumulating property. No love is required between husband and wife, marriage is not a reflection of Christ's love for his church, and there is neither necessity for nor expectation of permanence.¹⁷ Together, Hobbes and Locke show what becomes of "the family" with their assumption that we are by nature individuals who are not designed to belong together. One is hard put to see why, on their principles, anyone should want to be "married", at least as long as one has a competent financial advisor.

Holloway may go too far in stating modernity's undoubted complicity in the culture of death. After all, is not there something very good about liberal modernity concerning life, namely, the civic peace at which it aims, even though at the cost of a society which "cannot know the abundance of life"? In our time, many societies not much touched by modernity would be delighted to have the civil peace, prosperity and security for rights which characterize successful modern "developed" societies.¹⁸ These things are not everything needful for a healthy culture but neither are they nothing.

Stack and Shankman are distinguished from Holloway in that neither of them trace the culture of death to founding principles. But they implicitly question Holloway's doing so because both look for at least partial solutions to the culture of death in modern and American founding principles.

Stack finds it in the founders (or at least Hamilton's) quite modern commitment to a commercial way of life as more friendly to life than is the ancients' preference for agriculture. Stack's powerful argument, however, needs to explain why the coming into being of the culture of death in the late twentieth century has been concomitant with the growth of the commercial way of life and the decline of the agricultural. Might it be that commerce is only more humane "up to a point"? The growth of commerce means the growth of cities, the increase in mobility, and the destruction of traditional communities which were hospitable to families. Increased urbanization also means increased secularization and the declining influence of religion. Could it be that commerce is more humane only within a matrix formed by an agricultural way of life with its community-forming and other-regarding virtues. Or alternatively is it that too much commerce undermines those virtues? Does not commerce itself need limits? Commerce may not particularly foster avarice, but what virtues does it foster that can moderate avarice to prevent the hard-heartedness towards the weak and sick which characterizes the culture of death? Does not the humaneness of modern commerce compared to agricultural, depend on such moderation?

Shankman sees the culture of death, at least insofar as it is encouraged or imposed by the judiciary, as stemming from a departure from common law adjudication as understood by the founders, both as to a way of thinking and as to substance. As to substance, common law from the founders to Holmes embodied natural law of a more Christian rather than Hobbesian or Lockean bent. This promoted a way of thinking that encouraged judges to decide cases by treating circumstances as decisive and principles of natural justice as given; what one might call "bottom up" thinking. In contrast, post-Holmesian common law (which became influential on the Court after 1938) denies the existence of natural law however understood. This promotes a way of thinking in which principles are decisive, judges are free to give old principles new meaning, and judging is a matter of deciding under which dominant principle a case should be subsumed, what one might call a kind of top down thinking. This change in

common law substance and way of thinking about what judges do gave us *Roe* and its progeny. First, it gave the principle of privacy a wholly new meaning in *Griswold* (1963); then it decided in *Roe* (1973) that abortion should be decided under the principle of privacy rather than, say, homicide or child abuse.

Shankman looks to the restoration of sound natural law jurisprudence as a means to returning to the kind of judicial review consistent with the founders' constitution. And she persuasively defends a sound natural law jurisprudence against the reasonable fear (by allies of ours such as Robert Bork) that it will lead to further judicial usurpation of democracy. It is admittedly a paradox, but nevertheless true, that the pre-1938 Courts' frank willingness to declare laws unconstitutional on "natural law" grounds led to less such usurpation than did the post-1938 Courts' denial of natural law. The reason is that the later Court found in "the Bill of Rights" something new called "civil liberties" which gave the Court free rein in inventing hitherto unheard of meanings of rights and liberty,¹⁹ always of course in a good cause, as determined by the justices and the intellectual elites for whom they spoke. In other words, the Court opened the door to the culture of death not precisely because they lacked natural law but because they lacked restraints on their willfulness, i.e., on their willingness to be restrained by moral or constitutional meanings that they have not created.

Seen in that light, the return to the older common law is a means to moderate the judiciary's willfulness by, among other things, emphasizing the moral commonalities in the world's great cultures. I doubt this would help reestablish the culture of life directly (outside of Christianity and Islam I am not sure how much prohibition there is on abortion for example), but rather indirectly by moderating the self-regarding hedonism which is the soil that nurtures the culture of death.

Shankman joins Holloway in finding roots of this judicial willfulness in modernity (especially Hobbes), but she stresses his doctrinaire way of thinking. Her sound remedy is a restoration of prudential ways of thinking which she finds in Aristotle, Aquinas, and the pre-Holmesean common law and even in our own Declaration. This too is only of indirect help for willingness to be prudent presupposes willingness to accept restraints on willfulness.

One wonders whether, if restoring the culture of life requires overcoming modern hedonism, doctrinairism and willfulness, we must not first somehow acquire a new birth of self-restraint.

Notes

1. *Testem Benevolentia Nostra* criticizes teachings "which some comprise under the head of Americanism" (near the end). It was promulgated by Pope Leo XIII January 22, 1899, seventy-four years to the day before the Supreme Court's holding in *Roe v. Wade*. This encyclical is concerned with a tendency for American Catholicism to be influenced by America's liberal democratic regime in ways contrary to Catholic

teaching. In particular, the individualism of that regime, i.e., its assumption that individuals should be free from political "watchfulness and supervision" unless to prevent harm to others, is apparently thought to be working its way into the internal life of the American Church. But this penetration is harmful because the Church "as a divine society" is fundamentally different from "all other social human organizations which depend simply on free will and choice of men"(para. 13). The penetration is particularly harmful in matters of faith as distinguished from morals. Indeed moral issues are scarcely mentioned. The Pope's concern is rather for the "sacred dogmas . . . delivered as a divine deposit . . . to be faithfully kept and infallibly declared" by the Church. His concerns, in theological language, are matters of faith and its attendant ecclesiology (including Church authority, order and discipline) as distinguished from morality.

2. *We Hold These Truths: Catholic Reflections on the American Proposition* pp. ix-x. (New York: Sheed and Ward, 1960). But Murray was already alive to the dangers which the newly and increasingly secularized American democracy posed for Catholicism. "The question is sometimes raised, whether Catholicism is compatible with American democracy. The question is invalid as well as impertinent; for the manner of its position inverts the order of values. It must, of course, be turned round to read, whether American democracy is compatible with Catholicism." *ibid.*, pp. ix-x.

3. See Gary D. Glenn and John Stack, "Is American Democracy Safe for Catholicism?" in *The Review of Politics*, Vol 62, No. 1, Winter 2000, pp 1-48. This symposium includes responses by Michael Novak, Glenn Tinder and Clark Cochran and our rejoinder.

4. *Ibid.*, pp. 17-21.

5. We, of course, would say by "unconstitutional" principle.

6. See "Inalienable Rights and Locke's Argument for Limited Government: Political Implications of a Right to Suicide," *The Journal of Politics*, Vol. 46, May 1984, pp. 80-105. "Abortion and Inalienable Rights in Classical Liberalism," *American Journal of Jurisprudence*, Vol. 20, Fall 1975, pp. 62-80.

7. See Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979, Ch. 1, esp. p. 22ff. Brian Tierney, "Origin of Natural Rights Language: Texts and Contexts, 1150-12-50" *History of Political Thought*, Vol. X., No. 4, Winter, 1989. And "Natural Rights in the Thirteenth Century: A Quaestio of Henry of Ghent", *Speculum*, Vol. 67, 1992, pp. 58-68. Ramon Hernandez O.P., *Derechos Humanos en Francisco De Vitoria* (Salamanca: Editorial San Esteban, 1984).

8. I switch here from speaking of "Catholic" to Christian natural rights teaching because I am not enough of a scholar of Reformation thought to know whether there is a pre-Hobbesian natural rights teaching there. The pre-modern Christian natural rights teaching as it is known to me is Catholic (even Jesuit). It comes to modern political philosophy through the Protestant Filmer attacking the Catholic Bellarmine for teaching doctrines which Locke (who surely presented himself as a Protestant) will afterwards teach. (See Locke's *First Treatise*, Sec. 1 and 12. Robert Filmer, *Patriarcha*, Ch. I, sec. 1, 2, and 3 Ch. II, sec. 1 and 5, and 9. Filmer also attacks Suarez Ch. II, sec. 2, 3, 4, 5.) If there is a natural rights teaching in an undoubted Reformation thinker, I assume it would resemble the Catholic more than the modern (Lockean) teaching as here sketched. I may be mistaken in that, but I would rather be mistaken about that than be

in the position of assuming, which I do not know, that only Catholic thinkers, among the Christians, spoke of natural rights before Hobbes. I would be grateful for instruction on this matter.

9. "Reflections on the Revolution in France" (1791) in Ross J. S. Hoffman & Paul Levack, *Burke's Politics: Selected Writings and Speeches of Edmund Burke on Reform, Revolution, and War* (New York: Alfred A. Knopf 1959), pp. 303-304 (para 92 of 402). I think no Christian could believe that by nature human beings live in a "state of nature" as understood by Hobbes or (in the last analysis after much obfuscation) by Locke for that would suppose that God did not create us to live together. The modern "state of nature" supposes the fundamental phenomena are aloneness and fear; all Christianity known to me regards the fundamental phenomena as togetherness and love.

10. Ibid. This conclusion is pre-Hobbesian in substance and virtually in language. Cf. "Taking his stand on the doctrine of St. Augustine that 'since all men are created equal, the right for a man to command men cannot come except from outside humanity' [emphasis added] . . . Bellarmine maintained in accordance with the medieval tradition that this authority could only derive in the concrete through the medium of the people, whose it is to determine as to the form of government or who the incumbent in authority shall be and hence their consent is a necessary condition to the legitimacy of all secular power." Kathleen E. Murphy, Introduction to Robert Bellarmine, *DeLaicis or The Treatise on Civil Government*. (New York: Fordham University Press, 1928).

11. *Fragments of a Tract Relative to the Laws Against Popery in Ireland* (1765) in Peter J. Stanlis ed., *Edmund Burke, Selected Writings and Speeches* (Chicago: Regnery Gateway, 1963) p. 220.

12. *De Laicis or The Treatise on Civil Government* (1928) op. cit., Ch. VI, p. 27.

13. *The Catholic Historical Review*, October 1917, p. 289. Cited in John A. Ryan and Francis J. Boland, *Catholic Principles of Politics* (New York: MacMillan, 1940), p. 84. Hunt was Librarian of Congress, editor of the papers of James Madison, of Madison's Notes on the Constitutional Convention, and biographer of Madison and John C. Calhoun, among other writings.

14. Peter Laslett, John Locke, *Two Treatises of Government* (Cambridge: the University Press, 1967) p. 433n. Cf. The Declaration, "But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government. . .", with Locke, *Second Treatise*, para. 225: "But if a long train of Abuses, Prevarications, and Artifices, all tending the same way, make the design visible to the People, and they cannot but feel, what they lie under, and see, whither they are going; 'tis not to be wonder'd, that they should then rouse themselves, and endeavor to put the rule into such hands . . ." Again the Declaration: "Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves . . ." with Locke, para. 225. "Revolutions happen not upon every little mismanagement in publick affairs. Great mistakes in the ruling part, many wrong and inconvenient Laws, and all the slips of humane frailty will be born by the people, without mutiny or murmur."

15. To Henry Lee, May 8, 1825 in [no ed.] *Thomas Jefferson: Writings*. (New York: Library of America, 1984) p. 1501. Notes by Merrill D. Peterson.

16. *Leviathan* contains passing mentions of "family" (19 times scattered throughout 15 chapters); "marriage" (22 times in 11 paragraphs and only twice in the entire first half where Hobbes lays out his political teaching); and "matrimony" (3 times in 3 paragraphs and only once in the first half). But there is no sustained discussion of any of these as decisive or foundational for politics. Most references either distinguish them from the political or else are in the theological discussion in the second half. Similarly, Locke's *Two Treatises* use "family" 52 times scattered throughout 27 paragraphs; "marriage" only twice. One of the latter occurs in the same sentence where he restates, with ostentatious casualness and lack of conviction ("I suppose"), the traditional objections to adultery, incest, and sodomy (*First Treatise* sec. 59). The other place is in the *Second Treatise* (sec. 83) where he makes explicit that marriage is a contract and not permanent. "Matrimony" occurs only twice both times in this same section 83. Neither Hobbes nor Locke speak of "holy matrimony." Indeed, Hobbes objects to "the teaching that matrimony is a sacrament, [because it] giveth to the clergy the judging of the lawfulness of marriages; and thereby, of what children are legitimate; and consequently, of the right of succession to hereditary kingdoms" Ch. 47, para. 10.

17. See especially John Locke's *First Treatise of Civil Government*, Ch. VI and the *Second Treatise*, also Ch. VI.

18. I have in mind countries such as Sierra Leone, Ivory Coast, Zaire, Rwanda and Burundi (the Hutu and Tutsi), Sudan, Angola, Ethiopia and Eritrea. The same is true for unsuccessful modern societies such as the "countries" of the former Yugoslavia.

19. The utter novelty of "civil liberties" in our constitutional law beginning in 1940 is little known today. Nor are its regime transforming consequences well understood. We show both the fact of its novelty and sketch the regime altering consequences in "Is American Democracy Safe for Catholicism?" supra note 3, pp. 10-17.

PART II
Articles

