
CHAPTER SIX

WILLMOORE KENDALL
AND LEO STRAUSS

GEORGE ANASTAPLO

PROLOGUE

Generally speaking, [the physical activity described] is a phenomenon of outstanding importance. With [respect to] particles it would mean production or annihilation of matter, merely by the expansion [of the universe], whereas with light there would be a production of light traveling in the opposite direction, thus a sort of reflexion of light in homogenous space. Alarmed by these prospects, I have investigated the question in more detail. . . . It turns out that in this case the alarming phenomena do not occur, even within arbitrarily long periods of time.

—Erwin Schrödinger (1939)¹

Some of us first came to know Willmoore Kendall because of his remarkable (others would say, "notorious") association with Leo Strauss. I have had occasion to speak thus of this association: "Perhaps the most (if not the only) eminent 'convert,' among established political scientists in this country, to the Straussian persuasion was Willmoore Kendall."²

This is an association which Mr. Kendall himself made much of in the last years of his life (as is evident in the Kendall-Strauss correspondence), but which is not noticed at all in the instructive Kendall entry in a useful dictionary of American Conservatism.³ It is appropriate, considering how difficult Leo Strauss himself is to categorize politically, that the Strauss entry in this same dictionary should be as cautious as it is.⁴

Willmoore Kendall, at about the time that Erwin Schrödinger was registering alarm because of prospects suggested by reported developments in physics,

began his decades-long expressions of alarm because of developments in politics and political science. These worldwide developments threatened to be as unsettling as an unanticipated "production or annihilation of matter, merely by the expansion [of the universe]." The globalization of politics was indeed a phenomenon to be reckoned with.⁵

My contribution on this occasion (a chapter in three parts) draws upon talks I have given about the Willmoore Kendall I happened to know, a political scientist already very much under the influence of Leo Strauss. One of these talks was in 1990, the other in 1997 (with the more recent provided here first). I provide thereafter a talk on Leo Strauss given in 1984, a talk which suggests the Straussian thought that Willmoore Kendall encountered.⁶

Willmoore Kendall had been, upon their encounter, the better known of the two men in political science circles (as well as among conservatives). The Kendall alliance with Leo Strauss turned out to be remarkably "political," in that most political scientists of Willmoore Kendall's generation are no longer read, compared to Leo Strauss himself. Indeed, Mr. Strauss, in his return to the Classics, represented the wave of the future. What was particularly important about him was not the conservative political positions he happened to take (based sometimes on limited information and a non-American orientation), but rather his identification and clarification of enduring questions.⁷

A. WILLMOORE KENDALL, RHETORICIAN OF VIRTUE (1997)⁸

We have heard the chimes
at midnight, Master Shallow.

—Falstaff⁹

I

Willmoore Kendall was very much in my thoughts last weekend during a conference at Loyola University of Chicago which was built around a visit to that campus of Antonin Scalia. The resemblances between these two men—their gregariousness, witiness, intelligence, patriotism, Roman Catholicism, conservatism,

and rhetorical skills—these and other resemblances pointed up for me one vital difference between them: there is not for Justice Scalia the grounding in the Classics (ancient as well as modern) that one can see something of in Professor Kendall.¹⁰

This difference may be related to another one: Justice Scalia, a considerably more ambitious man, is much angrier. Professor Kendall's intemperance (however angry he sometimes pretended to be) took more amiable forms.

II

Although Willmoore Kendall relied much more than most conservatives—and, for that matter, than most liberals—upon good books, it should be added that he was more a *user* than a *reader* of books. This may be, in the final analysis, true of most of us.

Dr. Kendall—as he was known by students on this campus—respected the books enough to contribute as he did to the founding of the remarkable Politics and Literature Program here at the University of Dallas. I have many happy memories of two solid years of teaching in that program immediately after Willmoore Kendall's death, commuting down here from Chicago six times a semester. I have vivid memories as well of the commuting itself, memories which testify to the spirit, if not to the spirituality, of those days. There was one occasion, for example, when our airliner was thrown all over the sky and one could well wonder whether we would land in one piece. But I said to myself something like this, "If I come out of this alive, I will have to conduct a challenging seminar [it must have been on Hobbes] immediately upon arriving at the University. It will be no excuse then that I am unprepared because we were almost killed in a storm." "Besides," I further told myself, "if we do go down, what better thing can I be doing than thinking about the questions we discuss in our seminars?" And so I kept at the preparations (a form of prayer?) I had planned for the flight to Dallas.¹¹

When a first-class rhetorician uses a great book for high-minded ends, he may not notice—or at least he does not bother to put in—the required qualifications that a careful reading often calls for. Even so, Willmoore Kendall is preferable to most partisans of his and our day in that he was at least aware of the enduring questions and how they have been approached. He was not moved, as so many others are, primarily by considerations of self-interest, narrowly conceived.

I turn now to how Professor Kendall did read the old books, particularly the *Apology* and *Crito* of Plato, the *Areopagitica* of John Milton, and the *On Liberty* of John Stuart Mill. We will be considering, by and large, the problem of liberty

A talk given at the University of Dallas, April 11, 1997.

as it is dealt with in *Contra Mundum*.¹² The opening paragraph of "The People Versus Socrates Revisited" provides a useful point of departure for our discussion:

My topic: Plato's teaching about "freedom" of thought and speech. My target: Liberal teaching about freedom of thought and speech, and the Liberal claim that it traces back somehow to Plato, to, concretely, the *Apology* and the *Crito*. My target, stated in other words: The freedom of thought and speech doctrine of J. S. Mill's *Essay on Liberty*, which let us call the simon-pure doctrine of freedom of thought and speech; and that sentence in Mill's *Essay*, "Mankind cannot be too often reminded that there was once a man named Socrates," etc., where the clear implication is: Keep yourself reminded of Socrates, and what happened to him as a result of limitations imposed upon freedom of thought and speech, and you will accept as a matter of course the thesis of Mill's *Essay*, namely: "... there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered."¹³

III

Particularly troublesome in the Kendall reading of our Platonic dialogues is the insistence that Socrates' position, *vis-à-vis* his City, is god-centered. Much is made of Socrates' "theological" position: thus it can be said, "Insofar as the issue at stake between Socrates and the Assembly concerns Truth, it concerns *religious* Truth not that jump-ahead-of-the-pursuer 'scientific' truth of the Galileos."¹⁴ This approach to the dialogues, which reads back into them two subsequent millennia of theological discourse, culminates in these Kendallian observations (which are not without difficulty):

The drama Plato unfolds for us is, as it seems to me, projected upon two levels, and these must be sharply distinguished if we are to comprehend the teaching he is urging upon us. We have, first, the comparatively told story of the failure of a divine mission—in which, I submit, the point being insisted upon by the dramatist is the sheer inevitability of the failure. Socrates possesses the truth of the soul, and *must* try to communicate it to his neighbors. His neighbors reject it, but at no point does Plato imply that they were capable of doing other than rejecting it, or that the chasm that divides them from Socrates could conceivably have been bridged. It is, to an astonishing degree, the same story as that of the Gospels, with the same teaching (whether we have it from the lips of the teacher or from those of the narrator is,

evidently, a matter of indifference), "Forgive them, . . . for they know not what they do." And precisely what stamps the spurious symbol as spurious is that it is the creation and the tool of men who have *not* forgiven the Athenians: (Plato, who cannot know that the chasm between teacher and neighbor can be bridged by the Atonement, must—unlike the narrators of the Gospels—leave it at that.)¹⁵

A clue to the difficulties with the Kendall reading of these dialogues is his repeated and emphatic use of the term, *State*, instead of *polis* or *City*. This usage of *State* inclines one to see from a modern perspective what is said, done, and not done in those dialogues. It can also incline many to see the religious realm as separate from, if not even as superior to, the political realm.

A modern perspective includes a somewhat relaxed way (as distinguished from a vigilant way) of reading. It is, for example, a mistake to regard the arguments made by the Laws in the *Crito* as simply Socrates' arguments.¹⁶ Related to this is the Socratic/Platonic, but not as much the Kendallian, skepticism about the soundness of any majority opinion.¹⁷

If the arguments of the Laws are not simply, or unqualifiedly, the arguments of Socrates, what then does Socrates stand for and rely upon? What, for example, would he advise a *young* man under sentence of death to do who is someone that the City will very much need, for, say, his military genius? It is far from clear, it should be added, that Socrates at 40 would have conducted himself altogether as he did at 70—or that he would advise others to act as he did, no matter what their circumstances.

Put another way: What arguments would Socrates have made if he had had someone other than Crito to deal with on this occasion? Or, put still another way: What arguments had Socrates made to himself in shaping his actions and speeches during the trial and immediately thereafter?

IV

Also troublesome is the Kendall reading of the *Areopagitica*. It is salutary, of course, that we have had pointed out for us so emphatically that Milton insists that there are truths to be discovered (somehow or other)—truths to be discovered and lived by. There is, it is said, "not a whisper [of relativism] in Milton."¹⁸ It is also salutary to see so much civic-mindedness in so great a poet.

But I must wonder whether Willmoore Kendall appreciated the specialness of the no-prior-restraint argument in the Anglo-American legal tradition.¹⁹

This may be, at bottom, an argument for the rule of law, an argument that can seem artificial to someone not steeped in the law. A system of prepublication censorship, on the other hand, is very hard to supervise and to correct.²⁰ Thus, one can resist prior restraints and yet permit, if not even support, various post-publication sanctions against offending publishers. In short, Milton need not be considered inconsistent here.

Professor Kendall recognizes that there are arguments in Milton which are troublesome for him, arguments that even seem to support the modern liberal position that he himself opposes.²¹ This kind of honesty contributed to Willmoore Kendall's rhetorical effectiveness.

Still, he does not seem able to grasp fully why Milton has been as influential as he is. Much of the Kendall essay on the *Areopagitica* is devoted, instead, to showing that Milton should not be used by liberals as they do use him. (Something of this may also be seen in the *Apology/Crito* essay.)

The Kendall version of Milton may depend upon the assumption that the knowledgeable and virtuous will always rule the passionate and ignorant. Milton, at least, knew better—and would probably want various troublesome passages (especially those that justify restrictions) to be applied with caution. Noteworthy here is Milton's recognition of the limited scope of Plato's prescriptions in the *Republic*.²²

The strictures in the *Areopagitica* against Papists, which can incline even the Roman Catholic conservative toward "liberalism" for the time being, may be largely accommodations on Milton's part to the political passions of his day.²³ That is, John Milton may be more of a proponent of the Open Society than Willmoore Kendall desires.²⁴ On the other hand, "progressive" intellectuals, such as Stanley Fish, today protest that Milton in his *Areopagitica* is not enough of a proponent of the Open Society. I had occasion to respond in this fashion to Professor Fish during a colloquy we had in Memphis in 1991:

Milton, in his argument for the liberty of the press, does seem to deny to Roman Catholics the privilege of unlicensed printing that he so eloquently advocates. But however prudent it may be to notice such reservations on the part of a partisan thinker, it may be impudent to make as much of them as Professor Fish does. The implications of that principle can go far beyond what the immediate framers of that principle were either able to recognize or willing to put up with.²⁵

V

Of course, we are no longer accustomed to the intolerance that John Milton evidently permitted, certainly not with respect to Roman Catholics.²⁶ Milton can best be countered, when he does seem unduly restrictive, by showing what is implicit in his pronouncements, just as may be done with Magna Carta, the Declaration of Independence, the Preamble to the Constitution, the Commerce Clause, and the Fourteenth Amendment.²⁷ A different approach to this matter is reflected in the Kendall observation, "The 'principles' that should have 'led Milton on' to demand a still broader toleration are simply not there."²⁸

Willmoore Kendall was never really worried about any application of John Milton's principles that would "catch" either him or his fellow Roman Catholics in twentieth-century America. Why not? In large part because the principles implicit in the Milton position did reach further than Milton explicitly anticipated. These are principles accepted, refined, and extended by John Stuart Mill.²⁹

Perhaps they were extended further by Mill than may have been prudent—and for this he is faulted by Willmoore Kendall. There is something, that is, to the Kendall critique of Mill's "simon-pure doctrine of freedom of thought and speech."³⁰ Still, it should be recognized that Mill himself qualified what he said about these matters. Consider, for example, what he had to say about the political imitations on primitive peoples:³¹

However this may be, I do not believe that John Stuart Mill is necessarily the relativist exploited by the Kendall thesis.³² Mill is really better than it is convenient for Willmoore Kendall to make him out to be. Professor Kendall might have thought better of the liberating power of Mill's doctrine of liberty if he had lived to witness the collapse of Russian tyranny during the past decade.³³ Be that as it may, it does not seem to me in the spirit of the *Areopagitica* to insist that "on the critical issues [Milton] is the soul of intolerance."³⁴ A footnote to this Kendall passage adds, "We are not concerned here, of course, with the merits of the issues between Milton and those whom he would not tolerate [for example, Papists]."³⁵ This is an odd way to leave things unless one feels, in one's hips, that the Milton approach does not really threaten law-abiding Roman Catholics, however sinister it may at times sound, wherever John Stuart Mill does not moderate theological-political passions.

VI

Whatever reservations one may have about Willmoore Kendall's reservations about toleration, and hence about liberty, it will hardly do to consider him, as some are inclined to do, a Calhounian or an apologist for slavery.³⁶ Whatever reservations he may also have had about Abraham Lincoln and the Declaration of Independence, he was far too independent and far too much a lover of ordered liberty to be proslavery. He could recognize with other conservatives that freedom is a problem, but he could add that virtue, too, can be a "problem."³⁷

Willmoore Kendall's independence may be seen as well in his championing (against the bulk of the academic opinion of his day) Senator Joseph McCarthy.³⁸ But perhaps we should not make more of errors prompted by his fear of Communism and by his personal experiences in Spain than we do of Milton's errors, or of Mill's, prompted by fear of Inquisitions and the experiences of Socrates.

We have all seen, in any event, the long-run, as well as the immediate, ill effects among us of campaigns of suppression of serious dissent, especially during the Cold War and intermittently with respect to race relations.³⁹

VII

Willmoore Kendall continues both to instruct and to edify us. He certainly has useful things to say about the limits of presidents and plebiscites and the merits of legislatures and deliberative processes.

It is good also to have his endorsements, both in words and in deeds, of good books. We can see here his divergence from such partisans as Antonin Scalia, another skillful rhetorician.⁴⁰ Plato's *Gorgias* is particularly instructive in these matters: Justice Scalia, very much a positivist, is more like Callicles, who believes he stands for hardheaded realism, while Professor Kendall is more like Gorgias, an eloquent teacher somewhat open to, and respected by, Socrates.⁴¹

Significant here is the Socratic influence of Leo Strauss upon Willmoore Kendall. That influence is reflected in what Willmoore Kendall was able to do at the University of Dallas, where he excelled as a teacher who very much cared for his students, students who properly continue to treasure his effervescent memory, the memory of an adventurous man who heard more than his allotted chimes at midnight.⁴²

B. WILLMOORE KENDALL AND THE CONSTITUTION (1990)⁴³

To the Congress of the United States in the hope that it may be led to claim and exercise for the common good of the country the powers justly belonging to it under the Constitution.

—William W. Crosskey⁴⁴

I

I seek support from Willmoore Kendall (in my 1989 *Commentary on the Constitution*) for the proposition that Congress is far more important than contemporary conservatives recognize.⁴⁵ The concluding paragraph of Mr. Kendall's celebrated "The Two Majorities" essay is drawn on in my effort to confront the conservatives of this generation with the argument of perhaps the most influential American-born conservative theorist since the Second World War:

If the foregoing analysis is correct, the tension between Executive and Legislative has a deeper meaning—one which, however, begins to emerge only when we challenge the notion that the "high principle" represented by the President and the bureaucracy is indeed high principle, and that the long run task is to somehow "educate" the congressmen, and out beyond the congressmen the electorate, to acceptance of it. That meaning has to do with the dangerous gap that yawns between high principle as it is understood in the intellectual community (which makes its influence felt through the President and the bureaucracy) and high principle as it is understood by the remainder of the population (which makes its influence felt through the Congress). To put it differently: the deeper meaning emerges when we abandon the fiction (which I have employed above for purposes of exposition) that we have on the one hand an Executive devoted to high principle, and a Legislature whose majority simply refuse to live up to it, and confront the possibility that what we have is in fact two *conceptions* of high principle about which reasonable men may legitimately differ. Whilst we maintain the fiction, the task we must perform is indeed that of "educating" the congressmen, and, off beyond them,

⁴³A talk given at the Annual Convention of the American Political Science Association, September 1, 1990.

the electorate, "up" to acceptance of high principle; once we abandon it, the task *might* become that of helping the congressmen to "educate" the intellectual community "up" to acceptance of the principles that underlie congressional resistance to executive proposals. In the one case (whilst we maintain the fiction), discussion is unnecessary; in the other case (where we recognize that what we stand over against are two sharply differing conceptions of the destiny and perfection of America and of mankind, each of which conceivably has something to be said for it), discussion is indispensable; and in order to decide, as individuals, whom to support when executive-legislative tension arises, we must reopen (that is, cease to treat as closed), reopen in a context of mutual good faith and respect, the deepest issues between American conservatism and American liberalism. Reopen them, and, I repeat, discuss them; which we are much out of the habit of doing.⁴⁶

Mr. Kendall took this position on political, as distinguished from constitutional, grounds. He seems to have regarded the Legislative branch as intrinsically more conservative in its inclinations: it is likely to be less intellectual or ideological, and more responsive to the opinions and prejudices of the people, than the Executive branch, which is much more apt to be moved by "high principle."⁴⁷

Such features of Congressional life as virtual life tenure for many members, powerful committee chairmanships, and even the filibuster did not trouble him. Rather, they permitted members of Congress to be effectively representative of their constituents.⁴⁸

II

Conservatives today [1990] are of a different persuasion. They tend to ridicule Congress while celebrating the Presidency, so much so as to make it seem that every president (or at least every Republican president) is virtually a Lincoln. One can suspect that they may be moved here by partisan considerations, finding virtue primarily in that branch of the national government now controlled at least nominally by conservatives. Liberals too, have shifted their allegiances from time to time, depending on the branch of government *they* happen to control, as may be seen in current reservations among them about the Supreme Court.

A more principled approach is seen in the work of John Alvis. He, as a Kendallian, observes:

I should stress that what Kendall meant by the virtue he imputed to the representatives of local communities was something not greatly

exalted but nonetheless crucial to constitutional government: namely the ability to conceive and the will to conduct deliberation as a rational process aimed at justice. But if deliberation is no longer so conceived and so practiced but instead Congress has come to think of its business as the mere agitation of interests, then not reason but mere will must stand behind public law. As committees and staffs prevail and open discussion diminishes, arbitrariness and unchecked, or at least unaccountable, will must have its way.⁴⁹

III

Thus, it would seem, Mr. Kendall's preference for a deliberating Congress has been transformed into a repudiation of contemporary Congresses by some of his would-be disciples. But is not any dismissal of Congress as the branch which "has come to think of its business as the mere agitation of interests"⁵⁰ an argument that sounds suspiciously like that Executive invocation of high principle against benighted Congresses that Mr. Kendall warned against? This does not deny that Mr. Alvis provides us a most useful critique of various Congressional practices, those practices which can be faulted as inappropriate mimicking of the Executive branch by the Legislative. Even more serious, however, is the usurpation of Legislative powers by the Executive.

The extended political deliberation needed somewhere in our national government is not likely to be supplied by the Executive branch. After all, we have seen momentous decisions evidently made during a weekend at Camp David, decisions that were hardly open to formal public scrutiny and that unexpectedly took the United States to the brink of war with a former client in the Middle East. This seems to me a dangerous and otherwise disturbing state of affairs.⁵¹

A deliberative element is certainly needed in our system, and preferably in that body which lays down the permanent policies of the country after due public consideration of the issues. Congress is more apt to be deliberative, if only because of the considerable diversity of its constituencies. The energy and dispatch of which the Executive is capable are rarely appropriate for the deliberative mode.

Conservatives should be asking, then, what can be done to revive Congress if indeed it is no longer a properly deliberating body. Efforts should be made to help, as well as to require, it to do that which no other branch of government can do.⁵² I do not believe it helps to have the Executive usurp that function, unless it should thereafter do it so badly that it would then encourage us to rely much more on Congress than we might otherwise do.

IV

I have suggested that Mr. Kendall, in taking the position he did in the confrontation between Congress and the Executive, seems to have been moved more by political, even partisan, considerations than by constitutional considerations.

It is important, and not only for analytical purposes, to distinguish *constitutional* issues from *political* issues. For one thing, to regard every unwise or unjust measure as unconstitutional tends to "judicialize" our politics more and more. Mr. Kendall himself recognized that his arguments here (as I have noticed) were primarily political, not constitutional. But are one's politics apt to be sound if one's constitutional understanding, or its equivalent, is faulty? Do not sound politics depend upon proper presuppositions which permit one to see matters somewhat as they truly are? The required presuppositions need not be provided only by a political constitution of stature. They may also take the form either of a serious religious revelation or of a national epic developed by an inspired poet.

Willmore Kendall's perhaps instinctive recognition that he too needed something more permanent than politics to be guided by is reflected in his remarkable openness, in the last years of his career, to the teachings of Leo Strauss.⁵³ It is well to be reminded that there was much more to the Straussian teachings than a sometimes exaggerated critique of liberalism. The more polemical among Mr. Strauss's disciples tend to lose sight of the philosophical questions that he took most seriously.

V

The influence of Mr. Strauss upon Mr. Kendall was both deep and limited. Mr. Kendall was not, strictly speaking, a disciple: neither his temperament nor his training equipped him for such a role. He had neither the time nor the inclination fully to reassess his constitutional opinions in the light of Straussian principles. Had he done so, he probably would have been more respectful than he was of the intended meaning of the drafters of the Constitution. This could have led him to take the Constitution itself more seriously as a well-crafted instrument, one that requires considerably more precision in the *reading* of several of its provisions than he ever exhibited.⁵⁴ This, in turn, would have helped him recognize the extent to which the Constitution, even before the Fourteenth Amendment, provided for ultimate *and effective* supervision by Congress of various state activities (with respect, say, to suffrage, to legislative apportionment, and to economic

regulation).⁵⁵ Instead, he tended to see the system as naturally inclined to deadlock, a constitutionally anticipated deadlock which was congenial to his "conservative" preference for minimal government.

However mistaken Mr. Kendall may have been in his opinions about the extent of the powers of Congress, at least in domestic affairs, he did recognize that the United States was not intended to have a plebiscitary government, something that an Executive-dominated system inclines toward in a democratic age, especially with television as influential as it is. This is the concern of the central part of his "The Two Majorities" essay.⁵⁶ Plebiscitary government is often regarded as more incisive, especially in "dangerous times." (Plebiscitary impulses may be seen today in the intermittent agitation for direct election of the president and in the widespread reliance upon public opinion polls.) Mr. Kendall was sound enough in his instincts to sense that plebiscitary government cannot be relied upon to serve conservative interests or, indeed, the common good.

VI

The more serious problems in Willmore Kendall's constitutional interpretation can be traced back to his assumption that the Constitution of 1787 is, in principle, a deal, "the original *deal* between the states and the federal government."⁵⁷

This assumption contributes to, among other things, the depressed status in his system of the Declaration of Independence and, hence, of the principle of equality. (It also contributes to the inclination of conservatives to make states' rights more of a constitutional principle and less of a political principle than they should.)

But how can a deal "between the states and the federal government" be taken seriously here? The federal government referred to did not exist before the Constitution was established; no one acted on behalf of the Confederation government in making any deal. Furthermore, it was neither the States nor any national government but rather the people who made the Constitution.⁵⁸

To see the Constitution in terms of a "deal" is to make more of politics and less of principle, and this, in effect, makes less of the Constitution as constitution. Is one *not* apt to be a political conservative (or, for that matter, a political liberal) if one makes considerably more of the Constitution itself than Mr. Kendall does? Does not a heightened respect for the Constitution tend to raise one above ordinary partisanship?⁵⁹

VII

Mr. Kendall probably would have shrugged off these queries with the observation that a people does not live by its written constitution but by that body of opinion which reflects its experiences, prejudices, and interests.⁶⁰ His more "political" approach to these matters, which aimed at preserving the American way of life, may be seen in the fact that he did make much more of the *Federalist* than of the Constitution itself.⁶¹

But Publius, we should not forget, dedicated his rhetorical talents to the political objective of getting the Constitution ratified in a particular State with its special circumstances. Did it not matter to Publius what it was he was trying to get ratified?⁶² Was it not as apparent to Publius as it should be to us that that document, as well as the American way of life generally, rests upon the principles of the Declaration of Independence as its foundation?⁶³

Willmoore Kendall, too, looked beyond rhetoric and politics, moved as he was by a vision of the good, if not a great, society. It is that vision which has inspired, in turn, several generations of his students who divined that their driven teacher thirsted for more than he was ever prepared to say.

C. THE FUNDAMENTAL ALTERNATIVES FOR LEO STRAUSS (1984)⁶⁴

If one takes the attitude of Xenophon-Strauss's Socrates literally, one falls back again to the case of the *isolated* philosopher who is completely disinterested in the opinion that other men have of him. This attitude is not in itself contradictory ("absurd"), if the philosopher believes that he may attain the Truth by some direct personal revelation of Being or by an individual revelation proceeding from a transcendent God. But if he does believe this, he will have no philosophically valid reason for *communicating* his knowledge (orally or in writing) to others (unless it be for the purpose of obtaining their "recognition" or admiration, which is excluded by definition). Hence if he is truly a philosopher, he will not do so (the philosopher does not act "without a reason"). Hence we will know nothing about him; we will not even know whether or not he exists and, consequently, we will not know whether he is a philosopher or simply a lunatic. In my opinion, moreover, he will not even know it himself, since he will be deprived of

any sort of social testing or criticism which alone is capable of weeding out "pathological" cases. In any event, his "solipsist" attitude, which excludes discussion, would be fundamentally anti-Socratic.

Let us grant then that "Socrates," who "discusses" with others, is in the highest degree interested in the opinion that others hold or will hold about what he says and does, at least to the extent to which they are, according to him, "competent." If "Socrates" is a true philosopher, he progresses toward wisdom (which implies knowledge and "virtue") and he is aware of his progress. . . . If those who express opinions about him are "competent," they will appreciate him in the same way he appreciates himself (supposing that he is not deluding himself). That is to say, if they are not blinded by envy they will admire him to the same extent he admires himself. . . . To be sure, this does not mean that the fact of his having (consciously) made progress on the road to Wisdom does not bring "Socrates" pleasure and satisfaction independent of that brought by the admiration of others and his right to admire himself: everyone is aware of the "pure" joy that comes from the acquisition of knowledge, and they are all aware of the "disinterested satisfaction" that comes from the feeling of "duty done." And neither can one say that it is *in principle* impossible to seek knowledge and do one's duty without having as the motive the pleasure which results from it.

—Alexandre Kojève⁶⁵

I

Alternative interpretations are available of what "fundamental alternatives" meant for Leo Strauss. "Fundamental alternatives" could be taken to refer to the choices made by Mr. Strauss as to his own way of life—where his life would be lived, doing what, and with whom.⁶⁶

To a considerable extent, chance affected for him, as it seems to do for most if not for all of us, the challenges and opportunities made available—including, in Mr. Strauss's case, the association, from very early on, with the scholar who would be his most intimate philosophical ally, Jacob Klein,⁶⁷ and with the thinker who would be his most impressive (however morally disappointing) teacher, Martin Heidegger.⁶⁸ Of course, it was not simply a matter of chance that Mr. Strauss should have been drawn to such men as he was. But still, did not his

Jewishness, where he grew up and when, and other such chance factors help determine where and how he would spend most of his career?⁶⁹

No doubt, someone of Mr. Strauss's heritage and natural abilities would very likely have distinguished himself in a variety of circumstances, if only as a particularly learned man in a small community. He could even report, a few years before his death, "When I was sixteen and we read the *Laches* in school, I formed the plan, or the wish, to spend my life reading Plato and breeding rabbits while earning my livelihood as a rural postmaster."⁷⁰

But the path he did choose, among those that happened to become available, found him in a great American university in the 1950s and 1960s—and that proved critical not only to *how* he addressed certain issues but perhaps even to *what* he came to consider the most critical issues to be.⁷¹

II

This brings us to an alternative sense of what "fundamental alternatives" meant for Mr. Strauss—and this has to do with the issues he considered decisive. Of course, what *the* issues are can, and should, shape the life one leads—but aspects of that life may have determined, in advance, whether one would be equipped to see such issues for what they are. (To recognize in this manner the influence of chance or circumstances is not, it should at once be argued, to concede the case for historicism. Rather, it merely acknowledges that there may be material and other conditions which make possible the emergence of genuine understanding, an understanding which somehow transcends the conditions which permitted that emergence.)⁷²

For Mr. Strauss, the fundamental alternatives reflected, by and large, enduring questions that others had asked before him. He can be said to have learned from Socrates that some unanswered questions are more important, in that they are more instructive, than the answers one may secure to various other questions. The permanent questions may indicate what *is* to be taken seriously, questions for which plausible contending answers seem always to be available.⁷³

It is convenient, for our immediate purposes, to collect these persistent questions under three categories, categories having to do with the following fundamental alternatives:

1. To be or not to be;
2. To know or not to know;
3. To speak or not to speak.

These three sets of alternatives are intimately related to one another, but it can be instructive to distinguish them to some extent.

III

To be or not to be? Some thinkers, upon facing this question, might wonder whether existence can itself be established, or at least whether there is "anything" aside from one's own consciousness that one can truly know. Mr. Strauss, however, was no solipsist. Nor did he deny the goodness, as well as the very being, of being. Indeed, beingness and goodness could be considered by him, as it was considered by his greatest teacher (Plato), as reciprocal.⁷⁴ His notions about the "objective" character of truth, however difficult it may be to establish the truth in any particular or however temporary one's personal grasp of it may have to be, seem to have been old-fashioned.⁷⁵

Relatively little is said by him explicitly and in his own name about whether existence, or the world, is necessary or accidental (or providential).⁷⁶ He did not dwell upon the question of why things are, and why they are the way they are.⁷⁷ But he could see as fundamental alternatives that the visible universe may, or may not, be eternal—a determination which he considered vital to the ancient teaching about the forms⁷⁸ and, hence, to any assessment of the contemporary standing of philosophy (especially in its Platonic-Aristotelian, as distinguished [to the extent that it can be] from its Maimonidean-Thomistic, dispensation).⁷⁹

IV

Mr. Strauss seemed particularly receptive to that claim for the goodness of being which is evident in the natural desire for self-preservation. Life itself he considered good, thus sharing in what had been observed (if not even commanded) by both Moses and Aristotle.⁸⁰ Mr. Strauss's own desire here happened to be vigorous, which perhaps contributed to his sensitivity in appreciating for all it was worth (perhaps for more than it was worth?) what thinkers such as Thomas Hobbes have had to say about the desire for self-preservation and its social, political, and moral consequences.⁸¹ This, as well as his respect for nature and hence common sense, contributed (as did perhaps his American experience) to his prudent emphasis upon the political as proper grounding for the philosophical, even as he himself preferred (as something especially worth pursuing for its own sake) the life

of study to the life of action. One can see in all this the influence of a lively materialism—but a materialism which did recognize that the low should ultimately be seen in terms of the high.⁸²

In any event, Mr. Strauss did not devote himself in any marked way, at least in his publications, to any extended direct study of being as being. This sort of thing he can be said to have left to be developed by Mr. Klein, with his remarkable inquiries into mathematics and modern science.⁸³

On the other hand, Mr. Strauss evidently took more seriously than did Mr. Klein "the problem of God"—and hence the questions, or challenges, posed by revelation to philosophy.⁸⁴

V

To know or not to know? Is it possible to know anything—and especially anything important? Furthermore, is it possible to know anything, without first knowing absolutely certain important things?⁸⁵

Mr. Strauss seemed to think both that the senses do grasp common things (reliably knowing them, in a way) and that some important things can be known sufficiently with the aid of the reason. Even so, he considered serious, or deeply ranging, knowing—of the kind sought in philosophy—to be rare. But, he seemed to hold with Socrates, such knowing, or at least a dedicated attempt at such knowing, is to be preferred (both as more pleasurable and as more virtuous) to not-trying and to not-knowing.⁸⁶

Perhaps, however, Mr. Strauss made more here of critical alternatives than Socrates in his circumstances chose to do. Particularly dramatic was Mr. Strauss's repeated insistence upon the inability of either philosophy or revelation to deal authoritatively with each other.⁸⁷ A somewhat comparable Socratic approach may be seen in what is suggested in the Platonic dialogues about the sources and power of poetry—but is it not evident *there* that the best poetry, as well as properly revealed religion (which may depend at bottom upon the same impulses and sources as poetry), should be subordinated to a sound policy guided by political philosophy?⁸⁸

Mr. Strauss even went so far as to suggest that the remarkable vitality of the West is nourished by the coexistence among us of revelation and philosophy, with neither able to gain a decisive ascendancy over the other.⁸⁹ But does not such an analysis of the productive coexistence of alternatives depend upon a perspective which is higher or more encompassing than that provided by either philosophy or revelation? That is, does not someone who speaks in this way tacitly assume

that he himself can recognize a "best" (or at least a "better") which was anticipated by neither philosophy nor revelation (as conventionally understood)?⁹⁰

Be all this as it may, Mr. Strauss could observe that for the pious man it is not knowing but doing, not wisdom but righteousness (preferably in response to divine command), which is the highest activity of the human soul. Mr. Strauss, perhaps more than any other profound student of political philosophy since Baruch Spinoza, took revelation seriously, wherever he himself may have personally come down.⁹¹

In fact (Mr. Strauss could be seen to have taught), an awareness of the conditions for philosophy, and hence for political things, dictates that form of "a decent Respect to the Opinions of Mankind" which is reflected in a recognition of the significance of revelation and its practical (or institutional) manifestations, including the restraints that the most daring thinkers should always keep in mind, especially when they come to speak their minds.⁹²

VI

To speak or not to speak? The very nature of things, Mr. Strauss argued, helps determine both what one can say and what one should say. What *can* be said depends in part both upon whether becoming, as well as being, can be grasped in speech and upon whether one can know that one knows.⁹³ What *should* be said depends in part both upon what is necessary and otherwise good for the philosopher to say and upon what is useful and otherwise good for students and the community to hear. (In both cases, the "good" includes the "safe.")

The status here of the salutary myth should be noticed.⁹⁴ Does not responsibility recourse to deception not depend, for whatever propriety it may have, upon an awareness of the dictates of nature as well as upon a respect for the limitations set by nature? What nature in fact provides here—including what it suggests about the relation of the life of action to the life of the mind—reflects still another set of fundamental alternatives for Mr. Strauss.

All this is related to the discovery by Mr. Strauss of the esoteric tradition—or rather, to be more precise, the rediscovery and the practice by Mr. Klein and Mr. Strauss of esotericism, a rediscovery which requires and encourages a serious interest in the nature of nature.⁹⁵ With these observations, we have returned to the question of *being* and *knowledge* that we have touched upon.

VII

Thus, it can be said, the fundamental alternatives for Mr. Strauss can be conveniently reduced (at least for this occasion) to one question, "Should one be a Straussian?" Some term other than "Straussian" would have been used in other times, of course. Had personal temperaments and other circumstances chanced to have been different, we ourselves might be obliged to speak here of "Kleinian," if not even of "Kojévian," instead of "Straussian." One's natural sociability—of which one may have an excess as well as a deficiency—is not an irrelevant consideration in such matters?

If one is not a Straussian—that is, if one does not know how to read with the greatest care—then one is not apt to be truly serious. In this judgment, the ancients stand firmly against those moderns who believe that self-consciousness and history have liberated mankind from the self-denying tyranny of reason and the ideas.⁹⁶ Only someone who knows how to read, Mr. Strauss seemed to believe, knows what to say and when, knows what it is to know, and has reliable intimations of what being is—or at least he has begun to learn, if not to discover for himself, what has been taught by the very best thinkers about such matters.⁹⁷

Comparable things may be said, of course, on behalf of genuine revelation. The claims of revelation may even appear stronger in that revelation can plausibly deny what philosophy cannot—the influence, in the lives of even the most gifted men, of chance.⁹⁸

EPILOGUE

Look, it is a great misfortune to be both stupid and poor.

—Juan de Araújo⁹⁹

Willmoore Kendall believed, as a card-carrying conservative, that, in the United States, one need not be poor if one is not stupid. In this, he was very much in agreement with Abraham Lincoln, whatever reservations he may have sometimes wanted to have about Lincoln's constitutional principles.¹⁰⁰

Conservatives also tend to believe that government should step aside and allow a people's ingenuity and energies full rein. I had occasion, during the 2000 Presidential Campaign, to examine this belief in the following letter to the editor:

Dick Cheney, upon being reminded during the October 3rd Vice-Presidential debate that he is far better off financially than he was eight years ago, responded, "And I can tell you . . . that the government had absolutely nothing to do with it." "Absolutely nothing?" It has been pointed out since then that Mr. Cheney would probably not have the fortune he has so quickly made in "the private sector" without the contacts in American and foreign governments that he developed during his years on the federal payroll.

Even more significant, however, is Mr. Cheney's failure to acknowledge (whatever he may truly believe) how much the success any of us may enjoy depends upon the conditions, guidance, and support provided by the community, in large part through its various governments. Certainly, many of us can see how much better off we are than our equally-talented and equally-hardworking forebears were in the countries our families came from. Our form of government and its operations have encouraged and helped empower us, something that the first great leader of Mr. Cheney's Republican Party recognized again and again.

Then there is the vital assumption, by all of us who may insist that we have "made it on our own," that our government will expend considerable blood and treasure to help us retain what we have gained. Much is to be said, of course, for appreciating free enterprise and individual initiative, but surely not at the expense of forgetting how much is owed by everyone in this country, and especially by the most fortunate among us, to the organized efforts and repeated sacrifices of the entire community.¹⁰¹

I believe that both Willmoore Kendall and Leo Strauss would have been sympathetic to what is argued here, not least because of their reservations about the Open Society.¹⁰²

Old-fashioned conservative reservations about the Open Society would have to contend today with the consequences of the virtually irresistible globalization, which does seem to follow "naturally" from the modern conservative's reliance upon a market economy in a markedly technological age.¹⁰³ Does not globalization mean, among other things, that a radically open society will routinely challenge received opinions and established institutions, secular as well as religious?¹⁰⁴ Or, as has long been known, "All that is beautiful is difficult."¹⁰⁵

NOTES

1. Erwin Schrödinger, "The Proper Vibrations of the Expanding Universe," 6 *Physica* 899, 900 (1939). This 1939 article bears on contemporary "inflation" theory in physics. It seems to anticipate the post-Second World War Cosmic Radiation Background discoveries. See, on modern cosmology, George Anastaplo, *But Not Philosophy: Seven Introductions to Non-Western Thought* (Lanham, Md.: Lexington Books, 2002), 272.

2. George Anastaplo, "Leo Strauss at the University of Chicago," in Kenneth L. Deutsch and John A. Murley, eds., *Leo Strauss, the Straussians, and the American Regime* (Lanham, Md.: Rowman & Littlefield, 1999), 3, 24 n7. The citations which follow in my note include the following:

See, e.g., the review of Leo Strauss's *Thoughts on Machiavelli*, in *Willmoore Kendall Contra Mundum*, ed. Nellie D. Kendall (New Rochelle, N.Y.: Arlington House, 1971), 449-56. See, also, Kendall, Book Review, 61 *American Political Science Review* 793 (1967). [The 1967 review may be found at 263-66 of this Volume.]

The Kendall "conversion" to Straussianism was anticipated by his conversion in 1952 to Roman Catholicism. See, for the Strauss-Kendall correspondence, 191-261 of this Volume.

3. See Louis Filler, ed., *Dictionary of American Conservatism* (New York: Philosophical Library, 1987), 176. The complete Kendall entry follows:

Kendall, Willmoore (1909-1967), political scientist, a founder of the *National Review*, he contributed inspiration and ideas by force of personality and unbending conservative opinion. Born in Oklahoma, where his father occupied a pulpit, he was educated at Northwestern University, was a Rhodes Scholar at Oxford University, and later a Guggenheim Fellow. As a professor at Yale University he developed a strong, authoritative approach which impressed his student William F. Buckley, Jr., among others, but was less satisfactory to some of his liberal colleagues. His was a combination of basic assumptions and firm premises and preferences. He argued that the United States was deeply Christian and conservative, that this was its great tradition, which would endure whatever the vagaries of the day. Egalitarianism transgressed the spirit of the Founding Fathers and the practice of society, he maintained. The majority of the framers of the Constitution had opposed the Bill of Rights. Kendall's preferences and antipathies went back to the bases of society. He despised Hobbes's version of "natural law" and disliked John Locke's version of the "contract theory." Kendall's colleagues on the *National Review* found him a close debater, who kept them alert and eager to learn. He argued for a tight program which would win the country as liberals exposed their ignorance of the modes proper to society. He thought John Chamberlain glorified late 19th century conservatives, and Russell Kirk the role of religion. His long view saw triumphs where colleagues feared defeat. [The House Un-American Activities Committee] had resisted its enemies for thirty years, he noted. The South's "victories" (this was 1967) had made its cause national (in an article, "What Killed the Civil Rights Movement?"). Tired of the spirit at Yale, Kendall [had his tenure] bought out for \$25,000 and went on to the University of Dallas as chairman of its Department of Politics and Economics. His sense of leadership showed itself in "how to" articles, which extended to a book on baseball, *How to Play It and How to Watch It*. "How to Read Richard Weaver" assumed the general reader's limited capacity. Weaver, Kendall explained, was for a "select minority" of virtuous people. ("Virtuous" was here used to denote

those profoundly in tune with conservative principles of life.) Kendall was a careful, yet prolific, writer; among his books were *John Locke and the Doctrine of Majority Rule* (1941); *Democracy and the American Party System* (1955, which he co-authored); *The Committee and Its Critics* (1962), with *National Review* editors; *The Conservative Affirmation* (1963). He translated J.J. Rousseau's *The Government of Poland* (1972). At the time of his death, he was planning books on the "doctrine" and strategy of a conservative movement, and another book on the Bill of Rights. Following his death, a collection of his essays was issued: *Willmoore Kendall Contra Mundum* (1971), edited by Nellie D. Kendall.

4. See Filler, ed., *Dictionary of American Conservatism*, 318-19. The complete Strauss entry follows:

Strauss, Leo (1899-1973), German scholar whose philosophy of natural law helped conservatives clarify the source of virtue and the dangers in pragmatic solutions to the world's problems. Strauss's work took him into research which was rudely interrupted by the advent of Nazism. Of Jewish birth, he fled their persecution. Strauss was especially interested in the work of Hobbes. He analyzed him in *The Political Philosophy of Hobbes* (1936), and saw him as repudiating the natural law tradition—one of instinctive virtue and fraternity—for a "natural rights" conception which placed individual appetites above society's needs. This produced Levathan, and, according to Strauss, Nazism. Strauss much admired the ancient Greek view of society. His "classical paganism" disturbed Frank Meyer, who held that Christianity better estimated the worth of the individual. He held suspect too Strauss's willingness to have the state serve the public in benign ways. Nevertheless, Strauss was found evocative by rising conservative factions, at the New School for Social Research and, after 1949, as professor of political philosophy at the University of Chicago. His works included *Natural Right and History* (1953), *Thoughts on Machiavelli* (1958), for whom he felt distaste, and *What is Political Philosophy? and Other Studies* (1959). See also Voegelin, Eric.

5. My personal exposure to respectable "conservative" thought began with Richard M. Weaver at the University of Chicago in 1947, a scholar very much respected (I later learned) by Willmoore Kendall. The complete Weaver entry, in the *Dictionary of American Conservatism* (363-64) follows, an entry in which Willmoore Kendall figures:

Weaver, Richard M. (1910-1963), American author and educator. His life was a development of Southern feeling and conservatism which proved stimulating and evocative to others formulating new conservative views. Born in North Carolina, he studied at the University of Kentucky, explored socialism, and was taken by the writings of the Agrarians. In 1940, dissatisfied with his own state of mind and social trends, he undertook a reexamination of both. Ortega's *Revolt of the Masses* provided him with one clue to social order, the Southern tradition and the results of the Civil War another. The ideals of chivalry and religion seemed to him as necessary as ever. He joined the English Department of the University of Chicago in 1945. His first book made him famous. *Ideas Have Consequences* (1948) was a precursor of a coming literature of conservatism. Willmoore Kendall saw it as an indictment of "modern man," an egotist with no sense of moral responsibility. Based on the Platonic-Christian tradition, the book resisted what it saw as a crass empiricism endemic in society. Kendall's one criticism was that Weaver did not directly identify the liberal as the enemy. Weaver's *The Ethics of Rhetoric* (1953) built on the idea of words as deeds. Standing

between Old South traditions and the new conservatism. Weaver's essays and reviews contributed to developments in both sectors. Following his death, his essays were collected in *Visions of Order* (1964), with an introduction by Russell Kirk, and *Life without Prejudice* (1965).

However much Mr. Weaver and I differed "politically," our family very much looked forward to having him as our regular Thanksgiving Dinner guest the last years of his life. He reminded my wife of her grandfather (Harry Stonewall Davidson), who had been a Southern Presbyterian Minister. Willmoore Kendall, Leo Strauss, and Richard Weaver, I should add, were never as "conservative" as some regarded them. See, e.g., epilogue to this chapter. See also, George Anastaplo, "Lawyers, First Principles, and Contemporary Challenges: Explorations," *19 Northern Illinois University Law Review* 353, 453, 461-62 (1999).

6. It is important to remember, in assessing Willmoore Kendall's political proposals, that for much of his career (that is, since the early New Deal days) conservatives were more influential in Congress and in the States than in the National Executive. See, on Leo Strauss, George Anastaplo, *The Artist as Thinker: From Shakespeare to Joyce* (Athens: Ohio University Press, 1983), 249; also, note 2, above. See, on Willmoore Kendall and the Open Society, the text at note 24 of this chapter. See, also, note 102, below.

7. Mr. Strauss regarded Roman Catholics as allies, at least in the United States, on behalf of the moral virtues. The principal influences upon Willmoore Kendall can be said to have been (1) Christianity (especially Roman Catholicism, overlaying his father's Methodism), (2) American political thought and practice (with John Locke a significant early interest of his), and (3) Leo Strauss's Classicism.

Most of the notes for this chapter were prepared in 2001. It should be evident throughout this chapter that it is a quite personal account of both Leo Strauss and Willmoore Kendall. See, for my publications on sundry related matters, note 53, below.

8. This talk was given at a Willmoore Kendall Symposium, The University of Dallas, Irving, Texas, April 11, 1997.

9. William Shakespeare, *King Henry IV, Part 2*, III, ii, 203.

10. See, on Justice Scalia, George Anastaplo, "In re Antonin Scalia," *28 Perspectives in Political Science* 22 (1999).

11. I was provided some guidance here, I should add, by experiences in the Air Corps, as when I had had to continue working at my desk as an aerial navigator even while our B-29 seemed to be literally coming apart. My two years of solid teaching (as a commuter) at the University of Dallas were in 1967-1969. See, on early negotiations with respect to my association with the University of Dallas, the correspondence between Willmoore Kendall and Leo Strauss, November 4, 1966, 255-56 of this Volume.

12. Nellie Kendall, to whom we should all be grateful for what she has done to make generally available her late husband's work, has told me that I suggested to her the title for the *Contra Mundum* collection by observing that it would present Willmoore Kendall "against the world." I do not remember saying this, but I am glad to take the credit, thereby binding myself even closer to the remarkable academic enterprise in Irving, Texas.

13. Kendall, *Contra Mundum*, 149.

14. Kendall, *Contra Mundum*, 160. See, on Galileo, George Anastaplo, "The Forms of Our Knowing: A Somewhat Socratic Introduction," in Douglas A. Ollivant, ed., *Jacques Maritain and the Many Ways of Knowing* (Catholic University of America Press, forthcoming).

15. Kendall, *Contra Mundum*, 162-63. Somewhat different in spirit, it seems to me, is the last thing of his that Willmoore Kendall saw through the press, his review of the 1964 Leo Strauss Festschrift, *Ancients and Moderns* (a review published in the *American Political Science Review*, September 1967, 783-84). This review may be found at 263-65 of this Volume.

16. See Kendall, *Contra Mundum*, 154. See, on Plato's *Crito*, George Anastaplo, *Human Being and Citizen: Essays on Virtue, Freedom, and the Common Good* (Chicago: Swallow Press, 1975), 203. It is also a mistake not to take sufficient account of the effect of a disastrous war upon Socrates' fortunes in Athens.

17. See Kendall, *Contra Mundum*, 158. We can be reminded here of how much we owe to Thomas and Grace Starry West for their careful translations of Plato's *Apology* and *Crito*.

18. Kendall, *Contra Mundum*, 180.

19. See, e.g., Kendall, *Contra Mundum*, 176, 193.

20. See, for a memorandum on this subject prepared by me in the Summer of 1967, for Helen Vlachou in Athens, George Anastaplo, *The Constitutionalist: Notes on the First Amendment* (Dallas: Southern Methodist University Press, 1971), 680 n18.

21. See, e.g., Kendall, *Contra Mundum*, 175: "passages highly quotable because of their intoxicating rhetoric." See, also, Kendall, *Contra Mundum*, 177, 188.

22. "Plato . . . fed his fancy with making many edicts to his airy burgomasters . . . [He] seems to tolerate no kind of learning but by unalterable decree. . . . [But] Plato meant this law peculiarly to that commonwealth which he had imagined, and to no other. . . . [He] knew that this licensing of poems had reference and dependence to many other provisos there set down in his fancied republic." Kendall, *Contra Mundum*, 184 (quoting Milton's *Areopagitica*).

23. See Kendall, *Contra Mundum*, 200.

24. See Kendall, *Contra Mundum*, 188. See, on the Open Society, the text at notes 6 and 102 of this chapter.

25. George Anastaplo, *Campus Hate-Speech Codes: Natural Right, and Twentieth Century Atrocities* (Lewisohn, N.Y.: Edwin Mellen Press, 1999), 27-28.

26. American Communists were sometimes regarded by us during the Cold War the way that English Papists were regarded by Milton. See Kendall, *Contra Mundum*, 157. See, also, Anastaplo, *The Constitutionalist*, 812 (on the unfortunate Clear and Present Danger Test). It now seems to be the turn of American Muslims to be unduly suspected and therefore vulnerable capitalists. See note 104, below.

27. See, for discussions of these and similar documents, George Anastaplo, *The Constitution of 1787: A Commentary* (Baltimore, Md.: Johns Hopkins University Press, 1989); George Anastaplo, *The Amendments to the Constitution: A Commentary* (Baltimore, Md.: Johns Hopkins University Press, 1995).

28. Kendall, *Contra Mundum*, 177.

29. Introduction in John Stuart Mill, *Essay on Liberty* (on the need of barbarians for a benevolent despot, such as an Akbar or a Charlemagne). See, also, note 31, below.

30. See the text at note 13 of this chapter.

31. See, for what can be said on behalf of Mill, George Anastaplo, "On Freedom: Explorations," *17 Oklahoma City University Law Review* 465, 509 (1992).

32. See Kendall, *Contra Mundum*, 181.

33. See, on the inherent defects of a Russian-style tyranny, George Anastaplo, *The American Moralist: On Law, Ethics, and Government* (Athens: Ohio University Press, 1992), 161.
34. Kendall, *Contra Mundum*, 201.
35. Kendall, *Contra Mundum*, 201 n. 100.
36. See, for discussions of such charges, the chapters in this Volume by Leo Paul S. de Alvarez and John A. Murley.
37. He said this in response to Walter Berns's emphatic endorsement of virtue over freedom.
38. See, e.g., Kendall, *Contra Mundum*, 563-64, 572. See, for a comparison of "McCarthyism" and "Buckleyism," Kendall, *Contra Mundum*, 620-21. See, also, note 3, above, and notes 42 and 104, below. See, as well, William F. Buckley, Jr.'s foreword for this Volume.
39. See, on Vietnam and dissent, Anastaplo, *The American Moralist*, 225, 245. See, on racism and contemporary political correctness, George Anastaplo, "'Racism,' Political Correctness, and Constitutional Law: A Law School Case Study," 42 *South Dakota Law Review* 108 (1997); Anastaplo, "'McCarthyism,' the Cold War, and Their Aftermath," 43 *South Dakota Law Review* 103 (1998); Anastaplo, "Legal Education, Economics, and Law School Governance: Explorations," 46 *South Dakota Law Review* 103 (2001). See, also, John A. Murley, "Letter," 46 *South Dakota Law Review* 300-301 (2001).
40. See, on the risks of transforming the presidency into plebiscitary government, Anastaplo, *The Constitution of 1787*, 106; Anastaplo, *The Amendments to the Constitution*, 446 n251.
41. See, on Gorgias, Anastaplo, *The Thinker as Artist: From Homer to Plato and Aristotle* (Athens: Ohio University Press, 1997), 264.
42. The considerable Kendall influence at Yale is testified to by the profound effect he has had for decades on so gifted a student as William F. Buckley, Jr. See notes 3 and 38, above.
43. This talk was given on a Claremont Institute for the Study of Statesmanship panel at the Annual Convention of the American Political Science Association, San Francisco, California, September 1, 1990.
44. Dedication for William W. Crosskey, *Politics and the Constitution* (Chicago: University of Chicago Press, 1953). See, on Mr. Crosskey, note 55, below.
45. See Anastaplo, *The Constitution of 1787*, 317-18 n85.
46. Willmoore Kendall, "The Two Majorities," in *Contra Mundum*, 202, 226-27. The passage quoted in the text is the concluding paragraph of the essay. The essay was first published in 1960 in the *Midwest Journal of Political Science*. See, also, Anastaplo, *The American Moralist*: 120-21.
47. See, e.g., Kendall, "The Two Majorities," 227. Is not the Executive more likely than individual members of Congress to take the "national" view of issues and of their resolution?
48. I question the systematic abuse of the filibuster in this November 1998 Letter to the Editor ("Why Should Not the Majority Rule?").
- A perverse use of party discipline in this country in recent years has been the repeated recourse to threats of filibustering in the United States Senate, thereby subverting the duty of the majority to rule. The November 3rd election returns mean, among other things, that there is still no filibuster-proof margin enjoyed by the dominant party in the Senate.

The many proposals for constitutional amendments submitted to the First Congress in 1789 included suggestions that a "supermajority" (as we call it) be required on one issue after another. The First Congress refused to change what the Framers had done in limiting severely—that is, to a half-dozen instances—the occasions on which more than a majority is needed to resolve questions in either House of Congress.

The current Senate rule that keeps a bare majority from ending debate, even after a reasonable time for discussion of the relevant issues, is probably unconstitutional. A self-respecting Senate majority, with the cooperation of the presiding officer, should someday be able, by the use of well-reasoned points of order, to correct both the Senate filibuster rule requiring a three-fifths vote to end debate and the Senate rule requiring a two-thirds vote to change the rules of that body.

The restoration of responsible majority rule in the Senate probably depends upon an informed public opinion. A truly self-governing people would demand that their legislatures should always be free to act efficiently, making due allowance for adequate discussion, for fair procedures, and for traditional privileges.

In short, We the People have to revive, and to insist upon, a reliable standard of constitutionalism in this country.

See *Chicago Sun-Times*, November 11, 1998, 18; *Hickory Daily Record*, Hickory, North Carolina, November 15, 1998, A-4.

Consider, on the intended legislative supremacy, my unpublished letter of March 11, 2002, to the *Chicago Tribune*:

One of your readers, understandably troubled by radical measures resorted to unilaterally these days by the Bush Administration, argues that "the U.S. Constitution stipulates in no uncertain terms that the executive, legislative, and judicial branches are equal branches." (*Chicago Tribune*, Letters to the Editor, March 10, 2002, sec. 2, 6)

Sometimes the judiciary, as we saw in December 2000, acts as if it is supposed to be the dominant branch. At other times, as we now see, the executive acts that way.

But what the Constitution actually provides is that Congress, with such powers as those of the Purse and of Impeachment, is to be the dominant branch of the National Government, always subject of course to the sovereign Will of the People.

49. John Alvis, "Willmoore Kendall and the Demise of Congressional Deliberation," *Intercollegiate Review*, Spring 1988, 57, 64. See, also, Anastaplo, "Slavery and the Constitution: Explorations," 20 *Texas Tech Law Review* 677, 717 (1989).

50. Alvis, "Willmoore Kendall and the Demise of Congressional Deliberation," 64. Mr. Kendall made much of the *Federalist* where, it will be remembered, much is made (as in No. 10) of the salutary effects of "the mere agitation of interests." See also the epigraph at note 1 in the text of this chapter.

51. See, on the Gulf War, Anastaplo, *The American Moralist*, xvi-xix, 225; Anastaplo, "On Freedom," 579, 604. "[W]hat I do take sides on is the thesis of the *Federalist Papers*, namely: That America's mission in the world is to prove to the world that self-government—that is, government by the people through a representative assembly which, by definition, calls the plays—is possible." Kendall, "What Killed the Civil Rights Movement?" in *Contra Mundum*, 457, 468 (emphasis added).

Consider, in my Letter to the Editor of October 8, 2001, the call for a restored respect for Congressional prerogatives with respect to the initiation of wars:

The national administration, as part of its response to the monstrous crimes of September 11, has spoken often of going to war in or against one or more countries harboring terrorists. Attacks have been launched against Afghan targets. Now we hear talk about Iraqi targets. There still seems to be time, in the present circumstances, to have Congress consider a declaration of war against any country to be attacked by us. Such a declaration, preceded by a proper debate in Congress, would help clarify the current situation and focus everyone's attention upon what is to be done, why, and how. It would be healthy to see, through much salutary self-discipline, a reaffirmation in this country of the constitutional properties and the rule of law.

See *Chicago Daily Law Bulletin*, October 9, 2001, 2; *New York Times*, October 13, 2001, A22 (National Edition); *Chicago Sun-Times*, October 16, 2001, 34.

52. See Anastaplo, *The Constitution of 1787*, 124-48. See, also, Anastaplo, "The Supreme Court is Indeed a Court," in Robert A. Licht, ed., *Is the Supreme Court the Guardian of the Constitution?* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1993). "Deliberating" is not the same as "considering options," which the Executive must routinely do.

53. I sketch, in part C of this chapter, the fundamental alternatives for Leo Strauss, at least in this context. It is, in large part, a matter of chance that I was able to become as interested in the Straussian endeavour as I have been. Much the same can be said about my acquaintance with, and interest in the work of, William W. Crosskey. See note 44, above, and note 54, below. Such a dependence upon chance reminds us of our mortality and hence of our vulnerability. See the text at notes 65, 72, and 98 of this chapter.

The Strauss and Crosskey influences may be seen in much of my work. See, for bibliographies of that work, George Anastaplo: "An Autobiographical Bibliography (1947-2001)," *20 Northern Illinois University Law Review* 581-710 (2000); George Anastaplo: "Tables of Contents for his Books and Published Collections (1950-2001)," 39 *Brandeis Law Journal* 219-287 (2000-2001).

54. Mr. Strauss told me that he had heard that Mr. Crosskey read the Constitution as carefully as he (Mr. Strauss) read the philosophical texts that he studied.

55. The craftsmanship evident in the Constitution is celebrated in the work of William W. Crosskey. See Anastaplo, "Mr. Crosskey, the American Constitution, and the Natures of Things," 15 *Loyola University of Chicago Law Journal* 181 (1984). See, also, the epigraph at note 44 of this chapter.

56. See Kendall, "The Two Majorities," 212-19.

57. Kendall, "Equality and the American Political Tradition," in *Contra Mundum*, 356 (emphasis in the original).

58. See Anastaplo, *The Constitution of 1787*, 13-25. See, also, the discussion of the Confederate Constitution of 1861, Anastaplo, *The Amendments to the Constitution*, 125-34. It should also be noticed that most of the states in the Union did not exist at the time that the supposed "deal" was made.

59. Machiavelli would warn us, however, that one can become dangerously ineffective if one aims too high. But see Leo Strauss, *Spinoza's Critique of Religion* (New York: Schocken Books, 1965), 2: "It is safer to try to understand the low in the light of the high than the high in the light of the low. In doing the latter one necessarily distorts the high, whereas

in doing the former one does not deprive the low of the freedom to reveal itself fully as what it is."

60. See Anastaplo, *The Constitution of 1787*, 1-12, Anastaplo, *The American Moralists*, 555-69.

61. Compare Anastaplo, "The Constitution at Two Hundred: Explorations," 22 *Texas Tech Law Review* 967, 1042-53 (1991).

62. That is, Publius cared more for the Constitution itself than for the arguments conjured up to help get that constitution ratified in New York.

63. The work of Harry V. Jaffa is highly instructive with respect to these matters. See, on the Declaration of Independence, Anastaplo, *Human Being and Citizen*, 325; Anastaplo, "The Declaration of Independence," 9 *St. Louis University Law Journal* 390 (1965); *The Constitution of 1787*, 333; Anastaplo, *Abraham Lincoln: A Constitutional Biography* (Lanham, Md.: Rowman & Littlefield, 1999), 11-38.

64. This talk was given on a panel, "Leo Strauss on the Fundamental Alternatives: A Primer for All Political Scientists of Good Will," at the Annual Convention of the American Political Science Association, Washington, D.C., September 1, 1984. Hiljal Gliden and Laurence Berns were also on the panel. I have drawn somewhat upon Mr. Berns for what I say here as elsewhere about the relation of philosophy to Biblical revelation in the thought of Leo Strauss. On Leo Strauss, see also Anastaplo, *The American Moralists*, 622; Anastaplo, *The Artist as Thinker*, 497. On Jacob Klein, Mr. Strauss's long-time collaborator, see Anastaplo, *Human Being and Citizen*, 74; note 67, below.

The influence of Roman Catholicism on the thought of Willmoore Kendall also bears examination. (I do not believe, for example, that he would speak as Mr. Strauss did about the relation between philosophy and Biblical revelation.) See, on the status of nature in Roman Catholic thought, Anastaplo, *Human Being and Citizen*, 46; Anastaplo, *The American Moralists*, 347. Another important influence on Mr. Kendall seems to have been Eric Voegelin, about whom he did have reservations. See, on Mr. Voegelin, Anastaplo, "On How Eric Voegelin Has Read Plato and Aristotle," *Independent Journal of Philosophy*, vol. 5/6, 85 (1988).

65. Alexandre Kojève, "Tyranny and Wisdom," in Leo Strauss, *On Tyranny* (New York: Free Press, 1969), 168-69 (a book on Xenophon's *Hiero*).

66. See, on the Strauss career, Deutsch and Murley, eds., *Leo Strauss, the Straussians, and the American Regime*, 3-48. See, also, note 4, above.

67. See, on Jacob Klein, "A Giving of Accounts [by Jacob Klein and Leo Strauss]," *The College*, St. John's College, vol. 22, 1 (1970) (reprinted in Leo Strauss, *Jewish Philosophy and the Crisis of Modernity*, Kenneth Hart Green, ed. (Albany: State University of New York Press, 1997), 457; George Anastaplo, "Jacob Klein of St. John's College," *Newsletter*, Politics Department, The University of Dallas, Spring 1979, 1; Anastaplo, *Human Being and Citizen*, 74. See, also, note 83, below.

68. See, on Martin Heidegger, Green, ed., *Jewish Philosophy and the Crisis of Modernity*, 494; Strauss, *The Rebirth of Classical Political Rationalism*, ed. Thomas L. Pangle (Chicago: University of Chicago Press, 1989), 27. Anastaplo, *The American Moralists*, 144.

69. See, e.g., Anastaplo, *The Artist as Thinker*, 249; Green, ed., *Jewish Philosophy and the Crisis of Modernity*, 476; Anastaplo, "Law & Literature and the Bible," 23 *Oklahoma City University Law Review* 515, 758, 778 (1998).

70. "A Giving of Accounts." 2. Green, ed., *Jewish Philosophy and the Crisis of Modernity*, 460. Is it not remarkable that schoolboys were expected to study the *Laches* in Leo Strauss's time in Germany?

71. See Deutsch and Murley, eds., *Leo Strauss, the Straussians, and the American Regime*, 3, 39.

72. See, e.g., note 53, above.

73. Here, perhaps, the influence of Immanuel Kant may also be detected. See, for a recent introduction to Kant, Laurence Berns, "Putting Things Back Together Again in Kant," 28 *Interpretation* 201 (Spring 2001).

74. See, on Solipsism, the text at note 65 of this chapter. See, on Rene Descartes and the centrality of one's own consciousness, Anastaplo, "The Forms of Our Knowing."

75. This should have been apparent to anyone who watched Leo Strauss "in action" in classrooms and out. That it was not apparent to some very intelligent observers remains, at least for me, a mystery. See the text at notes 82, 86, and 96, of this chapter.

76. See the Strauss introductory essay for the Shlomo Pines translation of Maimonides's *The Guide of the Perplexed* (University of Chicago Press, 1963). See, on Leo Strauss and Maimonides, Green, ed., *Jewish Philosophy and the Crisis of Modernity*, 498.

77. He did touch here and there upon a special form of this question—the inquiry, "Why evil?"

78. See, e.g., Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 7-8. See, on the forms, Anastaplo, *The Thinker as Artist*, 303.

79. A caution is in order here: "A special effort is needed to realize the fundamental difference between Jewish medieval philosophy and Christian scholasticism." Green, ed., *Jewish Philosophy and the Crisis of Modernity*, 252. See, also, Green, *Jewish Philosophy*, 426-27.

80. Thus, the Jews are commanded to "choose life." See, e.g., *Deuteronomy* 30:19. And Aristotle could speak of the natural sweetness of existence. See Aristotle, *Politics*, 1278b25-29; Anastaplo, *But Not Philosophy*, 156-57, 167-68, 322, 358, 370, 372.

81. See, e.g., Anastaplo, *The Artist as Thinker*, 267

82. See note 59, above. See, also, note 75, above

83. See, e.g., Jacob Klein, *Greek Mathematical Thought and the Origin of Algebra* (Cambridge, Mass.: The M.I.T. Press, 1968); Klein, *Lectures and Essays* (Annapolis, Md.: St. John's College Press, 1985), 1, 35, 43, 85.

84. Mr. Klein's approach to these matters affected adversely his reading of Plato's *Meno*, a dialogue to which he devoted one of his three books. See Anastaplo, *Human Being and Citizen*, 74.

85. May not the mere suspicion of this limitation paralyze some talented men and women? May this (with its suicidal implications) be seen in some who have been influenced by Friedrich Nietzsche, if not in Nietzsche himself? See, e.g., Anastaplo, *The American Moralists*, 125.

86. See note 75, above, and note 93, below.

87. Among other reasons, they are bound to disagree about the very principles of proof. Compare *Judges* 6: 36-40.

88. See, on Mr. Strauss and prophethood, Anastaplo, *But Not Philosophy*, 131 n38.

89. See, on the relations between Jerusalem and Athens, Green, ed., *Jewish Philosophy and the Crisis of Modernity*, 496.

90. Is there assumed, in the Strauss argument about the juxtaposition of philosophy and revelation, that reason can eliminate some of the many purported revelations as not worthy of serious consideration?

91. See note 59, above.

92. See, e.g., Leo Strauss, *Persecution and the Art of Writing* (Glencoe, Illinois: Free Press, 1952); See note 95, below.

93. See, on what Socrates did know, George Anastaplo, "Freedom of Speech and the First Amendment: Explorations," 21 *Texas Tech Law Review* 1941, 1945 (1990).

94. See, e.g., Plato, *Republic*, 414D

95. See, on esotericism, Green, ed., *Jewish Philosophy and the Crisis of Modernity*, 492, and note 92, above. See, on the nature of nature, Klein, *Lectures and Essays*, 219.

96. See, on nature and natural right, Anastaplo, *But Not Philosophy*, 303.

97. Must there be at work here a sound intuition as to who the best truly are?

98. Does chance sometimes, if not even always, determine whether one has access to the best revelation? This bears upon what form of revelation Willmoore Kendall happened to be moved by, why, and to what effect. See note 53, above.

99. Juan de Araujo (1649?-1712), *Aparition que a Guadalupe (The Blindmen)*.

100. Consider, for example, Lincoln's Independence Hall sentiments in 1861 about the significance of the Declaration of Independence: "It was that which gave promise that in due time the weights should be lifted from the shoulders of all men, and that all should have an equal chance." This sentiment was repeated by him on many occasions, reinforced by the observation that slavery robbed human beings, masters as well as slaves, of that "equal chance" for the best that all are entitled to. See Anastaplo, *Abraham Lincoln*, 11.

101. This letter of October 9, 2000 ("On Personal Success and the Community") was published in the *Chicago Tribune*, October 20, 2000, sec. 1, 24. A caricature of "conservative" opinions about these matters is provided by Mark Twain, in chapter 6 of *The Adventures of Huckleberry Finn* (where we are treated to the fulminations against "government" by Huck's father).

Also in need of correction are those at the other end of the political spectrum from Mr. Cheney. Consider, for example, my unpublished letter of July 2001 to the editor of the *New York Times*:

Daniel Ellsberg, in his recent recollections of the Pentagon Papers controversy ("Lying About Vietnam," *New York Times*, June 29, 2001), emphasized that he had expected to go to prison, perhaps even for the rest of his life, because of his unauthorized release of forty volumes of Top Secret materials in 1971. Do we not see here the kind of exaggeration of risks which fueled Mr. Ellsberg's early support of our unfortunate Vietnam intervention?

In the course of our 1972 appearance together on a Chicago television program, during a recess in the Ellsberg Espionage Act trial, Mr. Ellsberg was astonished when I offered 3-to-1 odds against a conviction of him which would stand up on appeal. "This is the first time anyone has said this to me," he observed. "I wish my wife could hear it."

On that occasion I bet Mr. Ellsberg a dinner that he would never spend a night in jail because of his Pentagon Papers conduct. He still owes me that dinner.

See, on the Pentagon Papers, Anastaplo, *The American Moralists*, 245. See, on Mr. Ellsberg, Anastaplo, "'Racism,' Political Correctness, and Constitutional Law," 154.

Is it not prudent to add here the understanding that the most fortunate among us should usually take the lead in defending our country? Consider my unpublished letter, of March 21, 2002, to the *Wall Street Journal*:

Charles Moskoff concluded his instructive column ("Our Will to Fight Depends on Who Is Willing to Die," *Wall Street Journal*, March 20, 2002, A22), with a reminder, illustrated by the story of Iphigenia's death, that the ancient Greeks understood that serious sacrifice among "the privileged classes" is necessary if common soldiers are to be effectively called upon to fight.

Such matters are apt to be particularly divisive in a community when the political leaders who try to send young men into combat had not been willing (in their own youth) to risk their privileged lives in hostilities that they and their families had approved of, so long as somebody else did the fighting and dying.

However that may be, it is also prudent to remember, as a natural limit upon the political, that Agamemnon's own wife so questioned the necessity of her husband's deliberate sacrifice of their daughter that she butchered him immediately upon his return home from his memorable conquest of Troy.

A veteran of the Israeli army has endorsed this letter, recalling that in Israel the best battle cry is said to be "After me!"

102. Consider, for example, the observation, "The quarrel between the ancients and the modern concerns eventually, and perhaps even from the beginning, the status of 'individuality.'" Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 323. Consider, also, Wilmoore Kendall, "The Open Society and Its Fallacies," in *Contra Mundum* (1995 edition by University Press of America), 635; George Anastaplo, "Law, Lawyers and Property: The Open Society and Its Limitations," 20 *Williamette Law Review* 615 (1984) (at 631, 1. 20, "reluctance" should read "inclination;" at 641, 1. 7, "common" should read "common good") (an abridged version of this article was published in George W. Carey, ed., *Order, Freedom and the Polity: Critical Essays on the Open Society* [Lanham, Md.: University Press of America, 1986], 35).

103. See, on the presuppositions and implications of a market economy, Anastaplo, "Legal Education, Economics, and Law School Governance," 132-205, 253-95. One happy consequence of this development is the considerably more leisure time made available to those who do want to study.

104. It is this prospect that Islamists, for example, are troubled by as they contemplate the imperialistic communications industry spawned by the modern economy. See, e.g., George Anastaplo, "Islam in America" (commissioned by *The Claremont Review*); Anastaplo, *But Not Philanthropy*, 175. Something old-fashioned and sound in the Muslim tradition should be both constantly reinforced and confidently appealed to, as in my Letter to the Editor after September 11, 2001:

Among the innocent victims of the monstrous assaults last month on the World Trade Center and the Pentagon are the multitudes of decent Muslims worldwide who must endure the shame, for years to come, of the shocking abuse of American hospitality by their denigrated co-religionists, the kind of hospitality that Islam and its Prophet have always cherished. Is it not the duty of prudent

Muslims everywhere to remind their peoples of what is truly noble in their great tradition?

University of Chicago Maroon, October 2, 2001, 8; *Chicago Tribune*, September 21, 2001, sec. 1, 26. Prudent Americans are, in turn, addressed by me in this Letter to the Editor of November 17, 2001:

Concerns have been voiced about the November 13th Executive Order providing for trials by military tribunals, even in the United States, of foreigners accused of acts of "terrorism" anywhere in the world. Critics of the Justice Department's current campaign against "terrorism" should be heartened as it becomes generally apparent how ill-conceived even this vigorously-defended Executive Order really is.

Although it has been objected that the concurrence of only two-thirds of any tribunal established by the Order suffices for convicting and sentencing, it has not been noticed that the judges thus empowered need be two-thirds only of the tribunal members present, so long as a majority of the military officers designated for a tribunal is indeed present. If, for example, there should be eleven officers chosen for a tribunal, only six need be present to permit a final decision, which decision can then be made if two-thirds of those six (that is, four) agree. This can mean that little more than one-third of all of the officers who have heard the evidence during a trial can suffice for convicting and sentencing, whatever the other two-thirds (who happen not to be present for the decision) may believe or prefer.

Such curious anomalies suggest that this and related, potentially shameful, experiments in the administration of American justice are not likely to endure—and for this we all, not just suspected terrorists, can be thankful.

See, *Chicago Sun-Times*, November 20, 2001, 30. See, on shame, Aristotle, *Nicomachean Ethics*, Book IV, chapter 9. See, on *megalo-psychia* (greatness of soul), Aristotle, *Nicomachean Ethics*, Book IV, chapters 2-3.

Additional arguments on behalf of the rule of law are made by me in this Letter to the Editor of February 15, 2002 (which has been published in abridged form):

The appearance before a Senate committee of a former chairman of Enron on February 12 was hardly edifying. Senators, like the rest of us, are entitled to that freedom of speech which they vigorously exploited on that occasion to condemn predatory business practices and remarkably self-serving "leadership."

But is it not improper to subpoena a citizen to appear before a Congressional committee, knowing that he will almost certainly invoke his Fifth Amendment right to remain silent—and then have twenty-one Senators subject him to bipartisan abuse? Should we not still prefer to have both an indictment and a trial before prominent public servants mercilessly condemn a potential defendant?

In some instances, one suspects, the attackers were trying to purge themselves of their former associations with the target of their abuse. What a way to celebrate the birthday of that great champion of constitutional propriety, Abraham Lincoln!

See note 26, above.

105. Plato, *Greater Hippias* 304. See, on the Good, the True, and the Beautiful, Anastaplo, *The Artist as Thinker*, 275.