
Freedom, Nature, and Community

On Trial. By George Anastaplo: In *Loyola University Chicago Law Journal* 22 (Summer 1991), 765-1118.

The American Moralist: On Law, Ethics, and Government. By George Anastaplo. (Athens, Ohio: Ohio University Press, 1992).

While the theme of each book here under review is different, both volumes are collections of essays of the sort that Anastaplo has elsewhere called "constructive provocations." Each book contains essays on classical literature as well as on more or less recent events in American politics. This common feature betrays the author's strong inclination to somehow link theory and practice.

The subtitle of *The American Moralist-On Law, Ethics, and Government-does* not fully indicate the extent to which that volume deals with the problem of forming community in a liberal society. In its concern with this problem, *The American Moralist* belongs on the same shelf with recent books by Christopher Lasch and Michael Sandel.² Anastaplo's book differs from these in that it complicates the problem of community by viewing that problem in the context of the Socratic demand that our minds should be free, a demand rooted in the assumption that the truly human way of life is the philosophic life. What seems to be a needless complication turns out to be the indispensable ground for distinguishing between too little community and too much (see below, 176, 207-208).

On Trial is a more difficult book to describe. At one level, it is a readable and entertaining collection of accounts of famous judicial cases. In Anastaplo's narratives the cases of the Chicago Seven, of Julius and Ethel Rosenberg, and of the Haymarket bombers make

for fascinating reading. With imagination and insight, Anastaplo extends his range to cover also the trials of Thomas More, Joan of Arc, and even the Gospel accounts of the trial of Jesus. The trial of Socrates finds a place in his discussion of Plato's *Euthyphro* while two essays on Aeschylus' *Oresteia* help us to see the significance, if not of Orestes' trial, then surely of Aeschylus' trilogy, for the development of western civilization. If the inclusion of these essays does not stretch the meaning of the title beyond the ordinary notion of a trial as a court proceedings, then other essays surely do. Different aspects of the biblical view of things emerge in the course of essays on *Genesis and Jonah* as well as from the treatment of Kierkegaard's *Fear and Trembling*. The latter work can serve for Anastaplo as representative of key features of modernity, as can also Marlowe's *Doctor Faustus*. Students of these trials-in the extended sense of the word according to which Abraham and Jonah also undergo trials-will hardly find a better place to begin thinking about them than Anastaplo's essays. Central to each essay is a concern with what we can know and how much we have to know in order to make a responsible judgment (1060). Our focus, in this review, will be, not on individual trials or literary works, but on themes of law and politics, religion and philosophy that run throughout the essays. Even so, we will pause to consider at length Anastaplo's account of one particular piece of literature.

In the interpretation presented here, *On Trial* provides us with a way into what one is tempted to call Anastaplo's philosophy of history. Perhaps it is misleading to use the phrase "philosophy of history" in order to describe the thought of an author who always places nature above history. Nature is the standard by which Anastaplo intends to judge and be judged. Even so, the essays give an account of what one might call stages of human development. Given its historical range, we will deal with *On Trial* first. In the last part of the review, we will turn to community and related problems in *The American Moralist*.

Our approach to these two works is one that looks for common themes that transcend individual essays. This approach is bound to distort essays that are, taken individually, careful studies of particu-

lar works. The essays are parts, but each is also a whole in itself. It is appropriate, then, to look, in the second part of this essay, at one of Anastaplo's essays as what it is, namely, an interpretation of a particular book or play. For this purpose, I have chosen Anastaplo's interpretation of Marlowe's *Doctor Faustus*, one of the essays in *On Trial*. Anastaplo's interpretation of this play is quite useful in its indications of the way in which he views modernity and, hence, also the Enlightenment. This issue is relevant to my interpretation of Anastaplo himself, as becomes apparent in away from the title of part three below. In choosing to look at what Anastaplo has to say about Faustus, however, I have been guided also by a willingness to be "constructively provoked," in this case by an essay that presents, I think, more than one image of the same play.

The connections among the three themes designated in the title of this review can be anticipated by three questions. In the first two of these questions, the reader will see that we are in a way asking about Anastaplo's philosophy of history. Does nature limit human freedom in the construction of a political community? Does nature serve as a standard in guiding the affairs of the community? Can a community be true to its own standards while remaining open to the standards of other communities, or to what extent is it feasible to have a community within a community? The emergence of human freedom is one of the initial themes of *On Trial*.

Part I: To Be Judgmental

*To be judgemental" is to commit one of the great postmodern crimes.-Roger Scruton*³

In opposition to Jewish law, the New Testament tells us "Judge not that ye be not judged." ⁴ In *On Trial*, Anastaplo takes his stand on the side of the law. A trial requires judges and judgment. In stark contrast to the teaching of the New Testament, Anastaplo writes, "I judge in order that I may be in turn judged" (767). He can make as much as he does of trial and judgment, however, only because he makes much of standards by which we are to judge. "Standards" can

mean for him rule of law, but more often it means standards given by nature or by the natural understanding; sometimes it means simply the truth (822, 891; 850; 827; 877). While Jewish standards are fairly clear, it is "difficult to garner" that for which Jesus stands (888, 914). It is not surprising, then, that *On Trial* contains extensive discussion of the Hebrew and the Christian scriptures, both in contrast to each other and in contrast to the natural standard to which Anastaplo appeals in judging them.

A. Reason, Choice, and Authority

Beginning with the Garden of Eden, Anastaplo raises the somewhat shocking question whether we are not better off out of it. Could we have raised this question *in* the Garden, deprived as we then were of a knowledge of good and evil? The fruit whose consumption was our first sin seems to have brought with it also our humanity (777).

In what does our humanity consist? Not only knowledge, but also choice is involved.

Certainly, it can be said, the world would be incomplete if there were not in it beings capable of doing bad, and exposed to temptations to do bad, who nevertheless choose to do good^s (777).

Anastaplo can speak of "the supreme beauty of a deliberate preference for the good over the bad" (781).

The themes of resoluteness and willfulness as they are dealt with in *On Trial* bear upon the way in which we are to understand choice (794, 858, 870, 879). Will, *as* Anastaplo understands it, is, like commitment, essentially arbitrary (864). One can be resolute about anything, even something silly, like admiration for Hitler's hands (1093). Anastaplo sees "the hollowness of resoluteness as an end in itself" (795). How then can he locate man's humanity in the free choice of good over bad? How does free choice differ from resoluteness or willfulness? What does freedom add to goodness? Is goodness any better if freely chosen? Can one freely choose evil? Can one have a deliberate preference for wickedness? If so, either free choice or deliberate preference would seem at least as hollow as resolute-

ness.

The biblical view does, indeed, incorporate the idea of free will. In this way the biblical understanding leads to human responsibility for one's choice and, hence, to the idea of repentance when one regrets one's choice. Thus one needs to distinguish Anastaplo's view from the biblical view in at least four points. First, with some reservations, he seems to adopt the principle that all men desire the good (1043, 1087). (Do men desire only the good? Do they will evil at the same time? Do they perhaps desire two conflicting goods? Cf. also the "simply incomprehensible" actions of the Nazis.) (986) This, in a way, eliminates the element of choice from human action or, more exactly, reduces choice to understanding. If one knows the good, then one naturally chooses it. The second difference between Anastaplo and the Bible seems to be that he shares the Socratic view that virtue is knowledge, however this may have to be interpreted or qualified.⁶ On this view of things, free will goes hand in hand with ignorance. The so-called arbitrary element in will or commitment is merely the interpretation we give to our ignorance and our resulting confusion. If one knows the good, then, barring outside obstruction, one does it. Virtue is knowledge. Freedom is a euphemism for ignorance and its handmaiden, confusion. On this view, the supreme beauty of a deliberate preference for the good over the bad is indistinguishable from the supreme beauty of a correct understanding. One who does good without understanding (Adam before the fall?) is as much subject to chance as is one who does evil. In this sense, too, the fall may have been inevitable (777). Chance catches up with one.' The third way in which Anastaplo departs from the biblical view emerges from the preceding two. He questions the idea of repentance or, at any rate, he seems to doubt that it has a place in the Aristotelian scheme of things (1044). Why repent if one's misdeeds are a result of ignorance and not at all a result of the misuse of one's freedom?

If freedom is to be given a positive sense, then it must be distinguished from arbitrary will. This Anastaplo does, in the course of taking exception to what he sees as Kierkegaard's emphasis on the need for sacrifice in the character of a good or pious man. Anastaplo

suggests that discipline is more important than self-sacrifice in the character of a good man.

...to emphasize discipline [rather than sacrifice] is to assume there are standards to which one can aspire and from which freedom follows (870).

Freedom consists in living according to the standards one has come to understand (see below, 203). It consists neither in creating standards through an act of the will nor in sacrificing oneself in obedience to the arbitrary standards set by others. This fourth point, namely, that freedom consists in following standards, seems to me to be a logical corollary of the first and second features distinguishing Anastaplo's view from the biblical view: all men desire the good and virtue is knowledge. We are free only when we know what we are doing and can, therefore, do the good that we all seek. The good that is universally desired is known to us through standards that are universally applicable. Vice is ignorance or comes from ignorance (782), while freedom follows naturally (could one say necessarily?) from knowledge of the good. When we judge according to knowable standards, being judgmental is the source of our freedom.

If being judgmental is one of the great modern or postmodern crimes, as Scruton claims, then Anastaplo makes a virtue of this vice. His is an inverting mirror in which the inverted world of modernity can be seen right side up.

Anastaplo inverts the modern world, but he does no less to the biblical world. What in *Genesis* is the origin of our fall is in *On Trial* the origin of our humanity. Anastaplo's stance with respect to the biblical account of things can also be seen in his treatment of another story from *Genesis* (ch. 22), The Binding of Isaac. Here we can see the limits Anastaplo sets to obedience to authority, and what this means for his views on human freedom, reason, and choice. The story of The Binding has been made much of by Kierkegaard in his *Fear and Trembling*. Anastaplo rejects Kierkegaard's existentialist interpretation of the story, but he does so for reasons interestingly distinct from those of "a twentieth-century Jewish scholar" (856). The scholar in question is Robert Sacks.

Sacks, as quoted by Anastaplo, gives the following account of *Fear and Trembling*.

It is the story of an old man who had spent many years thinking about the present chapter [Genesis 22]. He looks at it from many sides and his final thoughts were something like this: Abraham had been promised the seed, and that seed could only come through his chosen son, Isaac. On the other hand, God has commanded that the boy die. Abraham, in order to maintain his faith in God, must believe both that the promise would be kept and that the son would die. The old man reaches the conclusion that it is human reason itself which was placed on the altar that day so many years ago in the land of Moriah (857).

According to Sacks, there is a sacrifice of reason by Abraham in the story as told by Kierkegaard, but not in the biblical account correctly translated. While Kierkegaard seems to think that God commanded Abraham to sacrifice Isaac, the Hebrew text in fact says, "Please take thy son..." (854). Sacks concludes, "So long as there was no command there was no contradiction..." (861). Kierkegaard is wrong on two counts. He is wrong to demand the sacrifice of reason and he is wrong to think that biblical religion requires such a sacrifice.

Is Kierkegaard wrong in his understanding of biblical religion? For my part, I admit an inability to see the significance of the word "please." What does "please" mean when addressed by God to a man? Sacks says that "God was speaking to Abraham 'as friend to friend,'" (861) but can two so unequal as God and man be friends in this sense? Is not the use of the word "please" itself absurd given the speaker? Does "please" here really mean that Abraham is free to ignore God's request or to refuse it? Did God say "please" because he recognized that the request was essentially arbitrary or unreasonable? Is God putting Abraham's faith or love on trial by asking him to do something senseless to prove his love and devotion? Or is God testing Abraham's rationality? Is the word "please" intended to challenge Abraham to assert his reason in the face of an absurd

command? To me, the use of the word "please" only seems to accentuate the sacrifice of reason that God seeks from Abraham.

Anastaplo focuses on the content of God's proposal, whether it be a command or a request. He sees the proposed sacrifice of Isaac as "monstrous" in its "fierceness" (862-3). He quotes with approval Maimonides' observation that the proposed sacrifice of Isaac is "repugnant to nature" (864). Abraham "should have known" that God would not require the sacrifice of Isaac, that a ram would be provided as a substitute (865-6). "Should Abraham have known what even we know, that God would not permit Isaac to be killed?" (865) Or does the wise man, in fact, know something quite different about what God will permit? One wonders what "even we" know about the Christian sacrifice of the Son by the Father. Is this, too, repugnant to nature? Or is the sacrifice less reprehensible if one believes, as Augustine believed, "that his son would rise again when he had been sacrificed..."? (867)

Nature and reason, not voices and visions, provide the standard by which men and women are to live. The "constant involvement of God in the things of this world" (864) would render nature unstable and, hence, useless as a standard for human conduct. Standards must be unchanging just as they are universal (830, 870-71; cf. 954). But what if God does not move or change? (932) Would it then be impossible for God, in fact, to ask for the sacrifice of Isaac? "Dare one add that if God is indeed changeless-and does not this follow from perfection?-may not the place one has to look to understand what happened on the occasion of The Binding be not into the unfathomable mind of God but in the all-too-human soul of Abraham?" (864; see also 1050, n.270; 1051, n.300)

When Anastaplo talks about the voices and visions of Joan of Arc, he dares more than to speak of them as all-too-human. "Of course," he writes, "there can be no assurance that her relapse [into heresy] was other than a resurgence of a psychopathic state from which the immediate prospect of death had momentarily shaken her, like a kind of shock treatment." (925) Do not all voices and visions lack this assurance? Anastaplo can even wonder aloud "if her visions reflected deep psychic disturbances which she had been temporarily able to

put to good use;" he can, in the same breath, speak of her "psychic turmoil" and "psychic anguish" (934). Dare one add that "Her career resembles in some respects that of Jesus himself?" (925) On the other hand, some two dozen pages later Anastaplo can warn that "it is far from clear to me that the radical questioning of Christianity since Shakespeare's time has done mankind in general, and the Jews in particular, the good that some of those moved by what Leo Strauss called 'antitheological passion' had once anticipated" (948-9).

Where Anastaplo stands with respect to the secular treatment of religious themes is a part, and a significant part, of his stance towards the Enlightenment. This in turn is a more complicated question than it might at first seem to be. In the essay on Marlowe's *Doctor Faustus*, the numerous critical references to modernity seem to put Anastaplo clearly in the camp of the ancients and in opposition to the Enlightenment philosophy that has shaped the modern world (786, 788, 791, 793-5). On the other hand, he can sometimes speak of "we moderns" (929) in a way that I do not recall him ever speaking of "we ancients," though the latter expression may simply sound awkward. It is interesting to note that Anastaplo deals with the incident of The Binding "somewhat as one would a play." (863) Is this not characteristic of the modern treatment of sacred texts? Indeed, *On Trial* mixes discussions of Jewish and Christian sacred texts together with studies of Marlowe, Aeschylus, Sophocles, Kierkegaard, Plato, and Shakespeare. All are treated in the same way, "with whatever aid is provided us by the light of natural reason and by the guidance of common experience" (919). One is reminded of the secular way that Machiavelli discusses Moses in the *Prince*. Of course, one might say that it is unfair to be reminded only of Machiavelli; one could just as well be reminded of the way Plato shows Socrates treating the stories about the gods in Books II and III of the Plato's *Republic* (1053). In contrast to Machiavelli's "realistic" concern with what human beings in fact do, Anastaplo's concern is with what the characters, historical or literary, should have done (865, 918, 1045).

B. Nature

For knowledge of what human beings should do, Anastaplo looks again and again to a natural standard (e.g., 823 or 877), for he does not wish to judge or be judged in a merely willful way.¹ One is bound to ask, therefore, what is the standard that nature teaches us? Does nature guide us as to what we should do? What is nature? To take one example, what does it mean to say that Abraham's action towards Isaac is "repugnant to nature"? Is the natural merely the ordinary, the customary way, or, at any rate, the non-miraculous, like a ram caught by his horns in a thicket? (866; cf. 1039, n.95) Is the unnatural the extraordinary? But how extraordinary was child sacrifice among Abraham's neighbors? (867) Certainly Abraham's action against Isaac is as unnatural as Euthyphro's action against his father. Euthyphro brings a legal charge of murder against his father in a case involving the death of a slave. His fellow citizens seem to regard this action by Euthyphro against his father as simply mad (874). Perhaps, indeed, Euthyphro is wrong, but is he wrong because he judges wrongly of his father's deed or because it is wrong for him to judge his father? Is this a case where it is unnatural to be judgmental? Would it have been wrong for Isaac to have judged Abraham? And if he judged him to be all-too-human, would he be wrong to resist his father if he could? Or, to consider another case that Anastaplo discusses at length, is Orestes wrong to judge Clytemnestra, even though she is his mother? Is it even possible for Orestes to escape judging Clytemnestra? Dare Orestes judge his mother as he might judge other women? "But does not philosophy sometimes seem to counsel treating one's parents the way one would treat other men and women?" (1052) What is the natural ground on which philosophy bases such counsel?

Surely the ground must be our knowledge of nature. If there are to be natural moral standards or "principles of natural right," as Anastaplo sometimes calls them (916), then nature must be knowable. Anastaplo has not a lot to say on the nature of our knowledge of nature, so what he does say is of extra weight. Rather than say anything himself, he quotes, in note 510 to the article on Joan of Arc,

Professor Chandrasekhar, who is in turn quoting Einstein: "The most incomprehensible fact about Nature is that it is comprehensible" (1064). This assurance may not be what the student of natural standards had hoped for, but it does affirm that nature is comprehensible, though not all of nature. To be sure, the scientists quoted would seem to suggest that comprehensible nature is nature as comprehended by modern natural science. Does this help at all in comprehending nature as the source of moral standards? The rest of the quotation from Professor Chandrasekhar bears upon this question.

Einstein continues: 'It seems that the human mind has first to construct forms, independently, before we can find them in things. Kepler's marvelous achievement is a particularly fine example of the fact that knowledge cannot spring from experience alone but only from a comparison of the inventions of the intellect with the facts of observation.' Let me repeat the crucial part of this remarkable statement: 'The human mind has first to construct forms, independently, before we can find them in things.'

Not the least remarkable thing about this quotation is that Anastaplo offers no comment on it-unless note 509 is a warning against commenting on note 510.

The notion that the mind must construct forms in order to interpret experience seems consistent with Anastaplo's assertion "that 'facts' and 'values' cannot be separated" (892). Perhaps one ought to interpret this to mean that nature and mind cannot be separated; one cannot, for example, reduce nature merely to instinct. But does this somehow lead one to see the artificial-if it is truly artificial, i.e., artful-as somehow natural? Anastaplo can go even further than this, defending the merely traditional as natural in some cases. In speaking of the mode of electing the President, in his commentary on the Constitution, he writes

It may seem odd to defend as desirable, that is, on the basis of nature, conventions that have been accidentally developed.

But that happens all the time, as may be seen for example with the language of *a* people or with our much-respected institution of trial by jury.'

Is not this passage similar in its line of thought to that by which a thinker like Edmund Burke transforms nature into history?

Anastaplo explicitly rejects history as a standard. The linking of facts and values blurs the distinction between natural science and natural morality. Values presumably enter even into natural science. The political consequence of this mixing of facts and values can be seen in what Anastaplo says, in the text of the article on Socrates, about the guiding role of reason in human affairs.

And so, it can be said it is philosophy or the proper use of reason, not history or a canon of stories about the gods, which is needed to guide mankind aright (880).

Perhaps it can be said that while philosophy must beware of wishing to be legislative, philosophy is of necessity legislative.

If philosophy is to be legislative without being merely willful, it must have standards, rooted in nature, by which to judge of its own legislation. We seem to move in a circle, back to the question, what is the nature of nature and its relation to human reason? Anastaplo concludes his lecture on the Nuremberg trials of Nazi war criminals with a story that is relevant here. "I came upon a falcon that had just grounded a pigeon," he tells his audience. For some students of nature, the pre-Socratics, for example, instinctive behavior, such as that of the falcon, is the only truly natural standard. Certainly, Anastaplo does not call the violence of fierce animals wicked, but this is because they lack the "element of understanding" (823). One may say of fierce animals what he says of the Furies in the *Oresteia*, that they are controlled by the "instinctive" or the "instinctual," and he recognizes here one meaning of the term nature (813). "There is indeed something natural, and hence in a sense proper, in the way the falcon conducts itself" (993). This, however, is not the only or the highest meaning of nature.

But we must never lose sight of the fact, providentially recalled for us by *my* falcon's display this morning, that what may be natural and acceptable in a fierce bird is not to be tolerated in human beings by anyone who truly understands the dictates of nature (993-4).

But what is the true understanding that makes this conclusion possible? Is not a certain falcon-like fierceness present in this stricture against that which is "not to be tolerated"?

How does one know when it is appropriate to be fierce and intolerant? What is the natural or rational standard by which we may judge something to be wrong or unjust? This way of putting the question supplies the answer. A thing is wrong or unjust if it is irrational: "...is there not something fundamentally irrational, or purposeless, to wickedness?" (781) In keeping with an affirmative answer to this question, Anastaplo characterizes Nazism as "simply incomprehensible" (986). The greatest evil of the twentieth century can be known by the fact that it was irrational and purposeless, hence, incomprehensible. Leo Strauss could write that the Nazi regime "was based on no principle other than the negation of Jews" (1094). Elsewhere in *On Trial*, Anastaplo draws a connection between negativity and evil (784, 846).¹⁰

Now it is necessary to juxtapose this standard of justice or injustice—that the unjust is the irrational or purposeless—alongside the principle, discussed earlier, of universal desire for the good (1043, 1087). The Socratic view, that evil is rooted in ignorance, seems to require the presupposition that the good is desired by all; we are prevented from following it only by our ignorance (782). The alternative view, which Kierkegaard takes to be a Christian view, is that sin is rooted in the will, in man's "disposition to evil" (869; see also 914-15). If one wants to avoid falling back on the will, while at the same time avoiding the conclusion that man is, in determinist fashion, blown hither and thither by the passions, irrespective of good or evil (consider 1051 n. 300), then it seems necessary to take up something like the , i,ew that the good is desired by all. We are *determined* toward the good.'

At some level, however, the view that all men desire the good seems to conflict with the view that wickedness is irrational and incomprehensible. If "[e]ven those who do terrible things can be said to aim at the good," then must they not have a rational purpose, however irrationally it maybe pursued? (1087) Perhaps, in order to sustain the claim that all men desire the good, it is sufficient to see that even irrational people would be rational if they could. The desire to be rational may, indeed, be our only inalienable right, the only right we could not knowingly give up. On the other hand, there may be a stronger sense-actual rather than potential only-in which all men desire, if not *the* good, then a good, some partial good.

One part of *On Trial* very often supplies material for thinking about another part so that a kind of dialogue or conversation among different passages develops in the mind of the reader. In the present context, a quotation from Alfred Rosenberg, one of the Nuremberg defendants, supplies some notion of that at which the Nazis perhaps aimed, over and beyond hatred of the Jews.

Among other matters, the Soviet prosecutor stated that the entire so-called "ideological activity" had been a "preparation for crime." In that connection I should like to state the following: National Socialism represented the idea of overcoming the class struggle which was disintegrating the people, and uniting all classes in a large national community. Through the Labor Service, for instance, it restored the dignity of manual labor on mother earth, and directed the eyes of all Germans to the necessity of a strong peasantry. By the Winter Relief Work it created a comradely feeling among the entire nation for all fellow-citizens in need, irrespective of their former party membership. It built homes for mothers, youth hostels, and community clubs in factories, and acquainted millions with the yet unknown treasures of art. For all that I served (991).

Perhaps one can say of Nazism that it took one good thing-"comradely feeling"-and treated that one good as if it were the whole good, the only good. In a similar vein, Anastaplo

can write that "[i]t is prudent for traditionalists and their sympathizers to be aware of the vices that tend to accompany the virtues promoted by community feeling" (1095). Community feeling is a good, but by itself it leaves no room for other goods, examples of which might be individuality or religious diversity (for instance, the Jews in a Christian community). (See below, 204-5.) The virtue of community itself turns into a vice when it is treated as the only or complete virtue. (On the notion of "complete virtue," see 895.) At the end of *The American Moralist*, Anastaplo writes

This [i.e., an awareness of what goodness is] is keyed to an awareness of what wholeness is, and hence can be an awareness of the limitations of any one part (600).

The touchstone of evil, then, is not so much purposelessness as it is treating one purpose, some partial good, as if it were the whole good, to the exclusion of all others. Even divinity has its limitations as a good (935). Good is not so much purpose as complexity of purpose, an ability to hold in tension or balance competing goods.

The complexity of standards based on nature seems to make them one of those matters worth studying "seven years together" (1077). Such study itself is a part of nature because it is a part of human nature. Study is what gives man a history in a sense that falcons do not have a history. Man can learn from his mistakes and not only from his mistakes. Does the studious man by nature eschew the fierceness of the falcon? Is there a natural connection between study and gentleness or, at any rate, moderation? If so, is this because he who studies knows what Athena knows, that "there are at least two sides to every controversy"? (820)

...one must, if one wishes to understand and to judge responsibly, hear both sides of the question (953).

One can discern in *On Trial* a sympathy with enlightenment as a civilized and civilizing force (e.g., 948, though in this passage enlightenment does not seem to have the same effect on everyone). Thus the author can write as follows about Plato's *Euthyphro*.

But this dialogue shows that, however much the philosopher is suspected by the *city*, something like the understanding of philosophy must be depended on if the *city* is to be able to purge itself of the excesses, whether of piety or impiety, to which it is inclined in some circumstances (881).

By contrast, "A religion, to be effective, must be to some degree simpleminded, if not even ruthless" (907). A sense of balance or proportion may be what the studious man-in the best sense-brings to political life, though this may make him somewhat intolerant of what is not balanced (1082, n.676). Balance or proportion is a form of moderation, and Anastaplo assumes that there is a connection between moderation and understanding (913). It *is* for the sake of his contribution to the moderation that derives from a proper balance that the city needs the philosopher.

In keeping with the search for balance or proportion, Anastaplo takes note of both sides of the argument about nature.

From the point of view of the most sophisticated opinion about nature today, we rational animals are basically domesticated animals (1097).

This sounds like an account of Nietzsche's view, though Anastaplo may have others in mind as well. Paradoxically, Nietzsche seems to agree with Anastaplo in thinking that reason has a gentling or moderating influence, but Nietzsche sees this as a danger. In a passage from his essay on the *Oresteia*, Anastaplo to some extent silently acknowledges the danger against which this "sophisticated opinion" tries to warn us.

In conflict here are the old and the new, the indoor and the outdoor, the female and the male, the dark and the light, the underground and the aboveground. It can never be a question of eliminating completely either side of any of these pairs.¹² Rather, it is a question, in each instance, of dominance (814).

The author does not want to purge man of his falcon-like instincts. That would not be desirable, if for no other reason than that "[i]t does

not bode well for civilization if the use of strength is repudiated by all but the wicked" (993).¹³ Moreover, the reference to "eternal Furies" (in the final sentence of the essay on the *Oresteia*) suggests that man's violent passions cannot be gotten rid of. But where it is a question of dominance, it is clear that Anastaplo favors the dominance of reason. Affirming the dominance of reason, he follows up his formulation of "sophisticated opinion about nature" with a question.

But is there not still something in all of us that can understand decent reasonability as a fulfillment of nature? (1097)

If I understand Anastaplo correctly, *On Trial* is an advocacy of just such decent reasonability as natural and proper in the affairs of men.

Is the effort to be reasonable and to see all sides of a question not sometimes either debilitating or corrupting? "Has reason been good for man?" (1038) This is Anastaplo's question, but, of course, it is also Nietzsche's. Nietzsche's answer is complicated by the fact that truth often (always?) destroys the limited or closed horizon that sustains life. It is from Nietzsche that we have heard that the truth can be deadly (774). Anastaplo could claim the authority of Nietzsche to sustain the point that "[t]he natural understanding sometimes may even be taken to suggest that there really is no meaning to the cosmos" (1043). It is easy to see how speculation along these lines could be destructive of political life. Notwithstanding such speculations, Anastaplo, as we have seen, takes the view that reason and enlightenment, albeit perhaps only moderate enlightenment, have been good for man and for political life, even though he notes that reason makes some men, Oedipus or Socrates, vulnerable (1036). Reason is both a moderating influence *and* a political good.

C. History

How much does man's freedom (the subject of Section A above) allow of a change in his nature (that which we have been seeking in Section B)? When Anastaplo asserts that it is philosophy "which is needed to guide mankind aright," he is talking about philosophy rooted in nature, not in history (880). Anastaplo rejects history as a

standard.¹⁴ Standards do not change. With respect to the counsel philosophy might give, in general and not only with respect to one's parents, one wonders if philosophy always gives the same counsel (1052, n.325). The fixed character of the counsel would depend, at least in part, on the stability of nature. If nature is subject to fundamental change, then, of course, the rational dictates of nature might change also.

In writing of the choruses in Aeschylus' *The Eumenides* and *The Libation Bearers*, Anastaplo makes the following assertion.

Perhaps it can be said of both sets of females in the two plays that they are eventually liberated from implacable passions which, however vital to humanity at one time, have outlived their usefulness, at least in their most primitive form (803-4).

What does this passage tell us about the nature of standards and, hence, about the nature of nature as Anastaplo understands these things? (830) What does it mean to say that certain implacable passions, for example, vengefulness, have outlived their usefulness? Has human nature changed so that passions once useful to humanity are no longer useful? (See below, 201.) Perhaps the "eternal Furies" are, after all, undesirable. But can they be extirpated? Are there, indeed, "stage[s] of man's development," which would provide for Anastaplo the basis of a philosophy of history? (777) In writing of Kierkegaard, Anastaplo indicates that a changing God who intervenes in the affairs of human beings introduces an element of the absurd into life (864). Does the same problem arise if human nature and, hence, nature itself changes? Nature that can change or be changed does not seem capable of serving as an ultimate standard, unless one wants to say that changing nature and the nature of change somehow themselves provide guidance for reasonable human expectations and, thus, for how men and women should live together.

Anastaplo does distinguish between a change in human nature and a change in the circumstances of man (783). If man's humanity does in fact consist in the ability to choose good through knowledge of the good, then it is reasonable to expect that these choices will

bring about some changes in man's circumstances, for better or for worse (777).

Anastaplo offers a concrete illustration of this development in his account of Aeschylus' *Oresteia*. Justice as revenge, "hate returning for hate" (799), is seen to be pointless, a vicious circle. However natural revenge may be in a pre-political condition, human choice can create a political community in which justice as revenge is replaced by justice as rule of law.

We can endorse here what some anthropologists suggest about the movement evident in this trilogy [i.e., the *Oresteia*]-the centuries-long movement from *feud* to *law*, from *family* to *city*, from *old* to *new* (821).

Anastaplo often puts his boldest suggestions in the form of questions; not so here. Mankind has a history-"the centuries-long movement from *feud* to *law*." The nature of nature and of natural standards as he conceives of them must accommodate this development. He can even call the new order introduced by Athena "an enlightened age that is still with us in critical respects" (821). One would be tempted to say that he simply believes in progress did not the next sentence remind us of "the eternal Furies."¹⁵ The move from feud to law must be seen, not in terms of the elimination of the violent passions, but in terms of their dominance by reason. (Still, Anastaplo does speak of passions that "have outlived their usefulness.")

As we step out of the Garden of Eden, we learn that virtue is knowledge. Freedom is the disciplined adherence to standards provided by nature. Disciplined adherence is, of course, not the same as instinct. Nature includes man's understanding of the circumstances in which he finds himself. Those circumstances are not immutable. The rule of law, for example, marks a new stage in human development. Human nature does not change, but man can change his circumstances in ways that render some natural characteristics more useful than others. History is not an alternative to nature: human history unfolds within nature. Man's ability to change his circumstances is limited; there are problems that cannot be

solved. This moderate assessment leaves considerable scope for the benevolent effect of reason on human affairs.

D. Truth and Justice

Still Anastaplo can ask, "Is too much made by the philosopher of reason?" (872) He answers his own question in the negative, partly because the philosopher gives everything its due, not only reason. Not revenge, but rather giving to each thing what is its due is justice (952). Justice is simply telling the truth about each thing.¹⁶

It is striking then, at least for this reader, to find the following sentences in a note to Anastaplo's article on the Rosenberg case.

Central to the assessment of any trial, it seems to me, is not truth but justice. Thus, whatever the truth about the precise involvement of the Rosenbergs in espionage activities in 1944-1945, the critical question remains whether they should have been executed in 1953-and scholarly research is not likely to help us much in answering that kind of question (1100).

The first sentence of this quotation implies a puzzling separation of truth from justice. Does Anastaplo mean that the question of what the Rosenbergs did is a question of truth while the question of what to do with them as a consequence is *not* a question of truth? In order to pursue what Anastaplo means, we need to look at it in the context of what he has to say about the Rosenberg trial.

Unlike his teacher and friend, Malcolm Sharp, Anastaplo was never convinced of the Rosenbergs' innocence (1002). Why then does he find in the Rosenberg case an instance of government misconduct "far worse than anything that we know to have happened in connection with Watergate"? (1009) Three reasons stand out. (1) The executions were conducted with "indecent haste," without allowing time for the full and proper working of the appeals process (1007). (2) The death sentences imposed on the Rosenbergs were "grossly excessive" and "barbaric" even if one assumes them to be guilty of espionage (998, 1006). This seems to have been particularly obvious in the case of Ethel Rosenberg (1102, 1104). (3) The judge, in passing sentence, failed to distinguish between espionage and

treason, the latter offense being "neither alleged *nor provable* by the government" (1997). The second and third points are obviously related, the harshness of the sentences being dependent upon an improper characterization of the charges.

Truth can be separated from justice by the criterion of due process. No amount of research into what the Rosenbergs did or did not do can affect our judgment as to whether they were properly convicted and sentenced in the light of what was known at the time. Setting aside the truth as it may subsequently come to light, we may still ask, "Were the Rosenbergs fairly treated in view of what was known at the time or what was then thought to be known?" Of course, the line between substance and procedure is not always easy to draw. Is the determination of the appropriate punishment for a specific crime a procedural issue or a substantive one? Perhaps because of the difficulties involved in such a distinction, Anastaplo does not himself characterize the assessment of a trial in terms of procedure rather than substance. But if we drop the distinction between procedure and substance as quickly as we have taken it up, what are we to make of Anastaplo's distinction between truth and justice?

Whether or not the punishment meted out to the Rosenbergs was barbaric, as Anastaplo thinks, seems to me at least in part a judgment of substance. Is the death penalty a fitting punishment for espionage? Aldrich Ames was a CIA employee whose spying for the Soviet Union apparently led to the death of at least ten Soviet agents who were spying for the United States.^{1 2} Ames will not be executed in the United States, but would it be wrong to execute him? Could one even conclude that it is wrong not to execute him? Or would his execution be obviously barbaric? Would it be a useless act of revenge, one that tries to change what is already past? Is it not enough to simply remove him from his job, put him somewhere where he can do no harm?

Even if one could rationally argue for the execution of Ames, this conclusion seems to have little or nothing to do with the Rosenbergs. The latter seem to have been more foolish and incompetent than criminal. Yet should not the harshness of the law discourage above

all the foolish and the incompetent from even attempting criminal activities whose long term damage to the common good they are least competent to decide? At any rate, the differences between Ames and the Rosenbergs make it obvious that a general rule prescribing the just punishment in all cases of espionage would be difficult to discover. Certainly the death penalty is more defensible in some cases than in others. A substantive decision about guilt or innocence seems to require looking at the particular parties and circumstances. Viewing the issue in a procedural light requires, on the other hand, looking at it in a general way, so that all similar cases might be treated similarly. Is there a connection between Anastaplo's preference for universal standards and his concern with procedure? (870-71) Moreover, do universal standards turn out to be more a matter of justice than of truth?¹⁸

Is there some point at which the form of treatment becomes more important than the substance of guilt or innocence? Should procedure eclipse substance, at least in some cases? For example, Anastaplo thinks Pontius Pilate very much at fault in his handling of the trial of Jesus, regardless of whether or not the claims Jesus made were true (905, 916). He can refer to "the gross misconduct of Jesus' trial" (917). But is not the likely truth of Jesus' claim not only relevant but decisive? Anastaplo himself can ask the curious question, "May there not be, in the life of Jesus, the curious phenomenon of *the form but not the substance* of an *unfair* trial?" (917)

To take another case, Anastaplo can speak well of the court that condemned Joan of Arc at least in part because they did not act with indecent haste: "there was no rush to judgment" (924). The truth of the criteria by which the court carried out its methodical deliberations never becomes an explicit issue. Curiously enough, Anastaplo can draw up a list of five tests to be used in evaluating visions such as Joan's without ever conceding that any divine vision or revelation is possible at all (932). Here we have a set of tests for dealing justly with visionaries without ever examining the fundamental truth of their claims. The truth in such matters is in a way politically irrelevant: the truth "has always been a minority view among men" (932).

In assessing the Nuremberg trials, Anastaplo does put less emphasis on procedure than he does in assessing other trials. Certainly the victor standing as judge of the defeated is not something we would allow in domestic law. I have been told that the precedent set by the trials was used in communist occupied eastern Europe to hunt down, under cloak of legality, those who posed a threat to the new regime, regardless of Nazi connections. The mere possibility of such abuse suggests the danger in disregarding procedure in the interest of truth.

Another procedural problem at Nuremberg stems from lack of precedent. Of the three categories of crime of which defendants at Nuremberg were accused-war crimes, crimes against peace, and crimes against humanity-only the first had precedent in international law. This gives rise to concern over the *ex post facto* character of crimes against peace and crimes against humanity, but Anastaplo does not, at the end of the day, see much validity in this concern. He rightly takes the view that the Nazi leaders simply should have known that what they were doing was criminal; like Abraham, they should have known better.

It will hardly do, then, to defeat justice by invoking traditional rules, such as the *ex post facto* prohibition, on behalf of men who had repudiated in the most comprehensive way one elementary rule and standard after another. Those rules are made for men, not men for those rules: their spirit and purpose should not be forgotten. One end of law is justice, gross violations of which are subject to correction even in the absence of explicit promulgation of rules by a sovereign power. A dedication to justice helps legitimate the very existence of sovereign power (989).

Here the emphasis on justice seems to me identical with emphasis on truth over legality and formal procedure. (What would it mean to suggest that the Nuremberg trials were more just than truthful?) The Nazis are an extreme case and perhaps Anastaplo would say that in such a case the truth will out. It is the more ordinary cases with which we need to be concerned; and in such cases justice cannot

simply be reduced to truth.

Both the Nuremberg trials and the Rosenberg trial, as Anastaplo presents them, raise the question "What is barbaric?" on the part of both accuser and accused. In the context of *On Trial* as a whole, asking "What is barbaric?" requires that we also ask "What is revenge?" Are the Nuremberg trials, for example, an act of justice, a vindication of natural right, or are they merely an act of revenge against a defeated and defenseless enemy? The nature of revenge is an important issue in *On Trial*; in some ways it is the heart of the book. It is an issue that we have raised, at least by implication, already in Part C above. The "implacable passions which...have outlived their usefulness, in the essay on *Aeschylus' Oresteia*, are very largely, if not exclusively, passions of revenge (800, 803-4).

How are we to distinguish revenge from justice? Justice is "to give each...what is its due" (952). But does not revenge very often give people-the Nazis, for example, but also perhaps Aldrich Ames-what is their due? Clearly, standards enter into any proper attempt to distinguish between justice and revenge. Revenge is motivated simply by love of one's own, hence, the murder of one's father-be it Agamemnon or King Hamlet-is particularly seen as calling forth vengeance. In justice, the ultimate standard cannot help but be the good or evil that was done. For example, the murder of a good man is an appropriate subject of justice whether or not he is one's father or brother. Unfortunately, these comments do not dispose of the matter, since they contain an implicit universalism that is itself troubling. Anyone who sets out to assure justice to all good men would be in grave danger of aspiring to universal tyranny¹⁹ (954).

Anastaplo silently leads us to try to distinguish justice from revenge in a context where he explicitly distinguishes between justice and truth. How are these two attempts at diremption related? The attempt to distinguish justice from revenge runs the danger of equating justice with universal truth. If revenge is too low a standard by which to judge human action, is truth perhaps too high a standard, one that might "make matters worse than they need be by expecting too much?" (918) Is due process somehow a more attainable legal

standard than substantive truth?

The progress of *On Trial* seems to distinguish justice from revenge, on the one hand, and from truth, on the other hand. This brings us to the essay that is perhaps the moral center of the book, the essay on "Shylock and Shakespeare." (The philosophic center may well be the essay on "Socrates of Athens.") A distinction between the theoretical truth of Judaism and the just treatment of Jews both individually and as a people seems to be the foundation for Anastaplo's judgment on and rhetoric about Shakespeare's play, while the play itself has not a little to do with revenge. Indeed, the issues raised below suggest that an alternative title for this pair of book reviews might have been "The Enlightenment, Revenge, and the Jews," in place of "Freedom, Nature, and Community."

Anastaplo tells us that *The Merchant of Venice* may well be the ugliest play written by Shakespeare.²⁰ The play is ugly, not simply because Shylock is shown as mercenary and vengeful as well as mocked and humiliated, but also because he is made representative of "all Jews who remain Jews" (936). The play is not made any more palatable by Shakespeare's handling of Jessica, "the unfaithful daughter," who betrays both her father and her religion (947). Her end in the play seems prosperous and happy; certainly nothing is done by the dramatist to show condemnation of her behavior.

The Merchant of Venice teaches all the wrong lessons. The audience might easily be impressed with the folly of remaining Jewish in a Christian land (Shylock) and the wisdom of assimilation (a way open to Jessica but not to Othello?). If I understand Anastaplo correctly, it is this teaching that he finds ugly, not only ugly in itself but also ugly because of the history of persecution of the Jews in Christian lands. Should not Shakespeare "have known better than to leave matters as he did in this play...have, as a thinker, been more astute and hence more just and responsible in his presentation of a much-reviled and perennially persecuted minority?" (940-1) To say that Shakespeare "should have known better" implies that he was not fated by historical circumstance to misunderstand, the Jews; any failure to understand here is personal, not a necessary limitation (Cf. 1062, n.475). When Anastaplo says that Abraham or Shakespeare

"should have known" what we know; he rejects at least that form of historicism according to which a thinker's insight is derived from and, hence, limited by his historical situation. (cf. Section C above.)

Anastaplo tries to make explicit what Shakespeare fails to make explicit, namely, "the enduring worth of Judaism" (950). He reminds us not only of the dedication, pious resolve, and dignity that characterize Judaism, but also of its exquisite sensitivity to the claims of humanity (939, 949).²¹ He reminds us as well that he is the author of another essay, "The Case for Supporting Israel" (1060). Anastaplo's attack on Shakespeare in *On Trial* seems to me to be another way of making that case. In supporting Israel, he is surely right. Moreover, he is surely right in taking to task anything that in any way might contribute to renewed persecution of the Jews in Christian, or in any other, lands. The author can with justice write that "the systematic atrocities visited upon so profoundly civilized a people as the Jews in the twentieth century oblige us to notice serious failings both in Christianity and in modernity, and perhaps also in Islam" (1096). Saying these things does not mean that Anastaplo is blind to the possibility of error in Judaism. One need only recall the essays on *Genesis*, *Jonah*, and *The Binding* that precede the essay on *The Merchant of Venice* (see also 1068, n.537; 1090, n. 723). But the theoretical problems at the root of Judaism are no worse than those at the core of Christianity or Islam, and they do not affect the moral worth of Jews or Judaism. One can be judgmental and yet tolerant, or so Anastaplo would seem to suggest. Is judgment more akin to truth and justice more akin to tolerance?

Perhaps in the end the difference between Shakespeare and Anastaplo has to do with differing judgments about the possibility of an enlightened and tolerant society in which Jews can live safely without assimilation (cf. 946-7 with 948). This difference strikes me as in important ways similar to the difference Anastaplo himself finds between Jesus and the Jewish authorities.

The most critical difference between Jesus and the Jewish authorities may have come down to the question of the extent to which enduring spiritual power depends on a political

community with its discipline and ritual (913).

Politics and religion cannot be separated; an enduring spiritual community requires the support of a disciplined hence, to some extent, closed-political community. *The Merchant of Venice* may show us that Shakespeare is doubtful that even a commercial society like Venice can endure if it is not to some extent a closed society, with its own distinctive "discipline." Even a liberal society must, in a way, legislate morality (see below, 200). Shylock emphatically is *not* the merchant of Venice; he is a Jew who would remain a Jew. If Venice is to endure, then Shylock must join the community of which he is a part. If this is the meaning of *Merchant-and* I stress the tentative nature of this interpretation-then, paradoxically, Shakespeare might be nearer than Anastaplo to sharing the view of the Jewish authorities as that view is presented in Anastaplo's essay on the *Gospel of Mark* (consider also 1067, n. 520). Like the ancient Jews, Shakespeare assumes the necessity of a closed society. But a closed society that is not Jewish cannot do justice to the Jews in its midst. Does Anastaplo question the truth of what ancient Jewish authorities believed in order to do justice to contemporary Jews? (See below, 204.)

E. Philosophy and Community

Defending Judaism, whatever its theoretical shortcomings, is one way of raising the question of the proper relation between philosophy, understood as the search for theoretical truth, on the one hand, and the political-religious community, on the other hand. Anastaplo presents this same issue in another way, by comparing Socrates' conflict with his community to the conflicts of Jesus and Thomas More respectively.

Jesus' death is presented as a necessary one: the very nature of things demands his death. This is not so with Socrates: he lived twice the age of Jesus-and had he died, naturally, a few years before he was brought to trial, he still would have lived a full life. If the Peloponnesian War had come out differently or

lasted a little longer, Socrates probably would never have been indicted at all. The Platonic Socrates, as is evident from the *Republic*, had an extensive political teaching; Jesus evidently did not. Whatever the natural tension between philosophy and the city, it is neither necessary nor inevitable that the philosopher be killed by the city (913).

Jesus' death may have resulted from his inability or unwillingness to recognize the political consequences of religious teaching (911). The philosopher, on the other hand, can more effectively control a conflict that he knows he cannot eliminate, namely, that arising from the natural tension between philosophy and the city.

That there is a tension between philosophy and the city Anastaplo does not deny; indeed, he may be said to insist upon acknowledging it. He explores the reason for this tension in his comparison of Socrates with Thomas More.

...Socrates' estrangement from the city was more nearly necessary than More's.

Socrates' way of thinking called into question, in an unavoidable manner, the things held most dear by the cities of the world. Socrates said he would have found accusers wherever he would have gone (963).

Reason requires us to judge of things, but in the case of the philosopher the judgment may sometimes have to conclude in an admission of one's own necessary ignorance (962). The man of action, such as More was, must also be a man of faith (862). But this is to say that the man of action is permitted to share the faith of his political community. He need not cast doubt upon the things that his fellow citizens hold most dear, at least not always. As *On Trial* shows, those who would get at the truth of things cannot help but cast doubt on received opinion (1075,n.623). The ensuing conflict sets limits, then, on a prudent man's hopes for mankind (821).

It is surprising that in Anastaplo's assessment, Socrates represents, not one pole of the debate, but rather a mean between Jesus and Thomas More? Socrates' conflict with the city is not avoidable

to the extent that More's conflict was, but it is not inevitable in the way that Jesus' conflict was. Is not More's conflict with Henry VIII rooted in his unwillingness to separate politics from religion, and does not Jesus run into conflict with the authorities because he connects politics and religion in the same way that More does? Perhaps the answer to the second of these two questions is "no." Jesus' conflict with his people was inevitable because, while they felt or saw or understood the political dimension of religion, he did not. To put it differently, Jesus made too much of truth and not enough of justice.²² Jesus was oblivious of the political in a way that neither Socrates nor More were oblivious of it. Did More, in contrast, make too much of justice and not enough of truth?

I have spoken of Anastaplo as an advocate of moderate enlightenment, by which I mean nothing more than that he sees the influence of reason on human life and political life as a salutary one. This may seem a harmless assertion, an obvious truism about reason. But it is a truism that has been disputed, for example, by Nietzsche. Reason can be seen as destroying the faiths by which men live, the hopes without which life would not be possible, the necessary love of one's own just because it is one's own. Anastaplo puts reason on trial. He tries to make the case for the goodness of reason without falling into the extreme hopes that characterized the Enlightenment. Those hopes assumed the possibility of radical change in human circumstances, change so radical that it would obliterate a nature that, in its immutability, would leave some problems irresolvable. The moderate enlightenment that tries to steer between the Scylla of Enlightenment and the Charybdis of irrationalism seems, if I may be judgmental, not only noble but essentially correct.

Part II: Anastaplo on Marlowe's *Doctor Faustus*

The second essay in *On Trial* is called "Lucifer and Faustus" and is an interpretation of the play by Marlowe that deals with that theme.²³ Throughout his essay, Anastaplo uses Marlowe's play and the character of Faustus to illustrate both what he, Anastaplo, takes to be the meaning of modernity or the modern and what is wrong with

modernity. Though Anastaplo does not name the Enlightenment, his essay clearly speaks to the meaning and limitations of that movement under the rubric of modernity. To judge by that essay, for Anastaplo, the characteristic features of modernity seem to be mostly its blemishes.

In the struggle for Faustus' soul, the Bad Angel tries to lure him with what Anastaplo calls "a prospect that can serve as the motto for the enterprising modern" (791).

Go forward, Faustus, in that famous art
Wherein all nature's treasure is contained.
Be thou on earth as Jove is in the sky,
Lord and commander of these elements (1.1.75-78).

Such passages surely remind us of Bacon's program for the conquest of nature as well as Descartes' invitation to become "masters and possessors of nature."²⁴ Such similarities with the modern project (Anastaplo does not specifically mention modern philosophy), prompt Anastaplo to remark that for the Bad Angel "as for much of modernity, nature is something to be exploited,²⁵ not something to take one's bearings by" (794). When nature becomes something to be exploited, it can no longer serve as a guide or a standard. The "enterprising modern" must forge ahead under the guidance of his own fortitude or resoluteness.²⁶ At one point, Faustus goes so far as to instruct Mephistophilis: "Learn thou of Faustus manly fortitude" (1.3.85). Anastaplo tells us that "Resolution...is intimately related to willfulness." He continues:

Is there not, in such an emphasis upon resoluteness, something distinctively modern? It has found expression in existentialism, providing a respectable way of dressing up self-assertiveness (794).

Anastaplo wonders whether the modern emphasis on resoluteness does not derive "from a perspective which sees mankind as essentially at war all the time." He questions whether this "Faustian scheme of things" leaves any place for goodwill (795). Here the "Faustian scheme of things" seems to be the modern scheme of

things. Faustus is also a modern in his willingness to challenge accepted norms, in his restlessness and love of liberty, and in his constant experimentation and desire for novelty, even when this leads him into triviality, on the one hand, or "unnecessary" risk, on the other (785, 788).

Anastaplo sees in the career of Doctor Faustus parallels with Marlowe's "own troubled character and turbulent life" (785). He sees in Marlowe's play another aspect of modernity. *Doctor Faustus* brings on stage not the charm of virtue but rather the ugliness of vice. Marlowe never shows us that virtue is good for its own sake. The play does a better job of showing us what to avoid than what to seek. In this, too, there is a lesson about modernity, about its propensity "to take its bearings by the greatest evil rather than by the greatest good" (793). The negative is clearer, more certain than the positive.

Variants of the word "modern" occur thirteen times in "Lucifer and Faustus" and they occur in each of the seven sections of the essay except in the fourth section. Does the fourth section of the essay somehow stand apart from the other sections? Section four deals with Faustus' opinions as distinct from his deeds. Faustus' deeds, at least in Anastaplo's opinion, are not "intrinsically wicked," something Anastaplo finds to be an "odd feature of this story" (787). Faustus' opinions, on the other hand, could be seen as "treason toward the Divine Governor of the universe" (788). The opinions in question seem to concern mostly matters of faith. "That is the way [i.e., in terms of faith]," Anastaplo adds in a parenthesis, "the pious Christian would put it, whereas the Classical thinker would have preferred to put it in terms of judgment" (789). Section four seems concerned, and to see the play as concerned, with the difference between judgment and faith. Is this a difference that transcends the difference between ancients and moderns? Ancient and modern philosophy share a common resistance to the humble obedience of piety, relying instead on the judgment of reason.

Faustus' judgments do, indeed, seem flawed, especially in his bargain with the Devil. He will give his soul to Lucifer's kingdom in exchange for twenty-four years of Mephistophilis' service. We are put in mind of Esau, who sold his birthright to his brother, Jacob, for

a mess of pottage.²⁷ Within Marlowe's play, Faustus' bargain puts us in mind of Robin, the Clown, to whom and of whom Wagner says, "I know he would give his soul to the devil for a shoulder of mutton, though it were blood-raw" (1.4.7-9). Faustus' bargain with the Devil is hardly much better.

Faustus does not show a foresight Machiavelli would have admired, unless one assumes that Faustus believes in hell no more than Marlowe's Machiavelli does.

I count religion but a childish toy And hold there is no sin but ignorance.²⁸

Machiavelli seems to doubt both God and the Devil, both heaven and hell. Is it possible that Faustus believes in Beelzebub, but not in hell? "I think hell's a fable," he tells Mephistophilis (2.1.125). Earlier, Faustus had made this confession of faith.

There is no chief but only Beelzebub, To whom Faustus doth dedicate himself. This word 'damnation' terrifies not me, For I confound hell in Elysium. My ghost be with the old philosophers! (1.3.57-61)

Anastaplo reminds us of "Faustus's refusal to adjust, in time, his opinions about the afterlife" (790). Faustus' skepticism about hell is paradoxical given his credulous belief in Mephistophilis' powers. His situation reminds us of contemporary moralists who, while they have lost their faith in God, continue to cling to the morality taught by Christ and His church, even without its indispensable foundation.

Marlowe's Faustus seems to be a fundamentally inconsistent character, saying "no" to both hell and Christ, but saying "yes" to the Devil. Much is made by Anastaplo of negativity in the "Faustian scheme of things" (784, 788, 793). *We* must ask whether or in what way Faustus himself (as distinct from the play as a whole) displays this characteristic. Is Faustus negative? Anastaplo calls the Devil "the great Nay-sayer;" is the same true of Faustus? When Faustus says "yes" to the Devil, is this fundamentally different from faith because it is fundamentally negative?

Despair in God, and trust in Beelzebub. Now go not backward;
Faustus be resolute (2.1.5-6).

Does Anastaplo discount this "yes" because of the Devil's negativity?

"Vital to Faustus' fate, then, is the issue of his faith" (789). Two sentences later Anastaplo restates his point: it is Faustus' "lack of [faith]" that is vital. To speak of Faustus' faith is to speak of something notable by its absence. But we miss certain parallels with faith if we fail to recognize that Faustus does, in a way, believe in something. Anastaplo acknowledges that the show of the Seven Deadly Sins (2.2.103-62) provides "the devilish counterpart to the attractions of paradise" (789). Are there other "counterparts"? Is not the faith of Faustus the truly devilish counterpart to the faith of the pious Old Man who tries to save Faustus' soul in the last act of the play? Anastaplo acknowledges as much when, in the final section of his essay, he says that "[t]he Old Man, too, is shown as resolute." He goes on to say, of the resoluteness he finds characteristic of Faustus and of modernity, "This steadfastness mimics, in a way, that of the Christian martyr" (795). "[T]he faith [i.e., Christianity] had meant so much for so long" that Anastaplo can find in the steadfastness of faith a genealogy of the resoluteness that "has become so important in modernity" (795). Given the correctness of these observations, it follows that Marlowe's *Tragical History* exposes to doubt two faiths at once. Faustus is blind to the obvious inconsistency of what he believes. His blind faith is the prototype of faith as such, a fact that makes Marlowe's play both circumspect and daring.

In the notes to this essay, Anastaplo tells us that its original title was "Negation and Affirmation: Some Perhaps Salutory Lessons from Christopher Marlowe's *Doctor Faustus* ." Anastaplo's "salutory lessons" about the defects of modernity are skillfully elicited from a text that provides "glimpses of the modern movement" (786). These glimpses derive from a coincidence of aims on the part of Faustus and the founders of modernity. While the aims may be similar, the means diverge in away that seems significant. Bacon and Descartes, while they share Faustus' longing to be "Lord and commander of these elements," would hardly confess, in Faustus' words, "'Tis magic, magic, that hath ravished me" (1.1.111). Nor did Descartes

share Faustus' contempt for medicine, which he thought more likely to prolong human life than the necromantic arts in which Faustus trusts (1.1.12-27, 51). Even Faustus' ends are not identical with those of modernity or the Enlightenment: he seems throughout the play more concerned to flatter and win fame among the nobility than to provide for the relief of man's estate. As an example of the former, Anastaplo cites the incident in which Faustus' sends Mephistophilis to fetch "grapes out of season for a pregnant duchess" (787). In the same scene in which the duchess gets her grapes, Faustus is confronted by the angry complaints of four commoners against the way they have been treated by him (4.7). Faustus makes sport of these men for the diversion of the duke and duchess. There is here none of the democratic sympathy or bias that one thinks of in connection with the Enlightenment. Faustus seems more akin with respect to both means and ends to the Pope, who asks defiantly, "Is not all power on earth bestowed on us?" (3.1.152)

Who is Marlowe's Faustus? Why is Marlowe interested in him? Faustus seems to be a mixture, inherently unstable, of philosophic skepticism ("My ghost be with the old philosophers!") and credulity encouraged by all-too-human weaknesses.

O, what a world of profit and delight, Of power, of honor, of
omnipotence Is promised to the studious artisan! (1.1.54-56)

Is the tragedy of Faustus perhaps the tragedy of those who are great-souled (or, at any rate, ambitious) and philosophically inclined yet who cannot rest content with a situation in which philosophic virtue must, indeed, be good for its own sake? Faustus belittles his own accomplishments as a physician with the apostrophe, "Yet art thou still but Faustus and a man" (1.1.23). Unaware almost of his own ambition, when Mephistophilis tells Faustus that hell can be here on earth if one is, like Mephistophilis himself, separated from God, Faustus scoffs at this.

Nay, and this be hell, I'll willingly be damned. What?
Sleeping, eating, walking and disputing? (2.1.136-37)

In these lines, Marlowe's subtle irony allows us to see Faustus' lack

of self-knowledge: to live within the limits of a man-"sleeping, eating, walking, and disputing"-is precisely the "damnation" Faustus seeks to escape through his bargain with the Devil. We venture the suggestion that philosophy has become "odious" to Faustus because it does not provide the power and fame he seeks, at least not in a form recognizable by him (1.1.107). *It* also does not provide answers to questions Faustus wants answered, e.g., about the heavens and the origin of the world (2.2.33-75). *Faustus is a man who wants answers, if not from God, then from Mephistophilis.* Philosophy has become "odious" to him because it is always rooted firmly in human nature, which is to say, within the bounds of human limitations.

To put it differently, there is something of the sophist about Faustus, as can be seen from his first speech in the play. Faustus will give up the study of logic because its purpose is merely to win an argument.

Is to dispute well logic's chieftest end? Affords this art no greater miracle?... Bid *on cay mae on* farewell...(1.1.8-9, 12).

As Marlowe's *on cay mae on* [being and not being] reminds us, there is more to logic than disputation. Logic is not rhetoric, but Faustus cannot see the difference. The final chorus "exhort[s] the wise / Only to wonder at unlawful things," but not "To practice more than heavenly power permits" (Epilogue 5-6, 8). While there is no suggestion here that the philosopher should curb his wondering, there is a philosophic resignation about the extent to which knowledge can be converted into power. To the extent that modernity does treat power, not knowledge, as the goal of human striving, to that extent the play does provide "salutary lessons" about modernity. Faustus can be seen to have despaired of merely human knowledge precisely because of its limits. Modern philosophy did not despair of knowledge, though it may, indeed, have thought that it had found a way for knowledge to join with power. To the extent that virtue is knowledge and "there is no sin but ignorance," to that extent Marlowe's play may (if only in a *negative way*) present virtue "as something good in itself" (cf. 792). Anastaplo sounds a similar note toward the end of his very intricate and challenging essay.

All this reflects the pervasive sense of the play, however muted, that the virtuous man is a whole, someone of integrity, and hence truly self-sufficient, which self-sufficiency is something for which the ambitious scholar may strive in a misguided manner (795).

Part III: Towards a Moderate Enlightenment

There may be better ways to describe the aim of Anastaplo's *The American Moralist*, but something like moderate enlightenment in the United States is at least one useful description. In other words, the essays brought together in *The American Moralist* seem designed to encourage or foster the kind of enlightenment that is characteristic of the American regime or of U.S. constitutionalism. In qualifying "enlightenment" by "moderate," we mean to acknowledge Anastaplo's clear resistance both to the mere willfulness to which Faustus succumbs and, especially, to any "unnecessary" risks that he takes in the name of reason.

Apart from the essays forming a "Prologue" and an "Epilogue," the remaining studies in the collection are grouped under two main headings, "Principles and Questions" and "Issues of the Day." There are forty-nine essays altogether. The reader is challenged not only by the complexity of the issues raised in these many essays but also by the range of topics covered, from Plato to Chicago politics. We shall focus first on the issue of moral freedom raised in the "Prologue" and then move on to consider some issues of community as they are raised in the "Prologue" and expanded in the "Principles" section.

As befits a moralist, the first essay in the book raises the question of free will versus determinism. Anastaplo thus invites the reader to place the subsequent essays in the widest possible context. His initial essay originated as a talk given to social workers under the title "What Does It Mean To Say That Someone Has Nobody But Himself To Blame?" Not surprisingly, the name of Oedipus finds its way into Anastaplo's discussion of this theme, which proceeds by way of thirteen stories. Oedipus denies his responsibility for his troubles in a passage that Anastaplo quotes from Sophocles' *Oedipus at Colonus*:

"I suffered them / By fate, against my will!"²⁹ In the sixth story, the speaker seems to personify fate in the person of his grandfather, blaming the latter for the poor match the speaker's mother made in marriage. Had the grandfather arranged a more prudent marriage for his daughter, the grandson would never have known the taste of misery! The interlocutors in the second story seem more resigned but even more hopeless than the speaker in the sixth story; they agree in thinking that it would be best not to be born, "but such luck not one in a hundred has." There is a tinge of humor to this story that differentiates it from the predominate mood of anger in the sixth story. These stories cause us to reflect on the extent to which people feel themselves to be, and are in fact, determined by their circumstances.

Of the thirteen stories, three point to the determinative power of the ethnic or political community into which one happens to be born (the second, fifth, and ninth stories), while two (the third and sixth stories) treat family as fate. The eleventh story, about a young bombardier with an uncanny ability to hit the target, suggests the role of family in another way; some of us inherit gifts, gifts which even we do not understand. In a way, these gifts determine not only our fate but also the fate of those with whom we may from time to time find ourselves in competition. Such fortuitous gifts of nature may accidentally give us more control over fortune than we otherwise might have had.

The first, fourth, and seventh stories share a somewhat more hopeful or tough-minded point of view. We are neither completely free nor completely unfree; very often we retain the power to make the best one could make out of even unfortunate circumstances. In the notion that one can always make something better out of one's circumstances Anastaplo sees a "more or less American approach" to these matters (12). Is there something of a noble illusion in taking it for granted that one can make a difference for the better? "There are times when little can be done, when one can do little more than try to understand how bad things may be" (461). This view is hardly edifying or encouraging and, therefore, not a useful view for a moralist to take. Fortunately, it is also not the American approach.

That approach, however enlightened, is moderate and, therefore, hopeful in its expectations.

Just how bad things can sometimes get is illustrated by the twelfth story in Anastaplo's series, but then this story also illustrates the extent to which appropriately tough, not to say harsh, measures can, indeed, bring things under control. All too often we are prisoners of our belief that the past will always repeat itself (as in the last of the stories).

Having thus established that there is a basis in the nature of things for moral resistance both to fate and to temptation, Anastaplo can confidently turn to the role of the community in building moral resources in the individual. This he does by reminding us of what Aristotle already knew in contrast to what we today are inclined to assume. We doubt that it is possible or desirable to legislate morality. For us, morality is a private affair. Indeed, our laws are conceived as protecting the private space that allows us to exercise our individual morality. Following Aristotle, Anastaplo takes the view that "There is a critical reciprocity between law and morality" (22). *On* the one hand, law grows out of the customs of the community; on the other hand, law shapes and perpetuates moral habits. In evidence that the law can have a "considerable influence," not only in perpetuating but also in shaping the moral opinion of the community, Anastaplo cites, in a later article, "what the law has done in the quarter of a century since the 1954 Supreme Court opinion in *Brown v: Board of Education* to make out-and-out racial prejudice no longer respectable in this Country" (372).

In order to help make Aristotle's view more intelligible to us, Anastaplo explains that "the ancient *polis* encompassed what moderns know as society, religion, and the state." As Anastaplo notes, the ancient city was so far from creating a sphere of personal autonomy that Aristotle could mention, as it were in passing, "that what the law does not require, it forbids" (23).³⁰

One might reply that this only shows the irrelevance of Aristotle to American conditions. Since we do distinguish between society and state, as well as between church and state, the legislation of morality once possible among the ancient Greeks is now, fortu-

nately, impossible among us. Anastaplo's reply is that any legal system promotes some morality, if only by its silence, for example, by the extent to which it does or does not allow the legal expression of racial prejudice. Likewise the silence of the law may be taken as encouraging certain forms of hedonism; indeed, legally sanctioned credit arrangements may be seen as promoting consumption and therewith various forms of self-indulgence. One might even point out that the separation of society and state is itself an act of legislation that involves the whole community in the consequences of a certain moral point of view. That we do not notice that we are, in fact, legislating morality does not change the necessary (or should one say, natural) relation between morality and law.

To deny that legislation of morality can or should take place does not eliminate such legislation; it merely conceals it, perhaps distorts it, and otherwise confuses and misleads rulers and ruled alike (21).

This part of the "Prologue" raises the question whether Anastaplo is not very much out of step with the American approach. Does he regard the way of life offered by the classicalpolis as simply superior to modern arrangements? Does he perhaps hope to insinuate into the American regime as much of an older approach as he can? While one cannot help but raise such questions, there is at least one sense in which they must be answered in the negative. We are reminded that "what the law does not command, it forbids." As Anastaplo is well aware, the *polis* did not command philosophy. If this silence was a prohibition, it was one that Aristotle chose to ignore. Philosophy itself seems to open up a sphere of privacy within the community, albeit perhaps a very exclusive and austere sphere. Within this sphere the philosopher both writes and publishes. Contrary to a widely held assumption, much of what Aristotle himself wrote is not at all a mere formulation of the generally accepted opinions of the community. For example, Anastaplo observes that "curiously little is said explicitly about religion and its bearing upon morality even in the *Nicomachean Ethics*" (26). Indeed, is not the whole thrust of the *Nicomachean Ethics* to create a morality that would be as little as

possible dependent on divine support? Such would seem to be an enormous act of what I would call private legislation on Aristotle's part. We can perhaps here get a glimpse of the ground on which Anastaplo stands when he champions, as he does, both the wisdom of Aristotle *and* the affirmation of the right of revolution to be found in the Declaration of Independence (24). The right of revolution as Anastaplo understands it includes an individual's right to attempt to change the regime based upon an appeal to reason.

One can make the argument that classical philosophy presupposes its opposition to a closed, tradition-bound society as the necessary soil without which the questioning activity of philosophy cannot take root and grow (140, 142). In this case, the rhetoric of philosophy, as practiced, for example, by Aristotle, must be controlled by the need to preserve the city as the closed horizon of opinion that the philosopher strives privately to transcend.³¹ It is simply a fact, however, that philosophers, ancient and modern, did try to make some rational improvements in the closed societies in which they lived. They must have noticed from time to time that certain passions had simply outlived their usefulness (see above, 179). There is no reason to make either a virtue or a necessity out of the worst evils of this or that particular closed society.

As is clear from the quotation above concerning *Brown v. Board of Education*, in Anastaplo's view, one of the passions that has outlived its usefulness as a basis of community, at least as far as the United States is concerned, is racial prejudice. Recognizing that "[t]he future of African-Americans is critical to the fate of constitutionalism in the United States," Anastaplo has long been a supporter of the kind of "imaginative affirmative-action programs" that would benefit both African-American citizens and "the Country" (xxii). One can get a more concrete idea of the kind of community Anastaplo would hope to see in the United States from the following observations, apparently made in 1977 before a group of academics and Chicago politicians.

It can be pointed out that things are not quite right when one sees in a city that is one-half non-white, almost nothing but

white faces in museums, the more prestigious concert halls, legitimate theatres, graduate school classrooms and lecture audiences such as this one, as well as even among the spectators at professional baseball and football games and in the front offices of businesses that *are* now colorblind on the playing field and at the sales counter. One can detect in these kinds of segregation the continuing effects of longstanding cultural and economic deprivations (473).

The above remarks are intended to put in sharp relief the contrast between Anastaplo, or even Aristotle, on the one hand, and the exclusive traditionalism of the ancient city, on the other hand. They in no way qualify the observation that even liberal society as we know it legislates morality, whether or not it knows this and whether or not it wants to do this. Building on this insight, Anastaplo treats the American regime, as well as state and local governments, as, in fact and of necessity, legislating morality. This being the case, he draws the rather obvious conclusion that what must be done should be done knowingly and thoughtfully. Indeed, the example of race relations in the United States points to a problem that would be insurmountable if thoughtful legislation could not shape, or at least influence, the morals of citizens of all races. To do what one must knowingly and thoughtfully, rather than unwittingly and by chance, is itself a kind of enlightenment.

The legislation of morality is one of the attributes of sovereignty. While there is no entry for sovereignty in the very useful, indeed, interesting, index to this book, one of the main aims of the book might be seen as the restoration of a confident, because thoughtful, sovereignty. (The six essays in Section E of the book are collected under the heading "Sovereignty of the Law.")

In a democratic regime, sovereignty is exercised by the community. In analyzing the problems of the Chicago public schools, Anastaplo sees that the schools cannot really be more healthy than the community. It is a deep problem, therefore, that

...there is no sovereign public, a community with generally shared opinions about the most important matters (461).

Community holds a central place in Anastaplo's political morality. In our present circumstance in this country today, community needs to be encouraged and strengthened, where it does not need to be simply restored.

In an article called "Human Nature and the Criminal Law," the reader finds a list of seven things that "the community should be taught" (385). These have somewhat the appearance of Seven Commandments for a healthy community, though none of them is introduced with the negative "Thou shalt not." The Fifth Commandment reads, in part, "The community should be persuaded that men are not free unless they act as they should" (see above, 167). Such a notion of freedom is often spoken of today as "positive liberty," in contrast to the "negative liberty" most often associated with liberal democracy. Negative liberty is concerned with the process by which our private sphere of expression and enjoyment is protected rather than with the content of that expression or enjoyment.³² Clearly Anastaplo sees sovereignty as requiring the community to be just as concerned with the ends of human action as with the process surrounding those ends (cf. above, 182). This sovereignty must be based on a kind of consensus, at least about the most fundamental things.

To be a community means that all or almost all *in* the association are being "judgmental" in much the same way about the same things (411).

Are Anastaplo's notions of community and sovereignty really compatible with liberal democracy? Does not liberalism, with its notions of separation of powers and divided sovereignty, really flee from the idea of sovereignty and of the sovereign community?

The American Moralist contains a long essay on the great medieval Jewish moralist, Moses Maimonides (58-79). From Maimonides as well as from Aristotle, Anastaplo can draw support for the notion that the law must legislate morality. In a passage quoted by Anastaplo, Maimonides says that one of the purposes of the Law is "the acquisition by every human individual of moral qualities" (69). Did Maimonides assume—as Aristotle clearly would—

that other communities ought to do for their people what the Jewish Law does for the Jews? The question is of interest because Maimonides writes during the time of the diaspora. The Jews are scattered and must of necessity live within non-Jewish communities (78). Does not the moral sovereignty that these communities rightly claim-by Maimonides' own standard-necessitate the assimilation of the Jews, their conformity to the morality legislated by the community in which they in fact happen to live? (See above, 188) But Anastaplo notes that Maimonides is "dedicated to the preservation of his people" (75).

If the legislation of morality is a purpose not only of Jewish Law but of all law, does not the accomplishment of this purpose require that those following a particular legal and moral code be organized in a separate sovereign community? (68) How are the subjects of one moral sovereign to exist scattered, among the subjects of another moral sovereign without undermining each other? One closed community cannot be a part of another closed community while maintaining its closure.³³ Anastaplo does not explicitly raise this problem or tell us how Maimonides solved it, if indeed he did solve it. The solution would be of great interest in so far as the American moralist, who sees the moral function of legislation, aims, nevertheless, to preserve in the United States a diverse community in which neither Jews nor any one else would be required to assimilate. Might the solution to this problem be more a matter of prudence than of principle; might it require what Anastaplo calls "principled moderation"? (xiii) Is it coherent to see a need for our moral and prudential accommodation to (not solution of) persistent difficulties that arise from the nature of things? The practical management of the particular theoretically insoluble problem indicated above obliges Anastaplo to recognize that one can in fact put "an undue emphasis on the community" (155). (See above, 176.) In Anastaplo's own thinking, the emphasis on community has always been balanced by the right of revolution, rooted in nature and reason, as set forth in the Declaration of Independence (e.g., 24). His concern with the First Amendment right of freedom of speech has the same ground.

Awareness of the dangers latent in the very kind of community

Anastaplo calls for might account for his emphasis on federalism, on local government as well as local schools, and on his suspicion of anything that might seem like military adventurism (e.g., 188, 290, xvi-xvii). It is at least worth questioning, however, whether any community in the United States will ever be strong enough, sovereign enough, to pose a threat either as an imperial world power or a truly closed society at home. Do we not live in the age of the decadent late empire with little chance of republican renewal lying before us and, therefore, with little need to worry about the dangers that might accompany such renewal? A closely related point is made by a reviewer whom Anastaplo quotes.

Anastaplo writes for an audience that believes there "are moral and political standards rooted in nature and discernible by reason." His audience died on July 14, 1789 (x)dii).

The dangers that might arise from a community based on such standards may be long since past in the United States.

Whatever may be true of the audience that believed in natural standards, the audience concerned with restoring nation and community did not die in 1789. Lasch and Sandel, among others, are evidence of this.³⁴ In Anastaplo's thinking, moral and political standards are necessary as the basis of a healthy community; community without standards would pose a grave danger. Indeed, "community without standards" would seem to be an incoherent expression.

Anastaplo's caution against making too much of community comes in the midst of an essay on the German thinker, Martin Heidegger. Country and community are central topics for Heidegger. This may help to account for the otherwise surprising presence of two essays on Heidegger in *The American Moralists*. While Anastaplo is very critical of the Nazi activities of Heidegger, he does share Heidegger's desire for community (144-60). Given Anastaplo's oft repeated preference for the ancients over the moderns, any similarity between Heidegger's thinking and Anastaplo's thinking might be prejudged to be of necessity superficial and unimportant. Such reflections might dispose of the matter if Anastaplo himself did not point to some kind of connection between his view and Heidegger's

view.

Now we all have to face up to what has long seemed to me to be true, that our most serious problems are not how we should conduct ourselves abroad but rather how we should live at home—that is, what kind of people we should be. The devastating effects of such innovations as broadcast television, aggravated by that growing commercialization of our everyday life which is corrupting our tastes and cheapening our language (which in turn subverts our thought), have yet to be generally appreciated, along with the limitations in what we can do about such things. I confess to being, to *this* extent, a Heideggerian (xxi-xxii).

We can see, in this quotation, the connection between the concern with community and the concern with technology that is characteristic of both Heidegger and Anastaplo." On the other hand, Anastaplo has referred to Heidegger as the "Macbeth of philosophy" because of his "gross misconduct."³⁶ Obviously then, the basis of Anastaplo's advocacy of community differs in important ways from Heidegger's.

As we have seen, at least in some ways Anastaplo can be seen as an advocate of positive liberty rather than negative liberty. It is interesting, then, that he can speak against Heidegger and in defense of negative liberty.

Heidegger never seemed to appreciate the merits of constitutional government, especially when it is compared with the alternatives available in the world today, and so he repeatedly disparages "negative liberty." ...It is liberal democracy, with its defense of property and liberty, that helps make unsupervised technological innovations routine matters. But it is also liberal democracy that makes it possible for us to diagnose the ills of technology and, if we are prudent, to take command of our lives and to do so long before we are left only with desperate measures to resort to (158).

On the basis of this passage, one might conclude that one of the

greatest strengths of liberal democracy, as Anastaplo sees it, is its potential for restoring a sovereign community that can gain control of a technology that threatens to control us.

It is worth adding at this point that Heidegger would probably object to the root idea of taking "command of our lives." From Heidegger's point of view, the imperative to "take command" is itself a symptom of the technological world view.³⁷ Heidegger's warnings against the controlling aspect of technology raise questions, in turn, concerning his view of human willfulness. According to Anastaplo, Heidegger makes much of the will and evinces a "devotion to willfulness" (156). Certainly the role of resoluteness in *Being and Time* lends support to Anastaplo's interpretation (143). On the other hand, Heidegger seems to think that willfulness is characteristic both of the Western metaphysical tradition, which he rejects, as well as of the technology that causes us to forget the most important things.

Still, it is hard to see, from what we have said so far, on what ground Anastaplo defends "negative liberty" against Heidegger's disparagement of it. The difference between Heidegger and Anastaplo from the point of view of the latter becomes much more clear in the following paragraphs.

The , proclamation by Heidegger that only a god can save us seems to have been adapted from the sixth book of Plato's *Republic*. (492-93) Socrates uses this kind of talk to explain how someone who is philosophically inclined by nature can be saved *for* philosophy. He has to be saved from, among other things, the voracious demands upon him of his city. Heidegger would use the rescuing god not to save the would-be philosopher from the community, but rather to save the community from the ravages of technology that modern science (itself derivative from philosophy) makes possible. The community takes the place for him of philosophy, reflecting perhaps the replacement of nature by history. But then, does he not consider old-fashioned philosophy to, be no longer possible in the modern world? This substitution by Heidegger of the

community for philosophy seems consistent with what he did in 1933 when he put his great talents at the service of the Nazis (155).

Perhaps one could say, on the basis of this quotation, that Anastaplo has two prongs to his opposition to modern individualism. On the one hand, he opposes modern individualism to the community that can and must legislate morality. On the other hand, he opposes to modern individualism an "old-fashioned" individualism that need not make much in public of its freedom from the goals of the community because it has availed itself of the freedom that is identical with understanding the community better than the community can ever understand itself.³⁸ In this way, Anastaplo can oppose not only the claims of a decadent individualism but also the claims of a decadent community. It is clear that Heidegger was not well positioned to oppose the latter.

In asserting a connection between freedom and understanding, we return to the problem that initiated our review of *On Trial*. Anastaplo's attachment to the old-fashioned individualism that made reason the source of man's freedom does not at all lead him to the conclusion, at once stoic and sentimental, that a human being's political and social situation is somehow irrelevant to true freedom. "Is it not dangerous sentimentality," he can ask, "to assume that only the body, and not the mind of man, can be fettered?"³⁹ This recognition of the importance of the political even to what is highest and most free in a human being leads a reasonable man naturally to desire that the political community be as sensible as circumstances will permit. It is because his political goals can be formulated in such terms as these that I have spoken of Anastaplo as an advocate of moderate enlightenment.

Anastaplo himself says that he has been shielded by his temperament from an apocalyptic view of things "of the sort that he ascribes to Heidegger (cf. xxiii with 150). Perhaps it is this temperament that allows him to promote reason in politics without fostering the utopian expectations that have played havoc with both our theory and our practice over the last two centuries and longer. To point the

way to a more prudent course is no small achievement.

There are many themes of *On Trial* and *The American Moralist* that I have not touched upon here, for example, the differences between men and women or the complicated relation between universal and particular.⁴⁰ No reviewer is likely to exhaust the rich store of material for reflection in these two works. I have tried to show that there is an interrelation among the essays and the themes they treat. One will get the most out of these rewarding books if one puts "on trial" the conflicting statements in various essays in order to try to see the pattern that connects them.

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Notes

1. The phrase is from the jacket cover of George Anastaplo, *Human Being and Citizen* (Chicago: Swallow Press, 1975).

2. Christopher Lasch, *The True and Only Heaven: Progress and Its Critics* (New York: W. W. Norton, 1991) and *The Revolt of the Elites and the Betrayal of Democracy* (New York: W. W. Norton, 1995); Michael Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1996).

3. Editorial in *The Salisbury Review* (September 1993), 42. See below, 63.

4. *Matthew* 7: 1.

5. One cannot help but wonder if the existence of such beings is not, rather, an indication that the world is somehow incomplete.

6. Cf. Anastaplo, *Moralist*, 156-57.

7. Plato, *Republic* 619c-d.

8. Did Shakespeare also use nature as the standard by which to judge and be judged? This is at least one possible interpretation of the sentiment Anastaplo attributes to Frank C. Sharp, "Shakespeare is nature." (*Moralist* 420)

9. George Anastaplo, *The United States Constitution of 1787: A Commentary* (Baltimore: Johns Hopkins University Press, 1989), 103.

10. But see Anastaplo, *Human Being and Citizen*, 28-9.

11. Freedom, under these circumstances, might be liberation from the obstructions that prevent the fulfillment of our nature.

12. Cf. below, 180, the quotation from 821.

13. On the erotic passion, see 1036, n.48.

14. See the criticism of Strauss on this point (1058).

15. It is hard to think that Anastaplo sees any kind of rational progress or cunning of history in the chance doings of Joan of Arc, which he brings to our attention. See also the two quotations from Leo Strauss (777).

16. Plato, *Republic* 331d.

17. *Le Monde*, 1 October. 1994, 4.

18. Plato, *Statesman* 294b-c.

19. But cf. 931 and 967 as well as 1091, n.729.

20. Oddly enough, the key to Portia's hand is in choosing the ugliest casket, which has her picture inside. Is the ugly play also the key to something not ugly? Does Shakespeare mean to suggest this?

21. I admit to finding some of Anastaplo's evidence for this point to be moot, perhaps intentionally so.

22. This must be said notwithstanding the extent to which those who see themselves as the contemporary followers of Jesus emphasize social justice.

23. All references in this part to Marlowe's plays are to the versions found in I. Ribner, ed., *The Complete Plays of Christopher Marlowe* (New York: The Odyssey Press, 1963).

24. Bacon, *Novum Organum*, tr. Peter Urbach and John Gibson (Chicago: Open Court, 1994), 131: Descartes, *Discourse on Method*, tr. Donald Cress (Indianapolis, Ind.: Hackett, 1980), 33.

25. Heidegger would have said *Bestand*, often translated as "standing reserve." See Martin Heidegger, *The Question Concerning Technology and Other Essays*, ed. William Lovitt (New York: Harper and Row, 1977), 17.

26. Anastaplo gives numerous references to passages in the play dealing with despair and the resolution that counters it (1040, n119).

27. *Genesis* 25: 29-34.

28. *The Jew of Malta, Prologue*, 12-13. In Ribner 1963, 179.

29. Oedipus does not seem to distinguish between his fate (patricide and incest) and the way he deals with that fate (blinding himself and other self-inflicted sufferings).

30. Aristotle, *Nicomachean Ethics* 1138a7.

31. For an insightful account of the central role played by nearly the same problem in the work of Bacon, see John E. Leary, Jr., *Francis Bacon and the Politics of Science* (Ames, Iowa: Iowa State University Press, 1994), *passim*, e.g., "...Bacon had to concern himself with certain potentially disturbing effects that a dynamic intellectual community dedicated to innovation might have upon the larger civil order which rested on apparently changeless custom" (Leary, 149-50).

32. Such a view of democracy is represented by the quotation from F. S. Haiman (315).

33. The unity of a city founded on division of labor in Plato's *Republic* is testimony to the fact that even ethnically and religiously homogeneous communities must struggle with the problem of part and whole. The problem arises from the fact that every part must be adequate to its purpose and, in that sense, must be a whole within a whole. The completeness or perfection of the part is incommensurable with its function as a mere part of the larger whole.

34. See above, note 2.

35. See Anastaplo's proposal for the abolition of television (262-274).

36. *Moralist*, 156; George Anastaplo, *Artist as Thinker* (Athens, Ohio: Swallow Press, 1983), 269.

37. Heidegger, *The Question Concerning Technology*.

38. On this kind of individualism and its "piety," see *On Trial*, 881 and context.

39. Anastaplo, *Human Being and Citizen*, 275,

40. But see above, 183 and 185.