

Justice and Community, Ancient and Modern

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I.

It may be natural to tend to prefer one's own, or the familiar, when one surveys the various ways, past as well as present, in which human beings have organized themselves in communities. One's own has, of course, the considerable advantage of usually offering itself in language that is familiar. But such accessibility can also mean that flaws hidden from others may be all too familiar, and even troubling, to those intimately connected with any particular system.

Still, much is to be said for *our* own, which is a vigorous form of Anglo-American constitutionalism. The standards we ultimately depend upon permit us, perhaps even require us, to notice serious flaws in how "we" operate these days. Serious problems (not simply issues of interest only to antiquarians) have festered among us because we have permitted to go uncorrected such abuses as the so-called filibuster rule in the Senate, the Executive license to project virtually unchecked our tremendous power worldwide, and the presumption of our Judges that they were originally intended to pass routinely on the constitutionality of Acts of Congress (so much so that the Supreme Court can at times seem to be the third branch of our national legislature).

Such abuses may be made even more troubling by what we have allowed to be done with the use of money in our political processes. Another form of corrupting excess is what we have allowed to be done in expanding the traditional (and invaluable) politically-oriented "freedom of speech [and] of the press" guarantee to include an ever-widening, and ever-corrupting, "freedom of expression," even as we deny the constitutional obligation of government to "promote the general Welfare." Irresponsible judges, unfamiliar with fundamental constitutional principles, (including with respect to the very nature of the Common Law), have contributed to these and other dubious developments that our elite constitutional law authorities (in the academy and elsewhere) cannot properly assess.

II.

Contributing to our contemporary confusion is our current unfamiliarity, as an intellectual community, with much of what has been said and done heretofore in our heritage. It may be useful therefore to begin to remind ourselves of the stages of our development in the Western World. Two of those stages, among others, may be worth glancing at in some detail on this occasion.

The first of these stages was significantly contributed to by the theater of Ancient Athens. Among the masterpieces of that period were *The Libation Bearers* of Aeschylus, the *Oedipus Tyrannos* of Sophocles, and the *Hippolytus* of Euripides. These tragedies can be usefully compared, for our immediate purposes, with three plays of Shakespeare, a playwright who has contributed significantly to how we feel and think and hence to who and what we are.

In *The Libation Bearers*, it will be remembered, Orestes is obliged to kill those who had murdered his royal father. In the *Oedipus Tyrannos* a talented man is confronted, both early and late in his life, with ominous forebodings. And in the *Hippolytus* a legendary ruler is devastated (and driven to extreme measures) by the supposed compromise of his wife's sexual fidelity.

III.

Comparable "situations" may be noticed in the tragedies of Shakespeare. Among his masterpieces were *Hamlet*, *Macbeth*, and *Othello*. Thus, the *Hamlet* can usefully remind us (in critical respects) of *The Libation Bearers*, the *Macbeth* of the *Oedipus Tyrannos*, and the *Othello* of the *Hippolytus*.

That is, we can see in the *Hamlet* a prince who, like Orestes of *The Libation Bearers*, is directed to avenge his father's murder. We can see in Shakespeare's *Macbeth* a leader who, like Sophocles' Oedipus, is confronted by disturbing predictions. He, like Oedipus, is understood by us both to have killed his royal predecessor (with such a victim readily identifiable as a "father figure") and to have contributed to the suicide of a much-cherished mate.

Also, we can see in Shakespeare's *Othello* a ruler who resorts to dreadful measures when convinced that *his* wife's sexual fidelity has been compromised. He, like Theseus in Euripides' *Hippolytus*, has been deliberately misled into such a maddening conviction. And Othello, also like Theseus, not only destroys someone he cherishes but comes to learn how dreadfully deceived he had been.

IV.

The similarities we have noticed (to which others can be added) are accompanied by significant differences. The classical characters we have singled out (Oedipus, Orestes and Theseus) are moved, directly or indirectly, to do what they do by divine messages. That is, critical messages were said to have come from Apollo in the cases of Oedipus and Orestes and (indirectly, but still decisively) from Aphrodite in the case of Theseus.

In the *Hamlet*, the *Macbeth* and the *Othello* of Shakespeare, however, the relevant directives come from what can be considered more personal sources. Prince Hamlet is directed by the Ghost of his father, Macbeth is directed, in effect, by three witches (or “weird sisters”), and Othello is maliciously “informed” by Iago. In none of these instances is the well-being of the persons spoken to evidently taken into account by their informants, something that can also be wondered about with respect to how Oedipus and Theseus (if not also Orestes) are manipulated.

Even so, our three Classical stories seem to rely more on divine sources and purposes, while our three Shakespearean characters seem to be caught up more by private concerns. We can be reminded by these observations that the terms *conscience*, *individual* and *privacy* (as worthy factors in human affairs) are not to be found in the Classical Greek lexicon. That is, we can be reminded of developments that have contributed significantly to the shaping of the modern soul, first in the West and then to some extent worldwide.

V.

Another comparison of the Classical Age with that of Shakespeare may be useful here, helping us in any preliminary effort to distinguish Ancients and Moderns. This comparison brings together the career of Socrates and the career of Thomas More. Thomas More is recalled as having himself indulged during his political career in practices quite foreign to the Socratic spirit, such as the wearing of a hairshirt and the persecuting of religious heretics to the death.

In Thomas More we can see still another emphasis upon the *conscience*. In his instance, what he could (and could not) say publicly evidently depended on how the Vatican happened to rule on whether a man could marry his brother’s widow. Either ruling here, it seems, could have invoked respectable scriptural and ecclesiastical authorities at that time.

Did it make sense to stake one’s life (as Thomas More evidently did) on how the Vatican had been moved to rule in an instance evidently very much shaped by international politics? And how should we judge the prudence of the Vatican itself if it was generally known that the ruling it did make would likely doom Thomas More? When Socrates learned of a supposed divine judgment (emanating from Delphi) relating to him personally, he evidently considered a decades-long investigation necessary.

VI.

Still another comparison of the Classical Age with that of Shakespeare may also be useful here. This comparison brings together the *Frogs* of Aristophanes and *The Tempest* of Shakespeare. Aristophanes' Dionysus has to visit Hades in order to secure for a desperate Athens the poet it needs (who turns out to be, in this case, Aeschylus).

This Dionysus is much tamer than the fierce divinity found in Euripides' *Bacchae*. Indeed, an explicit repudiation by Aristophanes of Euripides may be seen in the decision by Dionysus *not* to restore him to Athens in its need. Something much more old-fashioned was needed, and this (it could be hoped) Aeschylus could once again provide.

A comparable experiment may be seen in *The Tempest*. There, too, the modern recourse to the conscience may be seen, as villains can be forced by Prospero to begin to face up to their evil deeds. Also modern can be said to be the redeeming power of the love inspired in Ferdinand by Prospero's daughter, Miranda.

VII.

Was there anything divinely-ordained in the opportunity provided to Prospero, in *The Tempest*, to right old wrongs? Or was it a matter of chance that matters fell out as they did on that occasion? Successors to Shakespeare can talk, centuries later, about elements and forces in the human condition which can make it likely that things will work out well for human communities, if not even for the entire human race, in the very long run.

Does such an expectation provide hope for the future? Or does it make less likely sound assessments of the human condition, assessments which call for appropriate and thus different responses in various circumstances? Once again we must wonder what is likely to promote prudence in the conduct of human affairs.

We must also wonder how we should understand the overall ordering of human affairs. That is, what is the way things are—the way evidently presupposed by the Greek playwrights or the way Shakespeare has led us to expect? Are the two ways as different as they may at first appear, with one seeming to defer much more to a divine ordering of human things and the other seeming to make much more eventually (if not immediately) of private initiatives (including the possibility of the Conquest of Fortuna)?

VIII.

Perhaps the three sets of couplings that have been identified on this occasion can better be seen by venturing to suggest subsequent names that can be added to our roster. Thus, a development of the Oedipus/Macbeth coupling, with its deference to ambition at the cost of what is nearest and decent, may be seen in our time in the career of the would-have-been-Nazi Martin Heidegger. Indeed, I have had occasion to nominate him the “Macbeth of Philosophy,” a remarkable Thinker who could (in his impressive [but sometimes oppressive] scholarship) seem to move from the pre-Socratics to the post-Socratics without paying sufficient deference to the life and death of Socrates.

Thus, also, a development of the Orestes/Hamlet coupling, with its determination to set things right (no matter what the cost) may be seen in our time in the intellectual adventures of Friedrich Nietzsche. Critical *there* seems to have been an insistence upon “the Death of God.” All three of *these* figures (Orestes, Hamlet, Nietzsche) can appear at times to be so stricken by the immensity of their respective undertakings as to be, or at least to seem to be, mad.

Thus, as well, a development of the Theseus/Othello coupling, with its unsettling preoccupation with love, may be seen in modernity in the speculations of Jean-Jacques Rousseau (supplemented, perhaps, by the fanciful prescriptions of Karl Marx). Is something added to this addiction, even a kind of spice, by the challenge of having been betrayed in love? A loving relationship (if not even an infatuation) may be seen in how Rousseau can be familiarly referred to, and not only by his devotees, as simply “Jean-Jacques.”

IX.

The accomplishments of recent centuries include openings to modern science and to its remarkable technology, indeed to material developments that may even seem to hold out the prospect, for some, of the conquest of death. Many more texts would have to be examined in order to account adequately for the developments to which we have become accustomed. What, we have been wondering on this occasion, is there intrinsic to the Classical understanding that is significantly different from whatever may be found not only in Shakespeare but also both in his immediate predecessors and in his long-term successors?

Our technology *has* opened the way to what we know as *globalization*, making it easy to abandon thereby the age-old question of what size community is best for the human being, a question reflected in what Aristotle had to say about the merits (as well as, perhaps, about the limitations) of the *polis*. Does the opening to globalization mean that we can no longer believe that we can (or even should) ever again control our lives by shaping the communities in which we live? Consider, on the other hand, the challenge posed by the recognition that we, as a nation now of a third of a billion people, depend on a Constitution framed for three to four million (and growing).

However all this may be (or, indeed, may have been), we can still seem to have the option, if only one by one here and there, of knowing enough about the control of our particular lives to be able to *begin* to understand where we have come from, what condition we are now truly in, and where we may be heading. Socrates, we recall, did not like to travel. Did this contribute to the solidity of his grasp of *when* as well as *where* he was and hence of *who* and even *why* (if not also *how*) he could be?

About the Author

George Anastaplo (1925 - 2014), BA, JD, PhD from the University of Chicago, was a professor at Loyola University Chicago School of Law, as well as the author of more than a dozen books, and hundreds of articles. Anastaplo was famously denied admission to the Illinois Bar in 1950, a denial based on his refusal to answer McCarthy era questions about his political affiliations. His challenge of this denial led to a US Supreme Court case, *In re Anastaplo*, which he lost 5-4 in 1961. Justice Black's dissent in this case is considered one of the masterpieces of judicial rhetoric.



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