

THE ORIGINAL CONSTITUTION AND OUR ORIGINS

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The question why we should be bound by the original Constitution often is framed as why we should be guided by the dead hand of the past. The notion that this venerable document should be viewed as a possibly unfortunate constraint on our present potential as a society contains an implicit premise about man in history. According to this view, it is open to man to make his history in each generation through some collective cultural process. Given such a premise, it seems plausible to believe that each generation should enjoy the opportunity to decide anew whether to submit to the constitutive law of society that previous generations developed through some past process.

But there is a different view of history, shared by the Framers and again growing in acceptance, that man has an enduring nature, and that this nature substantially constrains both the human history man can create in general and the outputs that can be expected from collective governance in particular. As David Hume put it, "It is universally acknowledged that there is a great uniformity among the actions of men, in all nations and ages, and that human nature remains still the same in its principles and operations."¹ The Humean view of history puts the issue of the Constitution's relation to the present in a completely different perspective. If the principles and structure of the Constitution were premised on a correct view of essentially immutable aspects of human nature and the relation of those aspects to collective governance, the original document should not be regarded as a dead hand but as a present source of guidance. The Framers in fact believed that their theory of government would last because it was rooted in an accurate science of human behavior. The enduring nature of the original Constitution rests on the enduring aspects of the human constitution.²

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1. DAVID HUME, *AN INQUIRY CONCERNING HUMAN UNDERSTANDING* 92 (Charles W. Hendel ed., Liberal Arts Press 1955) (1748).

2. Of course, the Constitution is not permanent, because our constitutive law depends not only on enduring aspects of human nature but also on our level of technological progress and other kinds of change. (Indeed, the Constitution could not have created a

I would thus like to sketch two basic propositions, which I apologize for doing in a fairly unqualified way.³ First, the Constitution of 1789 and the Bill of Rights were generated by a view of human nature. Second, this view of human nature was in the main correct and accords with the model of man's nature set forth in modern evolutionary biology. As the classical philosopher Democritus conceived an atomic theory two thousand years before the mechanisms of such theory were understood, the Framers developed a generally accurate theory of the psychology of man and the distribution of his talents two centuries before modern evolutionary biology largely confirmed that theory. They then deployed this theory to establish a system that would allow man to pursue happiness given his nature. The Framers' theory was not perfect—just good enough for government work.

The Framers looked at man as, in Richard Hofstadter's phrase, an "atom of self interest."⁴ The entirety of the Framers' new science of politics was premised on this view of human psychology: government cannot depend on man's benevolence or virtue.⁵ On the other hand, the Framers did not believe that man's self-interest meant that he was depraved or that progress in civilization was impossible. To the contrary, they agreed with Adam Smith that, in the private sphere, self-interest could benefit the overall welfare of society, as individuals would profit by exchanging what they produced through trade.⁶ This spirit of commerce would in turn create a union among the people—a union forged

large national republic without the decreased information costs that the printing press made possible.) We have an amendment process defined in Article V to address the need for revisions brought about by such changes. Article V's requirement of a substantial supermajority of state legislatures for ratification of an amendment itself reflects a truth about human behavior: it is more likely that citizens in a moment of political passion will disregard the enduring aspects of human nature on which the Constitution is premised than that society will refuse to recognize technological and other changes that require revisions in the Constitution.

3. This speech is in fact a prolegomenon to a longer piece on which I am working called *The Constitution and the Return of Human Nature*. I hope the reader of these orally-delivered remarks will forgive their infelicities and imprecision, but I thought it would be useful to present these thoughts at an early stage to stimulate debate.

4. RICHARD HOFSTADTER, *THE AMERICAN POLITICAL TRADITION* 5 (1989).

5. *See id.* at 10.

6. *See, e.g.*, GOUVERNEUR MORRIS, *POLITICAL ENQUIRIES, 1776: AN ESSAY BY GOUVERNEUR MORRIS*, reprinted in Willi P. Adams, "The Spirit of Commerce Requires that Property Be Sacred": Gouverneur Morris and the American Revolution, 21 *AMERIKASTUDIEN* 327-31 (1976) ("The most rapid advances in the state of Society are produced by Commerce. . . . [Commerce] requires not only the perfect Security of Property but perfect good faith. . . . It requires also that every Citizen have the Right freely to use his Property.").

by enterprise.⁷ In accordance with the Framers' optimism about the role of self-interest in the private sphere—the sphere of contractual exchange and the market—the Constitution tries to sustain the private sphere against detrimental government interference. For instance, it prevents individual States from interfering with trade by authorizing Congress through the Commerce Clause to dismantle trade barriers.⁸ For the same reason, the Constitution provides substantial protection to property and enterprise through such provisions as the Contracts Clause⁹ and the Takings Clause.¹⁰

But the Framers understood that the self-interest which in the private sphere contributes to the welfare of society—both in the sense of material well-being and in the social unity engendered by commerce—makes man a knave in the public sphere, the sphere of politics and group action.¹¹ It is self-interest that leads individuals to form factions to try to expropriate the wealth of others through government and that constantly threatens social harmony. In *The Federalist No. 15*, Hamilton offered a sophisticated explanation for why an individual's self-interest leads to good behavior in the private sphere but bad behavior in the public sphere, where men may act in factions:

Regard to reputation has a less active influence when the infamy of a bad action is to be divided among a number than when it is to fall singly upon one. A spirit of faction . . . will often hurry [its members] into improprieties and excesses for which they would blush in a private capacity.¹²

7. This view represented such a consensus of Eighteenth-Century American society that it was accepted by Anti-Federalists as well as Federalists. See, e.g., LETTERS OF AGRIPPA, reprinted in 4 THE COMPLETE ANTI-FEDERALIST 71 (Herbert J. Storing ed., 1981) (“[T]he spirit of commerce is the great bond of union among citizens. This furnishes employment for their activity, supplies their mutual wants, defends the rights of property, and producing reciprocal dependencies, renders the whole system harmonious and energetick. Our great object therefore ought to be to encourage this spirit. If we examine the present state of the world we shall find that most of the business is done in the freest states, and that industry decreases in proportion to the rigour of government.”).

8. See Richard A. Posner, *The Constitution as an Economic Document*, 56 GEO. WASH. L. REV. 4, 14 (1987) (arguing that the Commerce Clause was designed to eradicate barriers to trade).

9. See U.S. CONST. art. I, § 10, cl. 1 (“No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .”).

10. See U.S. CONST. amend. V (“nor shall private property be taken for public use without just compensation”).

11. See MORTON WHITE, PHILOSOPHY, *The Federalist* AND THE CONSTITUTION 95-99 (1987) (arguing that both Madison and Hamilton had a jaundiced view of man's actions in politics as compared to his actions in the private sphere).

12. THE FEDERALIST NO. 15, at 111 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

In private dealings, individuals can monitor the actions of other individuals, and thus everyone has an incentive to maintain a good reputation so that others will deal with him to their mutual benefit. Because it is more difficult to monitor people acting in large groups, individuals are much more likely to use politics to seize all they can at the expense of others.

Just as part of the Constitution was structured to facilitate the gains from trade that could result from the operation of self-interest in the private sphere, much of the rest was designed to restrain the bad effects of the operation of self-interest in the public sphere.¹³ Most of the mechanisms are familiar. First, federalism encouraged regulatory competition between different regimes and thus restrained the power of factions—if a regime became too oppressive or too inefficient, individuals could always leave.¹⁴ The separation of powers and bicameralism raised the costs to factions of getting control of the entire government.¹⁵ The separation of powers also ensured that the branches would acquire different institutional interests, thus promoting a perpetual struggle between government institutions that impedes a regime of permanent or tyrannical control by a single faction.¹⁶

Besides the self-interested nature of man and its very different effects in the private and public spheres, one other fact about man's nature substantially influenced the Framers' approach: individuals have different abilities. Indeed, *The Federalist No. 10*—the single most important essay on political philosophy from the time of the Framing—turns on the recognition that men have "different and unequal faculties of acquiring property."¹⁷ It is important to observe that Madison does not say simply that individuals possess property in unequal amounts as some contingent cultural observation about a particular society; rather, the faculties themselves are different and unequal. Indeed, Madison says that the first object of government should be the "protection of

13. See Jonathan R. Macey, *Competing Economic Views of the Constitution*, 56 GEO. WASH. L. REV. 50, 57 (1987) (suggesting that the purpose of the Constitution was to guide transactions from public to private markets because private markets are better at creating wealth).

14. See Richard A. Epstein, *Exit Rights for Federalism*, 55 LAW & CONTEMP. PROBS. 147, 149 (1992) (arguing that federalism is a check on the monopoly of government power because individuals can move from State to State).

15. See Macey, *supra* note 13, at 76.

16. See John O. McGinnis, *Constitutional Review by the Executive in Foreign Affairs and War Powers*, 56 LAW & CONTEMP. PROBS. 293, 303 (1993).

17. THE FEDERALIST NO. 10, at 78 (James Madison) (Clinton Rossiter ed., 1961).

these [unequal] faculties" for acquiring property.¹⁸ Madison's belief that these faculties should be protected—rather than improved, perfected, or redistributed by government—underscores his sense of the intractability of inequality.

The brute fact of inequality becomes yet another reason to find mechanisms to restrain rent-seeking and expropriation. As Madison noted, natural inequality exacerbates the danger of factions.¹⁹ Inequality creates a reserve of the less talented, who readily are persuaded to expropriate the property of the more talented. Such expropriation threatens the incentives for self-improvement that generate gains from trade and thus endangers the progress of civilization that results from the operation of self-interest in the private sphere. The Framers also believed that demagogues and dissemblers serving the cause of expropriation would spontaneously arise, because ambitious individuals could acquire status from gaining control of the government as well as from success in private enterprise.²⁰

In the original Constitution, national democracy was not an end itself, but a means of mitigating the dangerous consequences of inequality in politics by making it more difficult for any coalition to maintain control of the instruments of governmental power. In *Federalist No. 10*, Madison argued for a large republic containing numerous factions so that shifting coalitions would replace one another with regularity.²¹ The national democracy he favored restrains the power of the public sphere, because any long-term collectivist scheme tends to be frustrated by the insecure and shifting ground of ever-changing coalitions. Thus under the Framers' system, providing public power to a continental people paradoxically was an attempt to protect wealth created by private enterprise from public expropriation.

Of course, the Constitution that was generated by the Framers' notion of human nature largely has disappeared in the last fifty

18. *Id.* Gouverneur Morris, the Framer who, after Madison, spoke most often at the Convention, also held the view that property was "the main object of Society." See 1 RECORDS OF THE FEDERAL CONVENTION OF 1787, at 533 (Max Farrand ed., 1937).

19. See THE FEDERALIST NO. 10, at 78 (James Madison) (Clinton Rossiter ed., 1961).

20. Cf. THE FEDERALIST NO. 48, at 309 (James Madison) (Clinton Rossiter ed., 1961) (suggesting that "ambitious" magistrates may take advantage of the people's "incapacity for regular deliberation and concerted measures").

21. This is the defense of a large national republic given in *The Federalist No. 10*. For further discussion of the importance of an extended democratic sphere in limiting the endurance of any single majority faction's control, see DAVID F. EPSTEIN, *THE POLITICAL THEORY OF THE FEDERALIST* 99-107 (1984).

years. The protections for property have been curtailed substantially. With the demise of any restraints on Congress's power under the Commerce Clause, federalism has passed away.²² And after the rise of the administrative state, the principle of separation of powers is a shadow of the Framers' original design.²³ These enormous changes in the constitutional architecture in turn gave rise to the success of noninterpretivist theories of the Constitution, because Court decisions could no longer be justified on any plausible originalist grounds.

These are the now-familiar stories of the triumph of New Deal constitutionalism. What is less familiar is that these revolutions coincided with and were substantially caused by a changing view of human nature. Indeed, not only have most of our advanced thinkers during this period not agreed with the Framers' view of human nature, but they have argued against the existence of human nature in denying that enduring and essential truths about human behavior even exist.²⁴ The perceived sense of man's malleability through the collective process of culture is directly responsible for the social democratic ideal that eroded the original Constitution. That is a less familiar story and one I think worth telling, although I do not have time to tell it here.²⁵

Rather, I would like to discuss the return of human nature and why it will tend to bring the original Constitution and originalism back. Although for most of this century social science has ignored biology and viewed social practices as wholly culturally created and sustained by a particular dominant group through some social mechanism, epochal change is in the air. For the last two decades, scientists across the social sciences—in psychology, economics, anthropology, and linguistics—have begun to understand social practices as rooted not simply in convention but in

22. For a discussion of the collapse of federalism of powers, see Richard A. Epstein, *The Proper Scope of the Commerce Power*, 73 VA. L. REV. 1387 (1987).

23. For a discussion of the collapse of the separation of powers, see Gary Lawson, *The Rise and Rise of the Administrative State*, 107 HARV. L. REV. 1231 (1994).

24. See CARL N. DEGLER, IN SEARCH OF HUMAN NATURE: THE DECLINE AND REVIVAL OF DARWINISM IN AMERICAN THOUGHT 59-215 (1991).

25. A good introduction to this history is Michael Spicer, *The Conflict between the Constitution and Public Administration*, 24 AM. REV. PUB. ADMIN. 85 (1994). Professor Spicer discusses the tension between the theories of public administration of the New Deal and the original Constitution. He shows that the former were premised on the rationalist notion that reformers could rearrange society as they wished, but the latter was premised on the notion that nature constrained social arrangements.

our evolutionary heritage.²⁶ Social practices spring not only from collective social processes but also, in the words of Leda Cosmides, from the “complex computational architecture of the human mind” that has been shaped by millions of years of natural selection.²⁷

The rise of Darwinism as a powerful explanatory theory in the social sciences is vindicating the Framers’ view of human nature in the three essential aspects described above.²⁸ Man is by nature self-interested and that self-interest sets severe limits on purely altruistic social behavior toward unrelated individuals. On the other hand, man’s self-interest is entirely consistent with the possibility of gains through cooperative trade, because man has a highly developed sense of reciprocal altruism on which systems of property and exchange can be built. Finally, individuals have substantial differences in their natural endowments, creating peculiar risks of expropriation through politics.

Let us take each of the three propositions in turn. Man is self-interested because he is a biological organism. As a matter of evolutionary theory, “organisms act as if their welfare were more important than that of all organisms,” except when other organisms can spread their distinctive genes.²⁹ Because of the way we reproduce, there are relatively few people closely related to us, and thus as a matter of evolution we are adapted to favor our own interests, those of the relatively few relatives who share a large measure of our genes,³⁰ and those of our mates, who are necessary to reproduce our genes.³¹ The ecology of our species

26. See DEGLER, *supra* note 24, at 215-45 (charting the revival of theories of the biological roots of human behavior).

27. John Tooby & Leda Cosmides, *The Psychological Foundations of Culture*, in *THE ADAPTED MIND* 39, 46 (Jerome H. Barkow ed., 1992).

28. The greatest defect of the original Constitution—its failure to abolish slavery—may be traceable to an error about human nature that Darwinian theory corrects. Much of Darwinian theory emphasizes the human nature that all individuals have in common as members of our species. Slavery was premised, at least in part, on a denial of that unity.

29. ROBERT WRIGHT, *THE MORAL ANIMAL: EVOLUTIONARY PSYCHOLOGY AND EVERYDAY LIFE* 336-37 (1994) (stating that individual organisms that failed to act in their own interest did not pass on their distinctive genes); see also RICHARD DAWKINS, *THE SELFISH GENE* (1989) (offering the theory that individuals are vehicles for the diffusion of their genes as a comprehensive account of natural selection in terms of genetic self-replication).

30. Humans have relatively few offspring. An individual’s interest in helping other relatives declines sharply when he has less than one one-hundred-twenty-eighth of his genes in common (the equivalent of third cousins) with the relative, because more distant relatives do not share a greater proportion of genes with him than does the general population. See DAWKINS, *supra* note 29, at 92.

31. We are also adapted to consider favorably the interests of those who are willing to provide us a benefit. See *infra* notes 36-38 and accompanying text.

makes us unlike female ants who, because they are closely and equally related to all other females of the colony, submerge their own interests in the interest of a large collective.³²

This has important political implications. In our evolutionary history, wealth and status have been highly correlated with reproductive success.³³ Thus, in any society large or heterogeneous enough for members to sense that they are unrelated, members will seek to turn common resources to their own advantage. On this understanding, rent-seeking in the democratic welfare state is wired into man's biological nature. Nor should we be surprised that in more strongly collectivist states (for example, communist regimes), individuals spend much of their time using the state apparatus to become "more equal" than others. There is simply a mismatch between collectivism on any large and enduring scale and our evolved nature. As Edward O. Wilson, the world's foremost expert on ants, remarked about Marxism, "Wonderful theory. Wrong species."³⁴

The Framers were thus correct to believe that the collective political process would not temper man's self-interest, but instead provide an outlet for its operation. It is also clear that Hamilton was essentially right about why self-interest operates so poorly in large-scale politics.³⁵ We have not evolved the ability to monitor the gains and losses from large-scale political actions. Since we cannot easily engage in reciprocal altruism on a huge scale, we revert to a narrower self-interest in the public sphere.

But the Framers also were right to recognize that the same self-interest that is the bane of the collective processes can be the engine of social benefit through private enterprise. Indeed, an evolutionary view of man gives us renewed reason to believe that trade is central to our humanity. Man's self-interest has been ad-

32. Female ants are more closely related to their sisters than to their offspring (they share three-quarters of one another's distinctive genes) because ants reproduce by haplodiploidy. See BERT HOLLOBLER & EDWARD O. WILSON, *JOURNEY TO THE ANTS: A SCIENTIFIC EXPLORATION* 99 (1994). This close relation leads to a strong bond between the females and a strong willingness to work for the good of the colony. *Id.* Male ants, however, are less related to their brothers than to their offspring; drones are thus "work shirkers." *Id.* at 100.

33. See Daniel Perusse, *Cultural and Reproductive Success in Industrial Societies: Testing the Relationship at the Proximate and Ultimate Levels*, 16 *BEHAV. & BRAIN SCI.* 267, 267-69 (1993). For a fuller discussion of this literature, see Kingsley R. Browne, *Sex and Temperament in Modern Society: A Darwinian View of the Glass Ceiling and the Gender Gap* (on file with author).

34. See Josh Getlin, *Natural Wonder: At Heart, Edward Wilson's an Ant Man*, *L.A. TIMES*, Oct. 21, 1994, at E1.

35. For a discussion of Hamilton's view, see *supra* notes 11-12 and accompanying text.

vanced by the development of reciprocal altruism—an evolved willingness to perform useful acts with the expectation that the person on the receiving end will reciprocate.³⁶ The qualities that make us reciprocal altruists were very useful in overcoming the “prisoner’s dilemmas” that were widespread in early social life.³⁷ In primitive societies, where centralized enforcement of obligations was quite imperfect, psychological mechanisms that resulted in cooperation would have been naturally selected. For instance, individuals who honored their agreements and returned a good turn with another increased their wealth and status relative to those who did not. As reciprocating individuals gained resources over nonreciprocating individuals and outproduced them, genes for traits related to reciprocal altruism spread through the population.³⁸

Indeed, the new science of evolutionary psychology suggests that much of the emotional life of our species—gratitude, sympathy, and moral outrage—has evolved to regulate the relations of reciprocal altruism.³⁹ Both cognitively and emotionally, we keep a mental account of what other individuals have done for us and against us, a fact immortalized in Thomas Wolfe’s concept of a “favor bank” in *The Bonfire of the Vanities*, in which lawyers and court personnel kept careful track of the favors they had performed.⁴⁰ The evolved mechanisms of altruism in man, however, are mechanisms of *reciprocal* altruism, not pure altruism. Genes that encouraged behavior that did not ultimately redound to the concrete benefit of an actor or his kin did not spread through the population.

36. The first paper to call attention to reciprocal altruism as a pervasive adaptation across species was Robert Trivers, *The Evolution of Reciprocal Altruism*, 46 Q. REV. BIOLOGY 35-57 (1971).

37. See WRIGHT, *supra* note 29, at 192-93. The classic prisoner’s dilemma is a situation in which two players each face a choice between cooperation and defection. Cooperation by both will yield the largest sum-total payoff of any set of decisions, and defection by both will yield the lowest sum of payoffs. The payoffs, however, are such that defection will always give a higher payoff to the defecting player regardless of the other player’s decision. Therefore, absent the ability to bind the other player to cooperation, the rational strategy for each player individually is to defect. The strategies that are individually rational, however, lead to a perverse result: the players receive the lowest sum of payoffs. For a more formal definition of the prisoner’s dilemma, see ERIC RASMUSEN, GAMES AND INFORMATION: AN INTRODUCTION TO GAME THEORY 28-29, 38-39 (1989).

38. For a discussion of computer simulations that demonstrate why routines of reciprocal altruism are likely to spread, see ROBERT AXELROD, THE EVOLUTION OF COOPERATION (1984).

39. See WRIGHT, *supra* note 29, at 204-06.

40. THOMAS WOLFE, THE BONFIRE OF THE VANITIES 400-02 (1988).

I do not wish to sound Panglossian about reciprocal altruism; humans like all other species have a strong interest in deceiving others to their own advantage, if they can get away with it.⁴¹ But the innate tendency toward reciprocal altruism gives us a strong foundation on which to erect institutions to enforce obligations that serve mutual self-interest. Contract and commerce are not mere social artifacts, but arise from innate prepolitical aspects of human nature.⁴² Exchange and property are as natural to man as song is to a songbird. In constructing a republic that tried to encourage trade and perfect the protection of property rights, the Framers were building with the grain of human nature.

Finally, modern science also confirms Madison's view that individuals have unequal faculties for acquiring property.⁴³ Because the ability to acquire resources was important to the genetic fitness of our ancestors, traits that contributed to that ability were selected over time. Evolution proceeds by such variation in traits that contribute to reproductive success. As a matter of theory, it is thus impossible to deny that there will be human variation in such important traits.⁴⁴ The theory is confirmed by recent studies suggesting that intelligence and other measurable personality traits are in important measure inherited rather than simply

41. For reasons why deception is pervasive in the human species, see ROBERT TRIVERS, *SOCIAL EVOLUTION* (1985). Trivers shows that deception takes place both between members of different species (mimicry and camouflage) and members of the same species for the same reason: deceptive behavior often can advance the deceiver's interest in acquiring resources or mates. *Id.* at 396-408. Genes for such successful (in evolutionary terms) behavior then will spread. Of course, it is in the interest of those potentially deceived to spot deception, which results in an arms race between the deceptive behavior and mechanisms for detecting deception. *Id.* at 395 (discussing coevolution of such behaviors). This arms race may well be the origin of self-deception in man. By deceiving himself, an individual may suppress the physical cues that will allow others to detect deception. *Id.* at 415-16.

42. Thus legal theorists are wrong to argue that there are no prepolitical facts about society and, in particular, that property rights cannot be conceived of as prepolitical. See, e.g., CASS SUNSTEIN, *THE PARTIAL CONSTITUTION* 40-67 (1993) (arguing against prepolitical concepts of property).

43. Like Madison himself, I am here speaking about inequalities among individuals only and do not imply that there are any inequalities among population groups.

44. See Philip Johnson, *The Creationist and the Sociobiologist: Two Stories about Illiberal Education*, 80 CAL. L. REV. 1071, 1087 (1992) (summarizing this analysis of evolution by variation as propounded by University of California anthropologist Vincent Sarich).

shaped by the environment,⁴⁵ and are correlated with social success.⁴⁶

It is only recently that the fruits of this revolution in the social sciences have become widely available to the public, partly because many social scientists are hostile to these ideas for political reasons. In the long run, however, science cannot be suppressed. The ongoing rediscovery of the constraints of human nature accounts in large measure for the recent skepticism in Washington about collectivist solutions imposed in the past. It is this return to truths casually discarded in the age of behaviorism and cultural relativism that gives us the sense of politics now as a tape played backwards. The programs of the Great Society and the New Deal are passing away because they were founded either on a different view of human nature or on the even more wildly implausible view that man has no nature but that which man collectively creates.⁴⁷

The Court has not yet embraced this counterrevolution, but as the return of human nature continues we can expect it to join in. When it does, the Constitution—far from being a dead hand—will be a living hand beckoning us back to government that better reflects the constraints of human nature. In fact, the original Constitution turns out to be a living Constitution because it was founded on an accurate assessment of the living organism that generates our politics.

45. There is a vast literature in psychology on the question whether intelligence is inherited. Contrary to popular accounts, there is an overwhelming consensus among scientists studying the issue that, at least in some measure, it is. See, e.g., MARK SNYDERMAN & STANLEY ROTHMAN, *THE IQ CONTROVERSY, THE MEDIA AND PUBLIC POLICY* (1988). For a recent discussion of the growing evidence that temperament also is shaped genetically, see JEROME KAGAN, *GALEN'S PROPHECY* (1994).

46. The classic discussion of the correlation of intelligence with success is RICHARD HERRNSTEIN, *I.Q. IN THE MERITOCRACY* (1975). It is a mistake, however, to view intelligence as the only inheritable personality factor that influences success. See Leon R. Kass, *Intelligence and the Social Scientist*, 120 *PUB. INT'L L. REV.* 64, 73 (1995) (suggesting that character is an important ingredient of success).

47. Two hundred years earlier, Adam Smith had inveighed against the architects of collectivist schemes like the Great Society, disapproving of the "man of system" who believes "he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess board." See ADAM SMITH, *THE THEORY OF MORAL SENTIMENTS* 233-34 (D.D. Raphael & A.L. Macfie eds., Oxford 1976) (1759).

