Prologue

The Spirit of Moderation in Constitutional Democracy

Academic and public discourse today retains a dim awareness that moderation was a political as well as moral virtue for classical and medieval political philosophy, defining the political good and justice by the avoidance of theoretical and practical extremes. This negative inquiry prepared for a principled middle ground or consensus that would best approximate justice and truth, precisely by reconciling worthy but competing principles. Broadly understood, Aristotle and Thomas Aquinas embody this twofold conception of moderation in the theory and practice of politics, as rooted in the Socratic tradition and adopted by Christianity. The inclusion of a balanced or mixed regime among the best regimes is one mark of their commitment to comprehending and balancing all the dimensions of political reality. Modern adaptations of moderation eventually produced an entirely new kind of regime and politics, an American order that reconciled principles hitherto seen as opposing extremes. Moreover, this complex polity became the model for a world order friendly to its principles and its security, with many peoples adopting its principle of moderation or balance to their particular circumstances and histories.

In the past century, however, moderation has been conceived as at best a tactic rather than a central principle of liberal-democratic theory and practice. This marks a revival of the radical Enlightenment spirit of Spinoza, Hobbes, Locke, Rousseau, and Kant among others – with some roots in Machiavelli. In this strain of modern thought, moderation was largely ignored, and sometimes vociferously criticized, as a betrayal of both truth and right (or, for Machiavelli, as ignoring reality). The modern demand for clear and novel conceptions of theory and practice, and for accelerated progress, required eschewal of the classical and medieval muddle of moderation. The singular achievement of the complex, moderate polity on the Anglo-American model was taken for granted as sustainable even while new software – single-minded and streamlined in its views of justice and progress – replaced the old. What could go wrong?

Another turn may be developing, and this demands broader academic and public attention. Recent theoretical interest in democratic deliberation and persuasion, together with contemporary concerns about destructive polarization in American politics and discourse, suggests the enduring salience of moderation as both concept and practice. The philosophical tradition that defined moderation as something more than a tactic, or mushy avoidance of conflict, or settling for third best in theory or practice, deserves rediscovery. So understood, a modern concept of moderation that incorporates elements of classical and medieval philosophy can be a central concept for inquiry, and for civic self-definition and civic education, among free peoples. Moderation conceived as avoiding theoretical and practical extremes, seeking breadth and balance among all the relevant dimensions and principles, and reconciling worthy principles in a higher middle ground can be both a guide and an aim for practical statesmen, and a benchmark for judging their character and conduct. Moderation properly understood also offers an important historical perspective on our theorizing and practice, since it has been a theme of not only liberal but also preliberal modes of politics and theory that have elevated balance, persuasion, and noncoercive legitimacy over power, conflict, and single-minded hegemony. In the current American context, the search for a path beyond polarization and beyond our incapacity to address serious public problems through long-sighted policies – social, fiscal, economic, and political – has led some public intellectuals to invoke a principle of moderation as an alternative.[1] Moreover, recent academic works have counseled not only theorists but also leaders and citizens to rediscover a principle of moderation.[2] This surge of interest in moderation among American pundits and academics is good news, for the sake of the intellectual health of our universities and public discourse and for the sustainability of a just and decent liberal politics. Nonetheless, the most important resource for recovering and investigating moderation as a political and philosophical principle still needs exploration. This is the dialogue that occurs among Montesquieu, the American Founders, and Tocqueville as it unfolds across the "Moderate Enlightenment" that spans the eighteenth and nineteenth centuries.[3]

[1] See David Brooks, "What Moderation Means," *The New York Times*, October 25, 2012, citing scholarship by Aurelian Craiutu (see note 2 below); Brooks's earlier "A Moderate Manifesto," *The New York Times*, March 3, 2009, provoked commentary by William Galston, "The Good, Bad, and Ugly of Brooks's 'Moderate Manifesto'," *The New Republic*, March 4, 2009.

[2] See Harry Clor, *On Moderation: Defending an Ancient Virtue in a Modern World* (Baylor University Press, 2008); Aurelian Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748–1830* (Princeton University Press, 2012); and Peter Berkowitz, *Constitutional Conservatism: Liberty, Self-Government, and Political Moderation* (Hoover Institution Press, 2013).

[3] I adapt this from Jonathan Israel, *Radical Enlightenment: Philosophy and the Making of Modernity 1650–1750* (Oxford University Press, 2001), which distinguishes radical from moderate philosophers, to criticize the latter; see also his *A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy* (Princeton University Press, 2009). Dennis

Of course, among the excellent studies of Montesquieu's philosophy, a few rightly identify moderation as the central principle of his political philosophy (as Montesquieu did). Many studies of the political thought of America's founders strive to encompass Federalists, Anti-Federalists, and Democratic-Republicans. Moreover, a resurgence of scholarly interest in Tocqueville in the past half-century has yielded many insights. What largely is missing, however, is the appreciation that philosophical and political moderation is a central concept explaining the development of both the theory and practice of moderate liberal constitutionalism from Montesquieu, through America, to Tocqueville.[4] Indeed, Tocqueville was neglected for a century in Europe and America until rediscovery in the mid-twentieth century; Montesquieu fell from being the central figure of political science to being breezily dismissed by academics such as Woodrow Wilson, on the basis of little careful study; and, while a few continue to study Montesquieu and *The Federalist* for enduring lessons about liberal constitutional democracy, they are a minor presence for most scholars and students.[5] Recent studies of Tocqueville do help to correct this larger imbalance, but these mostly lack a grounding in his serious study of Montesquieu and Publius, or in his appreciation of the statesmanship of George Washington.

The theoretical and practical threads of moderation in these works of the moderate Enlightenment were rejected by thinkers inclined toward more

Rasmussen, *The Pragmatic Enlightenment: Recovering the Liberalism of Smith, Hume, Montesquieu, and Voltaire* (Cambridge University Press, 2014) approaches Montesquieu in a similar spirit to this study (at 83–96, 149–152, 204–207), but only indirectly addresses philosophic moderation, and his stress on Berlinian pragmatism or pluralism (2, 9–10, 19–23) minimizes Montesquieu's commitment to natural right (252–58) and regard for religion (173–78) while overplaying his skepticism about right and focus on history and sentiment (58–69).

4 Among notable exceptions, beyond Clor, Craiutu, and Berkowitz (footnote 2 above), see Anne Cohler, *Montesquieu's Comparative Politics and the Spirit of American Constitutionalism* (University Press of Kansas, 1988); other important studies connecting Montesquieu, the Americans, and Tocqueville, or otherwise emphasizing moderation, include Harvey Mansfield, *Taming The Prince: The Ambivalence of Modern Executive Power* (Free Press, 1989) and *America's Constitutional Soul* (Johns Hopkins University Press, 1991); James Ceaser, *Liberal Democracy and Political Science* (Johns Hopkins University Press, 1990), and *Designing a Polity: America's Constitution in Theory and Practice* (Rowman & Littlefield, 2011); Norma Thompson, *The Ship of State: Statecraft and Politics from Ancient Greece to Democratic America* (Yale University Press, 2001); Paul A. Rahe, *Montesquieu and the Logic of Liberty* (Yale University Press, 2009) and *Soft Despotism, Democracy's Drift: Montesquieu, Rousseau, Tocqueville, & The Modern Prospect* (Yale University Press, 2009); and Rasmussen, *The Pragmatic Enlightenment*.

5 I discuss below some works recovering broader study of politics and thought beyond analytical liberalism; regarding Montesquieu, Alan Ryan features him as an important republican and liberal theorist in *On Politics: A History of Political Thought – Book Two: Hobbes to the Present* (W. W. Norton, 2012) 497–531, especially 518–31. Phillip Pettit references Montesquieu throughout *Republicanism: A Theory of Freedom and Government* (Oxford University Press, 1999 [1997]), on both the ideal and psychology of nondomination and the complex constitutional and legal forms for achieving it, for example, 18–21, 40–41, 106–109, 153–57, 177–80, 226–29, 251.

progressive, streamlined ideals and eager for implementing such transformative, radically just (or justly radical) ideals. The reasons that modern liberal theory and practice eschewed moderation deserve study, but so does the quiet persistence of this principle, including recent renewed interest. Perhaps residual awareness of the costs of immoderation in theory and practice explains the persistence of some regard for moderation. If our immoderate age honors moderation mostly in the breach rather than the observance and indulges in branding rival ideas or groups as extremes to be shunned, we still should notice the tribute these practices pay to virtue. Due notice also should be given to recent theorizing about civil discourse amid disagreement, or "democratic deliberation" – and most recently, about compromise. These themes suggest a kinship with moderation, and some of these studies of egalitarian, fair-minded deliberation and discourse might recognize the affinity. However, much of this work adopts the premises of John Rawls and his "ideal theory" of high analytical liberalism and understands itself as an extension thereof.[6] As discussed below, the Rawlsian project repudiates the tradition of philosophical moderation, so the possibility of conversation across these divergent philosophical approaches poses a worthy challenge. A few scholars have attempted this, but the voice of moderation needs and deserves to be more clearly articulated on its own terms before the dialogue can advance.[7]

This book therefore investigates in Part I the Tocquevillean principle of moderation in philosophy and constitutional founding, with chapters on Montesquieu, George Washington, and Tocqueville, and then in Part II investigates this constitutionalism of moderation in practice – a twofold effort to exemplify intellectual moderation, with theory paying due respect to practice. To prepare for these theoretical and practical dimensions, a prologue should briefly survey the roots of Western conceptions of philosophical and political moderation in Aristotle and Aquinas and the fate of this tradition. I try to meet halfway (so to speak) our contemporary academic spirit by offering an analytical, conceptual outline of moderation stretching from Aristotle to American constitutionalism

[6] Central to this scholarship is work by Amy Gutmann and Dennis Thompson; see, for example, *Democracy and Disagreement: Why Moral Conflict Cannot Be Avoided in Politics, and What Should Be Done About It* (Harvard University Press, 1996); *Why Deliberative Democracy?* (Princeton University Press, 2004); and *The Spirit of Compromise: Why Governing Demands It and Campaigning Undermines It* (Princeton University Press, 2012); for an early review of this approach, see Robert P. George, "Law, Democracy, and Moral Disagreement," *Harvard Law Review* 110 (1997) 1388–1406; also in George, *In Defense of Natural Law* (Oxford University Press, 2001). In a related yet distinct vein, Alin Fumurescu undertakes a genealogy in *Compromise: A Political and Philosophical History* (Cambridge University Press, 2013); he explores the Aristotelian tradition and links between compromise and moderation, at 29–36.

[7] Two works informed (as I see it) by the tradition of moderation that engage with recent democratic deliberation and discourse theory are Sharon Krause, *Civil Passions: Moral Sentiment and Democratic Deliberation* (Princeton University Press, 2008), and – perhaps the more moderate of the two – Bryan Garsten, *Saving Persuasion: A Defense of Rhetoric and Judgment* (Harvard University Press, 2006).

and Tocqueville. I then briefly encounter the predominant approach in political theory today, Rawlsian "ideal theory," and also some dissenters from that orthodoxy, to suggest why the dissenters are right but also are looking for moderation more than they might understand. The stage would be set for deeper study of Tocquevillean philosophical and constitutional moderation, including the salience of moderate views on religion, grand strategy, and a political science that redresses polarization and our current deficit of statesmanship.

Dimensions of Moderation – Philosophy, Liberal Constitutionalism, Statesmanship

A conceptual map of moderation as developed by Montesquieu and refined by the Americans and Tocqueville must recognize the root in the Aristotelian tradition. Even basic consideration of the deeper roots in Platonic philosophy, and then the principles in Aristotle's ethics and political science, would require another book. I can be suggestive only, nonetheless daring to sketch a bridge from Aristotle to Montesquieu provided, at least indirectly, by Thomas Aquinas. My focus is the modern liberal development of this classical and medieval tradition. That said, one dimension of the moderation in these modern philosophers and founders is their blending of classical, medieval, and modern ideas as best for tempering earlier modern thought.[8]

The light of the Socratic tradition that survives into modernity allows us to recognize moderation as a political and especially a moral virtue, but we can barely conceive of it as an intellectual virtue. For politics, we recognize the principle of balancing institutions or centers of power as found in separation of powers, federalism, and competing parties or interests. We faintly recall that we understand these modes of political moderation through Montesquieu's philosophy above all, since Hobbes's liberalism eschews such principles, and Locke's offers only a simple separation of powers and nothing on federalism and parties. Indeed, in our age of abundant calories and other choices, we retain some familiarity with moderation as a guide to personal morality and consumption. Our predominant view is that if moderation has any value, it is on these planes of private morality and perhaps politics. In contrast, we admire the single-mindedness we find in Hobbes and Locke – not to mention Machiavelli, Spinoza, Rousseau, Kant, Marx, or Nietzsche – as an indication of their philosophic seriousness. For Montesquieu, the charge arose in his lifetime that his works reveal not philosophical complexity but confusion, with their sprawling efforts at comprehensiveness and balance. Shouldn't a philosopher be intransigent, clear, and single-minded in the search for the truth – or, as later moderns

[8] Craiutu surveys classical and medieval views of moderation, from *sōphrosunē* (Greek) to *modestia* and *temperantia* (Latin), then modern adaptations and responses – ranging from Plato and Aristotle, to Polybius and Cicero, to Aquinas, Montaigne, and Hume among others – in *A Virtue for Courageous Minds*, 13–32.

might urge, in seeking the most recent revaluation of ever-changing values? A complicated case is Leo Strauss, often considered a conservative thinker, who at once praised philosophical moderation and distanced philosophy from it in his widely read essay "What is Political Philosophy?" When advocating the politic position that the philosopher should take toward nonphilosophers and a decent constitutional regime, especially after the recklessness of Heidegger's philosophizing (as an epitome of modern philosophy), Strauss argued for a pairing of philosophy and moderation. At another moment, when discussing classical political philosophy in its purest form, in Plato's *Laws*, he voices the radical purity of philosophic longing for wisdom: "For moderation is not a virtue of thought: Plato likens philosophy to madness, the very opposite of sobriety or moderation; thought must be not moderate, but fearless, not to say shameless. But moderation is a virtue controlling the philosopher's speech." In the final moment of the essay, Strauss addresses the relationship of moderation to philosophy again, arguing that a tempering of intellectual expectations opens up space for philosophy – since it must strive to be "the highest form of the mating of courage and moderation" in order to resist the charm at one extreme of reducing knowledge to mathematics or rationalism (mind over reality) but also, at the other extreme, the charm of succumbing to a simple awe that refuses to pursue knowledge.[9]

Other dimensions of Strauss's philosophy feature irreducible tensions in thought and in the cosmos that the philosopher must navigate, such as those between reason and revelation, Athens and Jerusalem, nature and culture or law, man and the city. Still, Strauss seems not to view such navigation as a virtue of intellectual moderation or path in itself to the truth; he seems instead to hold to the pure form as true philosophizing, while a qualified or Socratic acceptance of moderation counsels prudence. Aristotle and the Aristotelian tradition provide an alternate view that points toward a virtue of intellectual or philosophical moderation. As a student of Plato, Aristotle begins with the cautionary notes that Strauss later voices, but as is argued below, Aristotle develops a distinct stance. Should a philosopher be dogmatic and fanatical in pursuing his or her favored views? Should a thinker impose a degree of clarity that does not exist in the phenomena, simply to meet an abstract theoretical test of rigor or purity? The roots of philosophical moderation as understood through these cautionary queries are deep in our tradition. Ultimately they are traceable to Socratic dialectic, but they appear more substantially in the dialectical method of the *quaestio* in Aquinas – which is integral to the substantive moderation that he demonstrates in exploring the compatibility of revelation and reason. Consideration of Aquinas helps us to see that the most recognizable, developed,

[9] Leo Strauss, "What Is Political Philosophy?" In *What Is Political Philosophy? And Other Studies* (University of Chicago Press, 1959), 26–27, 32, 39–40. Thomas L. Pangle discusses the views of moderation in this and other Strauss essays in *Leo Strauss: An Introduction to His Thought and Intellectual Legacy* (Johns Hopkins University Press, 2006), 34, 50, 87–88, 108.

and characteristic forms of such moderation lie in the Aristotelian tradition, broadly conceived.[10]

The classic exposition of the mean as the method and principle of moral philosophy is the *Nicomachean Ethics*. Its complexity and care reveals the challenge: any analysis of ethics or politics that seeks moderation between alternatives must cogently define the extremes and the spectrum between them.[11] Aristotle proposes an ethical science of virtue, in which excellence in action, and practical wisdom or prudence in choice of actions, almost always is found in a mean between extremes. The fact that moderation (*sōphrosunē*, literally "soundness of mind") is one of the eleven virtues analyzed in the *Ethics*, as the mean regarding pleasures, complicates the story; moderation is both the philosophical approach and a particular virtue found through it.[12] This paradox is not a peculiar moment within Aristotle's philosophy of human affairs, which often uses analogous meanings to achieve understanding. His aim is not to impose meaning or artificial clarity upon reality through an ideal theory, but to discern inherent meaning.[13] A further complexity is that he defines virtue not merely as a middle point on a continuum but as an excellence that rises above opposing and false extremes, like the peak of a triangle, toward moral excellence as golden mean. Moreover, he specifies two important qualifications. The true and just point – being courageous, being magnanimous, being just, etc. – is not mathematically in the middle, but instead is farther from whichever false extreme is the graver error or danger. Further, some actions or passions allow no middle or mean and are simply wrong. Aristotle cited, as examples, adultery, theft, murder, spitefulness, shamelessness, and envy. One could not do such deeds, or indulge such passions, in a moderate way.[14]

While Aristotle does not launch the *Politics* – his sequel to the *Ethics* – by stating the method and aim of moderation, this first work of political science argues that the political good and justice are found in a mean between

[10] Among scholars viewing Aquinas in this moderate, dialectical vein – while differing about other points in interpreting Aquinas – are Josef Pieper, *The Silence of St. Thomas: Three Essays*, tr. John Murray and Daniel O'Connor (Pantheon, 1957); Anthony Kenny, *Aquinas* (Oxford University Press, 1980); and, John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford University Press, 1998).

[11] A new translation with critical resources is Aristotle, *Nicomachean Ethics*, tr. Robert C. Bartlett and Susan D. Collins (University of Chicago Press, 2011). I also consult Aristotle, *Nicomachean Ethics*, tr. Martin Ostwald (Library of the Liberal Arts, Bobbs-Merrill, 1962).

[12] Clor, *On Moderation*, 26–27, notes this paradox and explains his preference for the broader conception of moderation as the principle guiding all virtue, in contrast to the Platonic conception as one of four cardinal virtues.

[13] Thus in *Politics* Book 3 the central concept of the new political science is "the regime" (*politeia*) and yet one instance – the mixed regime comprising elements of monarchy, aristocracy, and democracy – is defined as *politeia* ("polity"). The paradox of using one word for genus and species makes sense in light of the larger political science.

[14] See Aristotle, *Nicomachean Ethics*, tr. Bartlett and Collins, Book 2, Chs. 6–9 (1106b37–1109b27, 33–41), especially at 1106b5–16 (34), 1107a9–18 (35), and 1109a1–2 (39).

intellectual and institutional extremes. The *Politics* instructs political philosophers and legislators to avoid extremes about the status of gods, beasts, and humanity; about money, communism, and private property; and about unity, divisiveness, and pluralism in Plato's ideal polis or a more reasonably best polis. Aristotle thus defends polity or the mixed regime as one of the correct regimes; arguably, he finds it one of the potential best regimes, if rightly structured.[15] Long before the claims of modern philosophers (especially the radical Enlightenment) about mathematically precise foundations for new sciences of moral philosophy and politics, Aristotle warned of rationalist extremes. The *Ethics* argues that any science of human affairs (ethics or politics) should strive to attain only "the clarity that accords with the subject matter," thus "one should not seek precision in all arguments alike." Arguments about what is just, noble, or prudent will be lost upon, or dismissed by, seekers of mathematical clarity. Thus, "it belongs to an educated person to seek out precision in each genus to the extent that the nature of the matter allows: to accept persuasive speech from a skilled mathematician appears comparable to demanding [mathematical] demonstrations from a skilled rhetorician."[16] Aristotle thus famously makes practical wisdom or prudence (*phronēsis*) a central idea of his ethical and political philosophy. There is only so much work that abstract philosophy can do, but a science of ethics can point out the respect due to, and the arena to be left for, prudence.

It often is overlooked that prudence also is a central concept for the ethics and political philosophy of Aquinas.[17] There is substantial latitude for judgment by individuals and statesmen within the frame of natural law, virtue ethics, and his preferred polity, the mixed regime.[18] Much discussion of Aquinas's

[15] See Aristotle, *The Politics of Aristotle*, ed. Peter Simpson (University of North Carolina Press, 1997) – in book and chapters, 1.2 (1253a26–28, 12); 1.8–11 (20–29); 2.3–5 (37–45); 3.11–13 (95–105), 3.17–18 (112–14). Interpretations supporting this view – that Aristotle doubts whether rule by a godlike one or few is political if completely excluding the many, and that polity is excellent if restricting the highest offices to the excellent – are Mary Nichols, *Citizens and Statesmen: A Study of Aristotle's Politics* (Rowman & Littlefield, 1991), and Kevin M. Cherry, "The Problem of Polity: Political Participation and Aristotle's Best Regime," *The Journal of Politics* 71 (2009), 1406–21; see also Stephen Salkever, *Finding the Mean: Theory and Practice in Aristotelian Political Philosophy* (Princeton University Press, 1990). See also Pierre Manent, *The City of Man*, tr. Marc Le Pain (Princeton University Press, 1998 [1994]), 165–69, especially on Aristotle's argument for intellectual and political moderation at p. 167.

[16] Aristotle, *Nicomachean Ethics*, tr. Bartlett and Collins, Book I, ch. 3 (1094b12–28), 3–4.

[17] Among the many topics to consider regarding Aquinas on moderation, beyond the importance of prudence as a mark of philosophical moderation, is his analysis in the *Summa Theologiae* of the cardinal virtue *temperantia* (temperance or moderation) and the affiliated virtue *modestia* (modesty, with overtones of moderation); for an overview, see Josef Pieper, *The Four Cardinal Virtues* (University of Notre Dame Press, 1966), and more specifically, on political implications of temperance and modesty as moderation, see Michael P. Foley, "Thomas Aquinas' Novel Modesty," *History of Political Thought* XXV (2004), 402–23.

[18] For a range of views on Aquinas and prudence see, for example, Jeremy Catto, "Ideas and Experience in the Political Thought of Aquinas," *Past and Present* 71 (1976), 3–21; James V.

views on politics and a best regime focuses on his letter to the king of Cyprus, *De Regno* (*On Kingship*), or on his unfinished commentary on Aristotle's *Politics*. In fact the most comprehensive, if brief, analysis of the best regime occurs in his great *Summa Theologiae*, near the end of his questions on law, in *Summa* I–II, q. 105. Here Aquinas argues that "the best constitution" or regime is outlined both in the Hebrew Bible ("the Old Law") and Aristotle's *Politics*. From this blend of sources, Aquinas finds a higher balance among several elements: rule by the virtuous one and few, with elections and participation by the many.[19] Among many striking points here, Aquinas moves beyond Aristotle by using "democracy" favorably, although he knew from his close commentary that for the *Politics* democracy was unjust, with the many ruling for their advantage rather than for the common good. Aquinas underscores that while his best regime has an element of monarchy, such a singular ruler should be selected by all the people from among all the people while (in Aristotle's spirit) also assuring that the most important offices are held on the basis of virtue, to include practical wisdom.[20] If moderation means avoiding extremes in theory and practice, comprehending a balance and breadth of principles, and blending or reconciling worthy principles, then the Aristotelian tradition is the main carrier of moderation into the modern philosophical and political world. Furthermore, Aquinas clearly seeks to reconcile philosophy and faith, reason and revelation, regardless of the worthy criticisms coming from both the philosophers and the faithful that in so doing he has misunderstood, or betrayed, the purest understanding of each view of reality.[21]

Schall, "A Latitude for Statesmanship? Strauss on St. Thomas," *Review of Politics* 53 (1991), 126–45; Daniel Nelson, *The Priority of Prudence: Virtue and Natural Law in Thomas Aquinas and the Implications for Modern Ethics* (Pennsylvania State University Press, 1992); Daniel Westberg, *Right Practical Reason: Aristotle, Action, and Prudence in Aquinas* (Oxford University Press, 1994); Marc D. Guerra, "Beyond Natural Law Talk: Politics and Prudence in St. Thomas Aquinas's *On Kingship*," *Perspectives on Political Science* 31 (2002), 9–14; and Finnis, *Aquinas*, 118–31, also 79–90 (among other accounts of prudence or "practical reasonableness" therein).

[19] Diverse approaches to Thomas largely agree upon this reading of *Summa Theologiae* I–II, q. 105, a. 1; see Douglas Kries, "Thomas Aquinas and the Politics of Moses," *Review of Politics* 52 (1990), 84–104; James V. Schall, "The Right Order of Polity and Economy: Reflections on St. Thomas and the 'Old Law'," *Cultural Dynamics* 7 (1995), 427–40; Finnis, *Aquinas*, 7–8, 260–63; and Christopher Wolfe, *Natural Law Liberalism* (Cambridge University Press, 2006), 179–80. More broadly, see Ernest L. Fortin, "The Political Thought of Thomas Aquinas," in Fortin, *Classical Christianity and the Political Order: Reflections on the Theologico-Political Problem* (*Collected Essays*, Vol. 2), ed. Benestad (Rowman & Littlefield, 1996), 151–76.

[20] Finnis, *Aquinas*, 7–8 and 17 (note l), provides a close English translation and the Latin text.

[21] It is telling that Mary Keys occasionally addresses moderation throughout her analysis of the moral and political philosophy of Aristotle and Aquinas, which argues that Aquinas succeeds in reconciling religion, philosophy, and politics – and that she concludes considering "Thomistic and Aristotelian Moderation for the Common Good," in *Aquinas, Aristotle, and the Promise of the Common Good* (Cambridge University Press, 2006), 236–38; on Aquinas's response to Aristotle's political science, see 87–115.

It is important to note, from this brief survey, that moderation for Aristotle and Aquinas encompasses three levels: first, a *philosophical* argument that natural right or natural law, and the good in human affairs, can be specified to a limited degree in abstraction, and thus complexity of principles and the virtue of prudence must be recognized; second, a sound *political philosophy and political science* suggests a balanced constitution, since an ideal ruler or small number of rulers might be possible (virtuous monarchy or aristocracy) but a mixed regime incorporating prudence in higher offices and democratic (or republican) participation also can be best – and indeed, for Aquinas, it is the best simply; and, third, a more specific discussion follows from these levels, of how *prudence or practical wisdom* operates, and why *statesmanship* is as indispensable as the rule of law in a best political order or a decent one.

This is roughly the three-level conception of moderation employed by Montesquieu, adapted by the American founders, and refined by Tocqueville. These latter thinkers are moderns and liberals, and we should not ignore the question of whether the development of classical and medieval moderation by these moderns is a species of adaptation, or distortion, or confusion. Still, the lineage first must be noted and explored before assessed. Part I of this book argues that Montesquieu, America's founders, and Tocqueville share, first, a *philosophical* disposition for breadth and balance in inquiry, for dialectical care in canvassing alternatives, so as to avoid narrow, doctrinaire extremes. This moderated philosophy sees in human nature both reason and faith, both social and individual dimensions, thus both duties and rights. At a second level, this modern moderation guides a *political science* that points to a *moderate liberalism* and thus to the principle of *complex constitutionalism*. Montesquieu, the founders, and Tocqueville endorse a liberal politics bounded by natural right, natural rights, and the rule of law, including a basic or constitutional law structured in a complex balance of institutions and powers. This structure calls for, thus leaves space for, a general prudence in the philosopher and in the founders or legislators designing (or reforming) a constitution. According to the first level, no one abstract theory or universally right constitution exists that would do justice to, or secure natural right among, diverse peoples and circumstances. A moderate, liberal constitution will balance or reconcile, at the second level, important moral principles, to include liberty, rule of law, equality, religious belief, and the civic virtues or character needed in citizens.[22] At a third level, for citizens and their representatives or rulers, philosophical and

[22] A modern argument for constitutional democracy that shares (and occasionally cites) Montesquieu's argument for complexity and balance, both of moral principles and institutions, is Walter Murphy's *Constitutional Democracy: Creating and Maintaining a Just Political Order* (Johns Hopkins University Press, 2007); George Thomas emphasizes the Aristotelian and Montesquieuan dimensions of Murphy's approach in his review essay "The Tensions of Constitutional Democracy," *Constitutional Commentary* 24 (2007), 793–806.