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Defining Rule of Law



By Jim Rankin

“[Now hear] ... the audacious fiction, which I propose to communicate gradually, first to the rulers, then to the soldiers, and lastly to the people. They are to be told that their youth was a dream, and the education and training which they received from us, an appearance only; in reality during all that time they were being formed and fed in the womb of the earth, where they themselves and their arms and appurtenances were manufactured; when they were completed, the earth, their mother, sent them up; and so, their country being their mother and also their nurse, they are bound to advise for her good, and to defend her against attacks, and her citizens they are to regard as children of the earth and their own brothers. “

Plato, *The Republic*, Bk III, 414

This is the season of miracles and thankfulness. Contrary to Plato’s apparent strategy, I do not believe in spreading miraculous stories—including stories of miraculous births in the center of the earth—as noble lies. I believe this, not because of a dogmatic conviction that only the harsh truth of materialism leads to self-enlightenment and realization of a successful community, but rather because I genuinely believe in miracles.

I have never seen what some might describe as supernatural miracles. I expect few of us have. The miracles I have seen and for which I am exceedingly thankful, have the appearance of natural phenomenon. To me, it was a miracle that I became a lawyer. I had a boyhood dream of becoming a lawyer and the dream came true. Most would say it was and is a miracle that I convinced another wonderful lawyer to marry me. The birth, growth, and success of our two sons is also a miracle; all my dreams of a wonderful family have come true. Many will argue it was just the natural course of things or, at most, extraordinary luck. If it is just luck I have been consistently lucky and from what I understand, that is not the way luck works.

Here is another thing: I was miraculously (or luckily) born and raised in the most extraordinary nation on planet earth. That is a miracle—or lucky break—that applies to almost every reader of this essay. However, miracles and luck have something in common. If you fail to recognize and nurture your miracles and make the most of these gifts, your fortune will turn and you will be lost.

Take, for example, the American Republic, improbable from its beginning to this day. Yet here it stands: a miracle. How to maintain the republic is not a new question. When leaving Independence Hall at the close of the Constitutional Convention in 1787, a woman stopped Benjamin Franklin and said “Well Doctor, what have we got—a republic or a monarchy?” Franklin supposedly replied: “A republic, Madam, if you can keep it.” Franklin’s words should be taken as an ominous warning. We must not take our form of government and the American nation for granted.

Around 1517, during the Renaissance, a Florentine civil servant, historian, and political commentator Niccolò Machiavelli (1469 to 1527) wrote his *Discourses: on the First Ten Books of Livy* (“Discourses”), which, in conjunction with his shorter work, *The Prince*, was meant as a tutorial on practical politics. Modern readers, unfamiliar with his *Discourses*, may misread Machiavelli. The *Prince* was written to enlighten an absolute sovereign as to how best to govern. Nevertheless, one man

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rule using manipulation and cynicism was not Machiavelli's preference. Machiavelli was a committed republican and this can clearly be seen when *The Prince* is read as a compliment to his *Discourses*.

The books of Livy which Machiavelli discusses were the work of Roman historian Titus Livius Patavinus (circa 60 B.C. to A.D. 17) known to posterity simply as Livy. Livy authored more than 140 scrolls describing the history of Rome from inception to his time. Most of Livy's writings are lost but the first ten books, upon which Machiavelli based his *Discourses*, recount the familiar stories of the early Roman Republic. These stories include a description of the life and times of Romulus, Rome's founder and the rise of the first Brutus who established the Roman Republic which would last almost five hundred years.

At the beginning of Book III of the *Discourses*, Machiavelli describes how a republic might survive for many years. Machiavelli argues that in order to long survive, a republic must regularly reaffirm its foundational principles. Machiavelli was not arguing for periodic revolutions against the existing social and political order but rather revitalization through reconnection with and emphasis on the republic's founding laws and ideals. Machiavelli argued that this could be achieved by great individuals willing to reform corrupted institutions; or through survival of effective laws and institutions, designed to weed out sloth and permit ordinary citizens a voice in government. Relying on Livy, Machiavelli retells the story of how Rome fell in 390 B.C. to an invading Celtic tribe from Gaul. After ridding Rome of its Celtic invaders, efforts to return Rome to its first principles began immediately. Machiavelli describes how Rome drew itself back

toward its beginning in these words:

[A]s soon as Rome was retaken, they renewed all the orders of their ancient religion, they punished the Fabii who had engaged in combat "against the law of nations[.]" . . . It is thus necessary. . . that men . . . often examine themselves either through . . . extrinsic accidents [such as the invasion from Gaul] or through intrinsic [means]. As to the latter, it must arise either from [traditional laws and institutions] . . . or . . . from a good man . . . who with his examples and his virtuous works produces the same effect as the [traditional laws and institutions].

Machiavelli, *Discourses*, III, I, 2,

Trans. By H.C. Mansfeld and N. Tarcov,

U Chicago Press (1996)

Machiavelli thus teaches revival of republics through a return to fundamentals. He does not suggest political changes in new untried directions, but a return to the founding first principles. He advocates a reconsideration of those virtues most appreciated by the founders of the republic. The equivalent strategy for twenty first century America would mean a return to respect for the ancient constitution of common law from which the rule of law is derived. Renewal would also mean a return to political compromise for the sake of nationhood and re-appreciation of what the term "liberty" meant to our founding fathers. Fortunately for America, the Gauls have not yet invaded. In this season, therefore, we can take stock of our miracles, great and small—public and personal—and be thankful.

Merry Christmas, and Happy New Year.

Memorials

Anthony John "A.J." Kotich

Date of Birth:

July 30, 1946

Admitted to Kansas Bar:

April 18, 1975

Passed Away On:

October 20, 2015

Dan E. Turner

Year of Birth:


1936

Admitted to Kansas Bar:

February 16, 1966

Passed Away On:

November 14th, 2015



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