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RESEARCH ARTICLE

Symbolization of Constitutionalism: A Voegelinian Approach

Peidong Wu

Department of Political Science, Louisiana State University and A&M College, Baton Rouge, LA, USA
Email: peidong2017@gmail.com

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Abstract

This article extends Eric Voegelin's analysis of symbolic forms to modern constitutionalism. Voegelin viewed symbols not merely as functional or superficially representative, but as articulations of reality. Therefore, this article proposes "permeability" as a core diagnostic concept. It constructs a novel symbolic framework for secular politics that establishes a creative tension between foundational "ontological human rights" and specific "practical human rights." This article explores Voegelin's concept of "reflective distance" to outline a potential method for analyzing the coherence between constitutional symbols and the state of national consciousness. It thereby lays the philosophical groundwork for assessing a symbolic framework's health.

Keywords: human rights; constitutionalism; symbol; reality; Voegelin

Introduction

Political science has long recognized that symbolic forms are not peripheral to politics, but are central to the constitution of social reality.[1] This symbolic lens is especially powerful for constitutionalism, where scholars analyze everything from foundational myths to political rituals.[2] This rich body of work generally treats symbols as instruments within a given political reality, not as the means

[1] Joseph R. Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement* (Urbana, IL: University of Illinois Press, 1967); Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley, CA: University of California Press, 1967); Molly Patterson and Kristen Renwick Monroe, "Narrative in Political Science," *Annual Review of Political Science* 1, no. 1 (June 1998): 315–31.

[2] Robert Neelly Bellah, "Civil Religion in America," *Daedalus* 134, no. 4 (Fall 2005): 40–55; Sanford Levinson, *Constitutional Faith* (Princeton: Princeton University Press, 1988); Murray Edelman, *The Symbolic Uses of Politics* (Urbana, IL: University of Illinois Press, 1964); David I. Kertzer, *Ritual, Politics, and Power* (New Haven: Yale University Press, 1988).

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that constitute it, and lacks a normative standard for assessing the symbols' inner truth. This article addresses that deeper question by turning to Eric Voegelin, who understood symbolization not as a political tool, but as the very process through which human consciousness constitutes order and apprehends reality.[3]

Voegelin's monumental studies focused on the four great traditional symbolic forms: Myth, Revelation, Mysticism, and Philosophy.[4] He demonstrated how these forms articulated a society's understanding of and participation in an encompassing reality.[5] Yet Voegelin did not systematically extend this analysis to modern, secular political forms. He left open the critical question of whether constitutionalism, the preeminent symbol of modern political order, could perform a similar function in an age where traditional symbols have lost their dominant efficacy. This article's focus on a rights-based order is not a claim that it is the only legitimate foundation. My analytical focus, therefore, neither discounts traditional sources of order (like Christianity in America or cultural heritage in China) nor forecloses future political paradigms. In our secular, technological era, rights discourse has become the lingua franca of political modernity; engaging with this dominant reality is therefore essential for diagnosing the discourse's implications for political stability and sustainability.

I argue that modern constitutionalism can find a path to authentic order through a new form of symbolization centered on human rights. I propose a new symbolic framework built on a critical distinction: between the evolving, enumerated practical human rights found in legal texts, and a foundational ontological human right, defined as the fundamental right of consciousness to pursue its open, tensional search for the transcendent ground of being. This endeavor builds upon a significant body of scholarship that applies Voegelin's insights to modern political life. Ellis Sandoz,[6] David Walsh,[7] and Michael Federici[8] have illuminated the spiritual and philosophical underpinnings of liberal and American constitutional orders. Recent work continues to engage Voegelin's critique of legal positivism.[9] While this scholarship reveals the spiritual dynamics of

[3] Eric Voegelin, *Anamnesis*, trans. Gerhart Niemeyer (Notre Dame, IN: University of Notre Dame Press, 1978), 14–36; Eric Voegelin, *Autobiographical Reflections*, in *The Collected Works of Eric Voegelin*, vol. 34 (Columbia, MO: University of Missouri Press, 2006), 89–95.

[4] Ellis Sandoz, *The Voegelinian Revolution: A Biographical Introduction* (Baton Rouge, LA: Louisiana State University Press, 1981).

[5] Eric Voegelin, *The Ecumenic Age*, in *The Collected Works of Eric Voegelin*, vol. 17 (Columbia, MO: University of Missouri Press, 2000); Eric Voegelin, *Israel and Revelation*, in *The Collected Works of Eric Voegelin*, vol. 14 (Columbia, MO: University of Missouri Press, 2001); Eric Voegelin, *Plato and Aristotle*, in *The Collected Works of Eric Voegelin*, vol. 16 (Columbia, MO: University of Missouri Press, 2000).

[6] Ellis Sandoz, *A Government of Laws: Political Theory, Religion, and the American Founding* (Baton Rouge, LA: Louisiana State University Press, 1990); Ellis Sandoz, *Republicanism, Religion, and the Soul of America* (Columbia, MO: University of Missouri Press, 2006).

[7] David Walsh, *The Growth of the Liberal Soul* (Columbia, MO: University of Missouri Press, 1997).

[8] Michael P. Federici, *Eric Voegelin: The Restoration of Order* (Wilmington, DE: ISI Books, 2002).

[9] Barry Cooper, "Hans Kelsen and Eric Voegelin: The History of a Divergence," *Political Science Reviewer* 47, no. 1 (2023): 61–91; Mateus Di Palma Back, "Hans Kelsen, Eric Voegelin e a Democracia" (Ph.D. diss., Universidade do Vale do Rio dos Sinos, 2023); Michał Kuź, "Voegelin's Escape from Legal Positivism: Constitutionalism and the Politico-Religious Problem," *Christianity and World Politics* 28 (2024): 132–43.

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modernity, this article offers a distinct contribution: it seeks to construct a specific, transferable theoretical framework for diagnosing the symbolic health of any constitutional order through its conception of rights.

The argument proceeds in four parts. First, it establishes "permeability" (structural openness to transcendent meaning) as the core diagnostic criterion. Second, it proposes an "ontological human right" as a modern equivalent to the traditional transcendent anchor. Third, it explains a diagnostic method using Voegelin's "reflective distance" to analyze the three dimensions of consciousness. Finally, it shows how this research extends Voegelin's work, offering a unique symbolic perspective on modern constitutionalism.

The diagnostic standard: permeability

A Voegelinian diagnosis of political order begins by asking a question that most constitutional theories take for granted: what is the nature of the reality that a constitution purports to order? Modern constitutional theories often treat reality as a pre-existing object to be managed or interpreted, whether as John Rawls's social facts,[10] Antonin Scalia's fixed text,[11] or Ronald Dworkin's evolving narrative.[12] This article introduces a Voegelinian perspective to constitutionalism to fill an academic gap and explore the practical application of Voegelin's thought. A Voegelinian analysis proceeds from a fundamentally different premise grounded in a theory of consciousness itself. Reality is not an external object but a participatory process within a "primordial community of being,"[13] an encompassing reality where one becomes real only through participation[14] and which finds meaning only through the self-interpretation of consciousness seeking its place in the whole.[15] Voegelin articulates this via the "paradox of consciousness,"[16] which has both a structure of intentionality directed at an external "thing-reality"[17] and a structure of luminosity, where it is an event of participation within the greater "It-reality."[18] The "Logos of

[10] Rawls assumes the fact of reasonable pluralism as a normal result of the exercise of human reason under free institutions. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), xix, xxvi, 4, 36, n. 37, 129, 135, 144.

[11] Scalia's textualism posits that "The text is the law, and it is the text that must be observed." He explicitly rejects searching for subjective "legislative intent" or treating the Constitution as a "Living" document that "grows and changes from age to age." See Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton: Princeton University Press, 1997), 22–23, 38.

[12] Dworkin uses the metaphor of a "chain novel," arguing that judges must read the legal tradition as a coherent story and then write the next chapter, ensuring it both "fits" the past and presents it in the best moral light. See Ronald Dworkin, *Law's Empire* (Cambridge, MA: Belknap Press, 1986), 228–32.

[13] Voegelin, *Israel and Revelation*, 39.

[14] Voegelin, *Anamnesis*, 163.

[15] Voegelin, *Anamnesis*, 148.

[16] Eric Voegelin, *In Search of Order*, in *The Collected Works of Eric Voegelin*, vol. 18 (Columbia, MO: University of Missouri Press, 1999), 28.

[17] Voegelin, *In Search of Order*, 29.

[18] Voegelin, *In Search of Order*, 30.

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being is the object proper of philosophical inquiry" within this participatory quest.[19]

Voegelin developed this theory because existing philosophies failed to completely explain the rise of totalitarian ideologies, which he saw not as mere incorrect propositions but as symptoms of a "deformed existence."[20] "Second Reality" is Voegelin's term, drawn from Robert Musil, for a fictitious world imagined as true by a person using it to mask and thereby eclipse genuine reality.[21] When any constitutional theory elevates its preferred domain to the status of the whole, it risks creating such a Second Reality, severing the open, tensional experience of existence in the *metaxy* and resulting in a loss of reality.[22] A science of politics must therefore grapple with these layers of meaning, analyzing the disordered consciousness that produces them to make such political movements intelligible.[23]

According to Voegelin, "The consciousness of concrete men is the place where order is experienced. From this center of experience radiate the interpretations of social order, both the noetic and the non-noetic."[24] The order of a society is the macrocosmic projection of the order achieved in the souls, or consciousness, of its members. A true political science is a "noetic interpretation" of humanity, society, and history that critically examines a society's own "non-noetic" self-interpretations and the conflict between these interpretations.[25] This leads to a crucial methodological conclusion: the only instrument for analyzing consciousness is the analyst's own concrete consciousness. The quality of the analysis depends not on an abstract ego or theory but on the analyst's existential openness and "permanent effort at responsive openness to the appeal of reality."[26] By introducing this framework, this article seeks to develop a new constitutional theory grounded in this unique understanding of reality and consciousness.

Voegelin's thought is often criticized for its abstractness and lack of clear prescriptions for political action.[27] The central obstacle to applying it is translating his profound but elusive concept of "reality" into a concrete diagnostic tool. This article addresses this methodological gap by proposing a new analytical standard: permeability. Defined as a political order's structural openness to transcendent meaning, permeability offers a concrete metric for an otherwise abstract diagnosis. It moves beyond general philosophical exposition to provide

[19] Voegelin, *In Search of Order*, 18.

[20] Voegelin, *Anamnesis*, 6.

[21] Eugene Webb, *Eric Voegelin, Philosopher of History* (Seattle, WA: University of Washington Press, 1981), 288.

[22] Voegelin, *Anamnesis*, 103.

[23] Voegelin, *Anamnesis*, 3.

[24] Voegelin, *Anamnesis*, 147.

[25] Voegelin, *Anamnesis*, 144-45.

[26] Voegelin, *Anamnesis*, 4.

[27] Ted V. McAllister, *Revolt Against Modernity: Leo Strauss, Eric Voegelin, and the Search for a Post-Liberal Order* (Lawrence, KS: University Press of Kansas, 1996), 17, 18; Sandoz, *Voegelinian Revolution*, 11; Webb, *Eric Voegelin*, 274; Robert P. Kraynak, "Strauss, Voegelin, and Burke: A Tale of Three Conservatives," *Modern Age* 53, no. 4 (Fall 2011), 24, 27.

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a specific, transferable method for assessing the symbolic health of any constitutional order. This provides constitutional theory with a new diagnostic question: not whether an order is just by its own internal logic, but whether it remains spiritually open to the reality it purports to represent.

The concept of "permeate," originating from the Latin *permeatus* (meaning "to pass through"), aptly describes this quality. Voegelin himself employs the term "permeable" to signify human openness to the divine realm, a quality central to human maturity or the *spoudaios.* He states, "Between the mover and the moved ... there is man who either is, or is not, permeable for the movement of being."[28] Indeed, "The degree of permeability for the movement of being determines the rank of human beings ... the criterion of rightly ordered human existence ... is the permeability for the movement of being, i.e., the openness of man for the divine."[29] The *phronimos* realizes the "specifically human mode of permeability for the order of the cosmos," and for Aristotle, the *spoudaios* "is the fully developed man who is in the highest degree permeable for the cosmic-divine movement of being."[30] This permeability is vital, as even law, if it becomes "impermeable for divine presence," can lead to a loss of the true self.[31] This "permeable reality," the capacity for meaning to extend from one existential level to another within the community of being, serves as a crucial indicator.

John J. Ranieri notes that Voegelin's focus is on the "permeability" of the person to the divine ground,[32] while Dante Germino holds that this openness is what makes an ordered existence possible.[33] Steven McGuire connects the concept to the philosopher's permeability to reason[34] while William M. Thompson defines it as the very measure of a person's virtue.[35] These analyses correctly identify the term's importance within Voegelin's philosophy of consciousness. However, they do not explicitly abstract "permeability" to propose it as a distinct, operational standard for diagnosing the health of a political order.

Permeability, therefore, I define as the structural capacity and existential disposition of a political order and its members to remain open to the tensional reality of the divine ground of being. To operationalize "permeability" for constitutional analysis, this article develops a distinction between "ontological reality" (corresponding to Voegelin's It-reality) and "practical reality" (the domain of the mechanistic functions of thing-reality) in constitutional study.

[28] Voegelin, *Anamnesis*, 64.

[29] Voegelin, *Anamnesis*, 65.

[30] Voegelin, *Anamnesis*, 68, 80.

[31] Voegelin, *The Ecumenic Age*, 323.

[32] John J. Ranieri, "Grounding Public Discourse: The Contribution of Eric Voegelin," in *The Politics of the Soul: Eric Voegelin on Religious Experience*, ed. Glenn Hughes (Lanham, MD: Rowman & Littlefield, 1999), 41.

[33] Dante Germino, "Eric Voegelin's 'Anamnesis'," *Southern Review* 7, no. 1 (Winter 1971): 74.

[34] Steven McGuire, "Subjectivity and Human Nature in Eric Voegelin's Reading of Aristotle," in *Subjectivity: Ancient and Modern*, ed. Steven F. McGuire and R. J. Snell (Lanham, MD: Lexington Books, 2016), 10.

[35] William M. Thompson, "Philosophy and Meditation: Notes on Eric Voegelin's View," in *The Politics of the Soul: Eric Voegelin on Religious Experience*, ed. Glenn Hughes (Lanham, MD: Rowman & Littlefield, 1999), 120.

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This distinction, while an interpretive construct for analytical purposes, directly builds upon Voegelin's foundational differentiation between the encompassing It-reality and the world of intended objects. When practical reality becomes closed off and impermeable, it risks degenerating into a Second Reality. However, when practical reality maintains its integrity while remaining permeably open to the infinite spiritual or ontological realm, it illuminates encompassing reality. Voegelin articulates this necessary connection between the practical and the ontological in *The Nature of the Law*, explaining that the law must not be seen as an autonomous creation but as a participant in a larger order. A society's law must attempt to endow its order with the stability of the order of being, which reveals itself through man's experience of consubstantiality within the primordial community.[36] The mutual permeation process between the practical law of society and the ontological order of being thus constitutes the reality. This experiential dynamic is decisive for public order. As Voegelin observes via Heraclitus, a truth claim remains a mere "private (*idios*) opinion" until the questioner finds the "word (*logos*) that indeed speaks what is common (*xynon*)" to reality. Only by speaking this "common logos of reality" can one "evoke a truly public order."[37] The ultimate test for any political order is therefore its demonstrable permeability.

Modern constitutionalism advocates for government limited by fundamental law, first defined by Carl J. Friedrich as the "technique of establishing and maintaining effective restraints on political and government action."[38] Its dominant twentieth-century theories were often grounded in legal positivism[39] or public reason.[40] It is thus overwhelmingly understood as a human-centered, procedural endeavor to structure worldly power and secure immanent justice. From a Voegelinian perspective, modern constitutionalism presents a complex case of permeability. It masterfully organizes the immanent poles of Man, Society, and the "World" (understood as the empirical environment), achieving a high degree of structural differentiation and functional integration. However, its relationship with the transcendent pole, what traditional forms symbolized as "God," is intentionally ambiguous and varies significantly.

From a Voegelinian perspective, modern constitutionalism reconfigures its permeability in diverse ways. Some forms, like French *laïcité*, intentionally restrict this permeability by privatizing transcendent symbols and grounding legitimacy in purely immanent sources. In contrast, the German Basic Law's preamble, with its reference to "responsibility before God and man," explicitly establishes a conduit for permeability.[41] Sandoz shows the permeability of American constitutionalism by grounding it in classical and Christian traditions

[36] Eric Voegelin, *The Nature of the Law and Related Legal Writings*, in *The Collected Works of Eric Voegelin*, vol. 27 (Columbia, MO: University of Missouri Press, 1991), 15.

[37] Voegelin, *In Search of Order*, 40.

[38] Carl J. Friedrich, *Constitutional Government and Politics* (New York: Harper & Row, 1937), 101.

[39] Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg (Cambridge, MA: Harvard University Press, 1949).

[40] Rawls, *Political Liberalism.*

[41] *Basic Law for the Federal Republic of Germany* (Grundgesetz), Preamble.

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that opened the order to a transcendent reality.[42] Other traditions offer non-deistic transcendent anchors, such as East Asian constitutional visions that draw upon Confucian concepts of a cosmic moral order to ground political legitimacy.[43] These conceptual variations demonstrate that modern constitutionalism does not uniformly eliminate the transcendent pole, but rather resymbolizes it in consequential ways.

While diverse in practice, dominant constitutional theories ground legitimacy within what Charles Taylor calls an immanent frame.[44] This theoretical focus often overlooks the non-rational, historical roots of political life, thereby causing theory to lag behind practice. Indeed, representative examples of political orders (e.g., in America, Germany, and East Asia) emerged organically from national tradition and modern experience, not from abstract models.[45] Conversely, as Ran Hirschl shows, constitutions based on pure theory or transplantation often falter when they conflict with the underlying political culture.[46] For example, Austria's 1920 Kelsenian constitution failed to prevent fascism when political consensus eroded.[47] Similarly, Liberia, which copied the American framework, has been plagued by instability, a fate shared by many nations that imported legal models without the necessary cultural prerequisites.[48]

Constitutional theory, which Leo Strauss[49] argues is rooted in the philosophical shift away from classical natural right, finds its most influential late-twentieth-century theoretical expression in attempts to construct a just order from a position of procedural fairness, as exemplified by Rawls's work. Political liberalism seeks a public reason that citizens, despite their deep disagreements on ultimate questions, can share.[50] Theories of political liberalism attempt to build a just order upon this foundation. Yet their very starting points often reveal a preemptive closure against the fullness of reality. Rawls's "Original Position" is not a neutral device; it is intellectually constructed to bracket the

[42] Sandoz, *A Government of Laws*; *Republicanism, Religion.*

[43] Daniel A. Bell, *The China Model: Political Meritocracy and the Limits of Democracy* (Princeton: Princeton University Press, 2015); Qing Jiang, *A Confucian Constitutional Order: How China's Past Can Shape its Political Future*, ed. Daniel A. Bell and Ruiping Fan (Princeton: Princeton University Press, 2012).

[44] Charles Taylor, *A Secular Age* (Cambridge, mA: Belknap Press, 2007).

[45] Edmund Burke, *Reflections on the Revolution in France*, ed. Frank M. Turner (New Haven: Yale University Press, 2003); Friedrich Carl Von Savigny, *Of the Vocation of our Age for Legislation and Jurisprudence*, trans. Abraham Hayward (London: Littlewood & Co., 2002).

[46] Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge, MA: Harvard University Press, 2004).

[47] Anton Pelinka, *Austria: Out of the Shadow of the Past* (Boulder, CO: Westview Press, 2019); S. Lagi, "Hans Kelsen and the Austrian Constitutional Court (1918–1929)," *Co-herencia* 9, no. 16 (January–June 2012): 273–95.

[48] J. Gus Liebenow, *Liberia: The Quest for Democracy* (Bloomington, IN: Indiana University Press, 1987); William Twining, "Diffusion of Law: A Global Perspective," *Journal of Legal Pluralism and Unofficial Law* 49 (2004): 1–45.

[49] Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953).

[50] Charles E. Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996); Rawls, *Political Liberalism.*

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primary existential questions about the ground of being.[51] The Veil of Ignorance achieves procedural fairness but compromises justice within an artificially truncated reality, ordering a society that has agreed to ignore the deepest questions of its existence. It is a solution for managing a self-imposed Second Reality.

This reveals the fundamental limitation of purely procedural theories, including the discourse ethics of Jürgen Habermas.[52] Such theories posit that correct procedures can filter irrationality and generate legitimate norms. Other theories exhibit similar immanent closure, locating authority in Larry D. Kramer's "the people themselves,"[53] Jeremy Waldron's legislatures,[54] Friedrich Hayek's historical tradition,[55] Frank I. Michelman's civic republicanism,[56] or Stephen Holmes's institutional design.[57] Even appeals to popular will, like Bruce Ackerman's "constitutional moments"[58] or Sanford Levinson's "constitutional faith,"[59] remain within a worldly political horizon. From a Voegelinian viewpoint, these approaches all locate ultimate authority within a closed immanent frame, rather than in the participatory reality where transcendent order becomes experienced in the immanent world. They operate within a modern moral language that, having detached from its original teleological context, risks a state of profound conceptual incoherence.

This article also distinguishes its Voegelinian approach from modern natural right and new natural law traditions. While these traditions, from the American Founders to John Finnis, ground rights in a transcendent order and thus reject pure positivism,[60] this article affirms their value even as it suggests they are susceptible to the dogmatism Voegelin critiques. Voegelin defines natural law as any attempt to transform a concrete experience of injustice into a "body of fundamental, substantive rules."[61] David Nordquest shows that Voegelin deems this project "worthless" when it devolves into a rigid system detached from its grounding "experience containing its meaning."[62]

[51] Rawls, *A Theory of Justice*, 15–19.

[52] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996).

[53] Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2004).

[54] Jeremy Waldron, *Law and Disagreement* (New York: Oxford University Press, 1999).

[55] Friedrich Hayek, *Law, Legislation and Liberty*, vol. 1. *Rules and Order* (Chicago: University of Chicago Press, 1973), 1, 85.

[56] Frank I. Michelman, "Law's Republic," *Yale Law Journal* 97, no. 8 (July 1987): 1493–1537.

[57] Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995).

[58] Bruce Ackerman, *We the People*, vol. 1. *Foundations* (Cambridge, MA: Belknap Press, 1991), 3–5.

[59] Levinson, *Constitutional Faith*, 9–10.

[60] John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011); Peter Langford, Ian Bryan, and John McGarry (eds), *Hans Kelsen and the Natural Law Tradition* (Leiden: Brill, 2019).

[61] Voegelin, *The Nature of the Law*, 80.

[62] Voegelin, *The Nature of the Law*, 82; David A. Nordquest, "Voegelin and Dogmatism: The Case of Natural Law," *Modern Age* 41, no. 1 (Winter 1999): 32.

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As Christopher S. Morrissey shows, Voegelin traces this theoretical derailment to the Stoics' "rationalistic petrifaction"[63] of Aristotle's more supple concept of "right by nature" (*physei dikaion*). As Nordquest[64] and Eduardo Schmidt Passos[65] show, this process gives symbols a "misplaced concreteness," treating them as objective concepts rather than expressions of existential experience. From this perspective, both modern natural right's appeal to "Nature's God" and new natural law's "basic goods" risk a similar reification. By treating experiential symbols as objective concepts for deduction, they can lead to an ideological instrumentalization that uncritically legitimizes existing positive law rather than genuinely measuring it.[66] Therefore, this article does not engage these theories as alternative solutions because, from a Voegelinian viewpoint, they represent variations of the problem itself. It instead adopts Voegelin's prior task: a critical science of consciousness that examines the authenticity of the experiences undergirding any claim to transcendent order.

These theories, while internally coherent, lack a critical standard to diagnose when a society's symbolic universe has become a self-contained ideology. Edmund Burke's critique of the French Revolution similarly warned against rights conceived in "metaphysical abstraction," detached from concrete historical circumstances.[67] Burke saw danger in ignoring the experiential reality where political life unfolds. This insight is echoed in Voegelin's emphasis on participatory reality, where truth emerges not from abstract theory alone, but from consciousness engaged within the concrete flow of existence. A Voegelinian analysis addresses this lacuna by focusing on a deeper problem: a systemic *pneumopathology*. This spiritual sickness, a willed closure to the divine ground of being, operates beneath the level of rational discourse.[68] When such a deformation afflicts the collective consciousness, even the most perfect procedures will only serve to rationalize a disordered existence. A Voegelinian diagnosis therefore operates at a prior level, analyzing the health of a community through its participatory openness to the encompassing reality of being rather than its internal coherence. Ultimately, escaping the confines of such a Second Reality requires more than immanent solutions; it demands the restoration of a meaningful symbolic language that reconnects the political and ontological orders.

[63] Christopher S. Morrissey, "Philosophical Distinctions in the Social Thought of Benedict XVI: Maritain, Ratzinger, and Voegelin on Natural Law, Reason, and Gnosticism," *Études Maritainiennes/ Maritain Studies* 28 (2012): 123.

[64] Nordquest, "Voegelin and Dogmatism," 32.

[65] Eduardo Schmidt Passos, "Eric Voegelin and the Natural Law Tradition," *Perspectives on Political Science* 48, no. 3 (2019): 211.

[66] José María Carabante Muntada, "Normatividad y derecho natural: La propuesta de Javier Hervada frente a Eric Voegelin," *Forum* 5, no. 2 (2019): 729; Patrick H. Martin, "Natural Law: Voegelin and the End of Legal Philosophy," *Louisiana Law Review* 62, no. 3 (Spring 2002): 882.

[67] Burke, *Reflections*, 7.

[68] Eric Voegelin, *Modernity without Restraint*, in *The Collected Works of Eric Voegelin*, vol. 5 (Columbia, MO: University of Missouri Press, 1999); Eric Voegelin, *Hitler and the Germans*, in *The Collected Works of Eric Voegelin*, vol. 31 (Columbia, MO: University of Missouri Press, 1999).

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A proposed symbolic framework: from divine ground to ontological human rights

The unique challenge of modern constitutionalism cannot be understood in a vacuum. It follows a long history of what Voegelin called the differentiation of consciousness, a process articulated through a succession of major symbolic forms.[69] Each traditional form, from the compactness of Myth to the breakthroughs of Revelation and Philosophy, offered a distinct structure for mediating political order and transcendent reality.[70] In essence, these analyses reveal how differentiated symbolic forms, through unique articulations of permeability, structure the primordial community of being, each providing an internally coherent framework for political and existential reality. While myth offers total but undifferentiated permeability, and revelation, mysticism, and philosophy establish distinct pathways connecting differentiated poles, modern constitutionalism's purposeful focus on immanent order shapes a reality that, though potent, presents a significant contrast in its scope of permeability and, therefore, in the comprehensiveness of the reality it reflects.

To transform permeability from an abstract concept into a practical diagnostic standard first requires us to reconceptualize the transcendent pole for a modern context by engaging with Voegelin's nuanced understanding of "divinity." For Voegelin, divinity is not a static doctrine but the experienced, luminous ground of being that reveals itself within consciousness's quest for truth.[71] Crucially, this experience of the ground undergoes historical differentiation, evolving through a series of major symbolic forms.

Voegelin posits that divinity is not a "thing" among other things but is experienced within the tensional "in-between" of existence, the *metaxy*, where consciousness participates in the encompassing "It-reality."[72] This It-reality, comprising "God and man, world and society," is where the divine reveals itself as the very ground of being and order. Philosophy itself is "the love of being through the love of divine Being as its source of order,"[73] and philosophizing is the "interpretation of experiences of transcendence."[74] The divine has a "formative presence"[75] or parousia within all things, becoming luminous to consciousness through the quest for truth.[76] The ultimate tension of existence itself "becomes luminous in the symbol 'divine'," indicating an experiential recognition rather than exhaustive comprehension.[77] These variants, from the cosmological divinity of ancient empires to the transcendent God of revelation and philosophy, illustrate that the symbol of divinity historically differentiates while

[69] Voegelin, *The Ecumenic Age*, 52–54, 67–68, 375, 377, 384, 386–87.
[70] Sandoz, *Voegelinian Revolution*, 80.
[71] Voegelin, *Autobiographical Reflections*, 156, 161.
[72] Voegelin, *In Search of Order*, 29–30, 47, 119.
[73] Voegelin, *In Search of Order*, 19.
[74] Voegelin, *In Search of Order*, 23.
[75] Voegelin, *In Search of Order*, 45.
[76] Voegelin, *In Search of Order*, 47–48.
[77] Voegelin, *In Search of Order*, 124.

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always pointing to the ground of being experienced in consciousness.[78] The key insight from these differentiations is that divinity, in its articulation, is the ground of being made luminous through the participatory experience of a specific historical age. With the rise of modern secularism and scientific-technological development, the universal adoption of classical symbols and the widespread belief in a singular religion or morality are simply no longer viable.

To apply "permeability" as a diagnostic standard to modern, secular constitutionalism, we require a symbolic language native to that order. I adopt the modern, post-1945 conception of human rights, distinct from older "natural right" theories grounded in a metaphysical or divine order.[79] As Samuel Moyn argues, contemporary human rights emerged as a secular, post-World War II political project to set a universal standard of dignity against state power.[80] This framework includes both negative and positive social and economic rights.[81] Given that the discourse of modern political legitimacy has made the grammar of human rights its predominant language,[82] any new symbolic framework needs to be constructed from this material.

Recent scholarship resists purely formalist conceptions of rights by seeking a substantive moral core. Whether grounding rights in human dignity,[83] human capabilities,[84] or socially guaranteed and constructed,[85] these theories converge on a shared goal: to move beyond legal formality toward a robust philosophy of human rights.[86] This theoretical turn affirms that the "thing-reality" of enumerated rights depends upon the "It-reality" of a moral vision. However, a Voegelinian diagnosis suggests even these powerful theories may still operate within an immanent frame. They may provide many paradigmatic concepts and principles of It-reality, but permeability is a dynamic of participation. It would be problematic if, once the interaction between realities ceases, things either stagnate on the corresponding concepts of ontological reality or become confined within the corresponding domain of practical reality.

[78] Voegelin, *In Search of Order*, 23.

[79] Universal Declaration of Human Rights, General Assembly Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

[80] Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press, 2010).

[81] Nicholas W. Barber, "Constitutionalism: Negative and Positive," *Dublin University Law Journal* 38 (2015): 249–64.

[82] Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990).

[83] Pablo Gilabert, *Human Dignity and Human Rights* (New York: Oxford University Press, 2018); Jeremy Waldron, *Dignity, Rank, and Rights* (New York: Oxford University Press, 2012).

[84] Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Belknap Press, 2011).

[85] Andrea Sangiovanni, *Humanity without Dignity: Moral Equality, Respect, and Human Rights* (Cambridge, MA: Harvard University Press, 2017), 235–55; Rainer Forst, *The Right to Justification: A Constructivist Theory of Justice*, trans. Jeffrey Flynn (New York: Columbia University Press, 2012).

[86] John Tasioulas, "Towards a Philosophy of Human Rights," *Current Legal Problems* 65, no. 1 (January 2012): 1–30; Adam Etinson (ed.), *Human Rights: Moral or Political?* (New York: Oxford University Press, 2018); Rowan Cruft, *Human Rights, Ownership, and the Individual* (New York: Oxford University Press, 2019).

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Voegelin's position on human rights and constitutionalism is twofold. He was deeply critical of the modern liberal constitutional model, whose core elements, basic rights, separation of powers, and suffrage, he identified as a "manifestly historically contingent" collection.[87] This model's list of "basic human rights" was merely the "sediment" of older divine and natural law, salvaged after the loss of their authentic "religious and metaphysical foundation" in an age of spiritual decline.[88] However, in *The Authoritarian State*, Voegelin identifies the "liberal element" of liberty and fundamental rights as an "essential element" of any political organization. He grounds these rights not in contingency but in a "metaphysics of the person," arguing that the individual as a "metaphysical substance" sets "absolute limits to the authority of the state." Voegelin acknowledged this raised "basic questions of philosophy of the state" but deferred the discussion,[89] an inquiry he never systematically revisited.

Therefore, the task becomes to resymbolize the concept of human rights itself, differentiating between its practical manifestations and its deeper ontological ground. This analytical task is necessary because abstract words pose a significant risk. Irving Babbitt observes that they "control the imagination" which in turn "governs mankind." A central political symbol like "human rights," if left unexamined, can detach from the experiential reality that gives it meaning. This detachment creates what Babbitt calls a "tyranny of words," a condition that fosters the development of a Second Reality. The proper response, Babbitt suggests, is not to discard the symbol but to submit it to a "searching Socratic dialectic."[90] This task is complicated by the fact that human rights are rarely grounded today in explicitly transcendent claims. Yet their historical lineage, deeply interwoven with Christian theological concepts of human dignity and conscience, provides a crucial starting point.[91] The modern, secularized right retains a formal structure inherited from its religious antecedents: it posits a source of moral authority that stands prior to and above the power of the immanent state. The critical question for a Voegelinian analysis is whether this formal appeal to a metaphysical substance functions as an open symbol, pointing toward the ground of being, or has degenerated into a closed, ideological sediment. As Willmoore Kendall and George W. Carey argue in their Voegelinian analysis of the American founding, the language of rights in the Declaration of Independence can be interpreted as either a symbol rooted in the experiential reality of a people or a gnostic derailment into ideology.[92] This leads us to propose a critical distinction between two levels of human rights.

[87] Eric Voegelin, *Published Essays, 1953–1965*, in *The Collected Works of Eric Voegelin*, vol. 11 (Columbia, MO: University of Missouri Press, 2000), 95.

[88] Voegelin, *Published Essays, 1953–1965*, 95.

[89] Eric Voegelin, *The Authoritarian State: An Essay on the Problem of the Austrian State*, in *The Collected Works of Eric Voegelin*, vol. 4 (Columbia, MO: University of Missouri Press, 1999), 362.

[90] Irving Babbitt, *Democracy and Leadership* (Indianapolis: Liberty Fund, 1979), 218.

[91] Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, CA: University of California Press, 2008).

[92] Willmoore Kendall and George W. Carey, *The Basic Symbols of the American Political Tradition* (Washington, DC: Catholic University of America Press, 1995), 61–66, 84, 145.

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At the foundational level lies the ontological human right. This is not a specific entitlement but the fundamental right to be fully human, which, in Voegelin's terms, means to exist consciously in the tensional "In-Between" of immanence and transcendence. It signifies the fundamental right of human consciousness to engage in its defining activity: the open and unending quest for the ground of being. It is the essential right to the process of human self-interpretation, to ask ultimate questions about justice and order, and to seek a reality that transcends the contingent arrangements of the present political moment.

In contrast, practical human rights are the specific, historically won legal protections enumerated in constitutions, such as the freedoms of speech, assembly, and conscience. These practical rights are the indispensable instruments that create the necessary social and political space for the ontological quest to proceed. Their purpose is to safeguard the individual's and the community's search for truth. When a society treats a practical right as an end in itself, rather than as a tool to serve the open search for reality, that right begins to suffocate the very human rights it was meant to protect. A just and permeable constitutional order, therefore, must not only protect the current list of practical rights but, more fundamentally, preserve the ontological right of its people to continue the quest that gives all rights meaning.

The concept of the ontological human right requires a clear distinction from the practical, enumerated rights found in a constitution. The ontological right is not a specific legal entitlement that one can claim in court. It is the fundamental right to the existential process of being human itself. In the Voegelinian framework, this means the right to live within the tensional quest for the divine ground of being, the right to the *zetesis* or search that constitutes an open existence.[93] Practical human rights, in contrast, are the specific legal and social protections that create the necessary space for this ontological quest to occur safely.

A healthy constitutional order designs these practical rights to permit a certain degree of "misuse." For instance, a society must tolerate some foolish or even false speech to avoid creating a chilling effect that would stifle the genuine search for truth. As Frederick Schauer argues, legal rules often protect a wider range of conduct than the underlying justification for the rule strictly requires; this overprotection acts as a buffer against the danger of erroneous government suppression.[94] This allowance for reasonably foreseeable misuse is a pragmatic concession, made not to legitimize the misuse itself, but to ensure the underlying ontological right remains undamaged by intrusive state power.

The disorder of a Second Reality emerges when this tolerated misuse transforms into a celebrated norm or is asserted as the primary purpose of the right. While the ultimate diagnosis of a Second Reality pertains to the state of consciousness, its presence manifests through observable correlates. These indicators provide tangible evidence of a polity's spiritual closure. We can identify at least three such categories. First, linguistic indicators emerge when

[93] Voegelin, *Anamnesis*, 93.

[94] Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge: Cambridge University Press, 1982), 139, 187.

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public discourse degrades into the kind of politically coercive language that George Orwell famously analyzed. Such rhetoric employs abstract jargon and ready-made phrases not to express thought, but to prevent it, effectively ending genuine dialogue before it can begin.[95] Second, behavioral indicators appear when political actors systematically refuse to engage with opposing arguments on their merits, resorting instead to ad hominem attacks that target the opponent's motives or identity. This practice signals an inability to process realities that conflict with a closed ideological world.[96] Third, institutional indicators become evident when a regime designs legal and political structures aimed at immunizing its core ideology from all criticism. Such institutions, as seen in modern authoritarian legalism, use the law not to order reality but to entrench an ideological fiction. Identifying these correlates in a society offers a concrete starting point for a Voegelinian diagnosis.

The ontological human right serves as the essential diagnostic criterion for judging the application of practical rights, allowing us to distinguish between a right's Intended Use, its Reasonably Foreseeable Misuse, and its Abusive Use. While other legal and political theories also seek to identify the abuse of rights, they typically do so on different grounds. The well-established legal principle of "abuse of right," for example, limits the exercise of a formal right when its holder uses it for a malicious purpose or in a manner contrary to its underlying social function, a concept codified in German Civil Law as the *Schikaneverbot*.[97] This logic extends to broader constitutional rights. The right to property is not merely a tool for individual autonomy but also entails a norm of social obligation, requiring that ownership serve human values that support a flourishing community.[98] Standard constitutional analysis often operates within an immanent framework, justifying limits on rights by the need to prevent tangible harm to others[99] or to maintain coherence with other foundational principles like human dignity.[100] In contrast, the Voegelinian diagnosis repositions the entire inquiry by shifting the object of analysis from the legal rule to the state of consciousness that produced it. The critical question is no longer whether a right's use aligns with the immanent logic of the legal system, but whether the system itself maintains a permeable relationship with the transcendent ground of being. It diagnoses not merely injustice or legal inconsistency, but a potential "loss of reality": a spiritual condition where a society's symbols no longer illuminate reality but

[95] George Orwell, "Politics and the English language," in *The Collected Essays, Journalism and Letters of George Orwell*, ed. Sonia Orwell and Ian Angus (New York: Harcourt, Brace, Jovanovich, 1968), 127–40.

[96] Diana C. Mutz, *Hearing the Other Side: Deliberative versus Participatory Democracy* (New York: Cambridge University Press, 2006), 88.

[97] Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd ed., trans. Tony Weir (Oxford: Clarendon Press, 1998), 500.

[98] Joseph William Singer, *The Edges of the Field: Lessons on the Obligations of Ownership* (Boston: Beacon Press, 2000).

[99] Joel Feinberg, *The Moral Limits of the Criminal Law*, vol. 1: *Harm to Others* (New York: Oxford University Press, 1984).

[100] Waldron, *Dignity, Rank, and Rights.*

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eclipse it.[101] Therefore, a jurisprudence that meticulously defends the instruments of liberty, while remaining blind to the potential for this deeper spiritual closure, risks becoming the formal guardian of an unreal order. The concept of the ontological human right reintroduces a standard for this vital, existential judgment.

The ontological human right thus functions as the modern equivalent of a sacred mystery, the ultimate direction for the permeation of laws and practical rights.[102] Mystery, for Voegelin, finds its own reality only in the symbols engendered by the quest.[103] This framework requires a modern symbolic equivalent for the transcendent pole. I propose historical immortality,[104] the community's conscious project of perpetuating its particular political order across generations. I extend Voegelin, clearly proposing that the lasting participatory consciousness is the sole locus of immortality. A people interprets itself for "action in history" through its basic symbols[105] in this quest for endurance. Immortality thus represents the historical endeavor to link "all human beings" (a concept central to the UDHR), "those who are living, those who are dead, and those who are to be born,"[106] in a shared existence oriented toward transcendent truth. This effort to preserve the community's symbolic identity through time mirrors the classic practice of *athanatizein* (immortalizing).[107] It offers a symbol of transcendence reflecting the order's commitment to perpetuate its specific existence within the encompassing reality.

As Voegelin argues, even when we must reject traditional symbolizations as incompatible with our present experience, we continue to live in the "reality of the cosmos" and not merely the "universe of physics" propagated by scientistic ideologues.[108] Voegelin did not articulate these new symbolic forms, a theoretical task that this article undertakes. At the foundation of the new symbolic framework lies the ontological human right. This is not a specific legal claim, but the fundamental right to the process of self-interpretation and seeking an authentic order. A constitutional order then articulates practical human rights as the essential social and legal safeguards for this ontological quest. This entire structure orients the political community toward the symbol of historical immortality.

Having established the principle of permeability and the corresponding framework of ontological and practical rights, how do we apply this standard to the concrete, shifting realities of politics? How is the modern equivalent of this sacred mystery to be understood, so that it can be used to critique whether specific rights are being misused?

[101] Voegelin, *Anamnesis*, 176.

[102] For a study on the process of a historical document attaining sacred status, see Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Alfred A. Knopf, 1997).

[103] Voegelin, *In Search of Order*, 52.

[104] Eric Voegelin, "Immortality: Experience and Symbol," in *Published Essays, 1966–1985*, vol. 12 of *The Collected Works of Eric Voegelin* (Columbia, MO: University of Missouri Press, 1990), 52–94.

[105] Kendall and Carey, *Basic Symbols*, 21-22.

[106] Universal Declaration of Human Rights, Art. 1; Burke, *Reflections*, 82.

[107] Voegelin, *Anamnesis*, 103, citing Aristotle, *Nicomachean Ethics* 1177b33.

[108] Voegelin, *Published Essays, 1966–1985*, 93.

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The indirect diagnostic method: reflective distance

Every constitutional order is a concrete reality emerging from specific historical and social conditions. We must therefore abandon any attempt to abstract this political mystery into a universal principle or to offer templated case analyses. According to Voegelin, a science of politics cannot be a body of fixed propositions because political reality is not an external object but a field constituted by the self-interpretation of the society in question.[109] His political science rejects the model of an actor confronting an objective world and instead understands consciousness itself as the primary site of participation in reality; a person's existence is an event within the reality it experiences.[110] This philosophical foundation makes such templates inappropriate for diagnosis.

The appropriate diagnostic method must assess the congruence between the constitutional symbol and the nation's state of consciousness. This analysis defines a nation's state of consciousness as the specific, historically formed mode in which a political community's members experience and symbolize their participation in reality. The character of a people depends on the level of reality in which their consciousness participates. A constitutional symbol proves authentic and effective only when its structure is congruent with this particular state of national consciousness, reflecting and ordering the specific tensions of its existence. This dynamic process, where symbolic constitutionalism aligns with the national consciousness, is precisely how the critical spirit of ontological human rights illuminates and critiques the use of practical human rights within a given nation.

Voegelin's concept of reflective distance offers the essential analytical tool for this diagnosis. While originating late in his work and remaining underdeveloped for practical politics, its structure is key. Philosophy, broadly, is the love of wisdom and the overarching quest for truth about reality. Reflective distance, however, denotes a specific methodological capacity within that quest: the ability of consciousness to become aware of its own participatory structure, distinguishing between its experience of reality (luminosity) and the objects it intends (intentionality), as well as the symbols it uses.[111] This method directly connects the core concepts of this framework. Reflective distance allows the analyst to examine the crucial relationship between the ontological human right (the foundational openness to the ground) and the specific practical human rights designed to protect that openness. By analyzing how these rights function within the complex structure of consciousness that Voegelin identifies,[112] reflective distance serves as the instrument to assess permeability. It helps diagnose whether the practical rights genuinely facilitate the ontological quest, keeping the political order structurally open to transcendent meaning (symbolized by Historical Immortality), or whether they have become detached, contributing to closure and a Second Reality. Reflective distance thus

[109] Voegelin, *Anamnesis*, 144.
[110] Voegelin, *Anamnesis*, 5, 116.
[111] Voegelin, *In Search of Order*, 55.
[112] Voegelin, *In Search of Order*, 58.

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operationalizes the diagnostic standard by providing the lens through which the symbolic health of the rights framework, and thus the polity, can be evaluated.[113]

As articulated by Jürgen Gebhardt, reflective distance restores philosophy to its authentic domain: the analysis of reflective consciousness itself. This method provides a potent tool for critiquing ideology, bridges the gap between an individual's "absolute" experience of truth and the "relative" truths found across human history, and lays the groundwork for a genuine "experiential science of consciousness."[114] Reflective distance's power lies in its compatibility with modern political principles, as it does not require recourse to a pre-existing traditional or religious symbolic order to function. Reflective distance is not the final achievement of consciousness's luminosity or the attainment of a transcendent foundation, nor is it a simple empirical observation of political phenomena. Rather, it reveals the structure of consciousness observing itself. As Voegelin states, this reflective capacity "is not a 'thing' to be described or not, but has its reflective presence in consciousness itself."[115]

This analysis argues that the terrain reflective distance analyzes is the three-level structure of consciousness. Extrapolating from Voegelin's work, we can identify three interwoven fields of existence as the personal, the social, and the historical.[116] On the personal level exists the individual's unique self-awareness, private opinions, and quest for meaning. On the social level exists the shared world of public narratives, common actions, political institutions, and positive law. On the historical level exists the consciousness of humanity's long, open-ended "millennial quest for truth," a horizon of meaning that transcends both the individual and the current society.[117] This framework suggests that a healthy order requires more than a simple balance; it demands a permeable hierarchy. At each level, the diagnostic of permeability becomes critical, distinguishing between a practical right's Intended Use, its Reasonably Foreseeable Misuse, and its Abusive Use. Personal consciousness finds its proper order when guided by social consciousness. In this dynamic, the social consciousness functions as the ontological ground for the practical rights of the individual, diagnosing their use. The practical rights exercised within the personal sphere are used abusively when radical individualism severs essential social bonds. For example, when the practical right to free expression transforms into a form of limitless expressive individualism, detached from any shared truth or communal bond, it fosters the kind of social atomization that theorists like Cass Sunstein argue weakens the republic.[118] This illustrates an abuse where the personal right to speak eclipses the social ground that gives speech its ultimate meaning.

[113] Voegelin, *In Search of Order*, 59.
[114] Voegelin, *In Search of Order*, 133.
[115] Voegelin, *In Search of Order*, 58.
[116] Voegelin, *Anamnesis*, 114–15; *In Search of Order*, 132–33.
[117] Voegelin, *In Search of Order*, 28.
[118] Cass R. Sunstein, *Republic: Divided Democracy in the Age of Social Media* (Princeton: Princeton University Press, 2017), 55–58.

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In this framework, the social consciousness finds its ultimate orientation by remaining subordinate to the unending quest of historical consciousness. The historical consciousness thereby acts as the ontological ground for the practical rights that structure the entire society. An abusive use at the social level, such as an oppressive collectivism, emerges when the political order closes itself off from the questioning of historical transcendence. We can observe a miniature of this phenomenon in modern campus debates where the concept of "safety" has expanded to include protection from emotional or intellectual discomfort, a process Nick Haslam calls "concept creep."[119] When this absolutized claim to safety leads to the suppression of open inquiry, a social-level Second Reality forms that stifles the very ontological quest for truth it was meant to facilitate.

Finally, this framework defines the practical right at the historical level as the commitment to this very openness. This requires a continuous attunement to the nation's state of consciousness, actively interpreting its historical tradition, its present structure, and its future trajectory to prevent a dogmatic historicism from suppressing the other dimensions. This danger becomes apparent in contemporary "history wars," where competing political factions attempt to establish a single, definitive narrative of the nation's past, whether as purely heroic or purely oppressive.[120] Such efforts represent a form of dogmatic historicism that closes off the tensional and unending nature of the historical quest, replacing it with an ideological symbol.

The Voegelinian insight is that authentic autonomy for any sphere of consciousness arises from its permeability, not its isolation.[121] To venture a step further, the relationships of power and authority in observable politics, which are structured by obedience to command, are merely phenomena within the pragmatic framework of societal arrangements. The archetypal encompassing reality of this relationship is neither a matter of legal obligation nor one of coerced submission. Rather, its authentic form is a permeable, participatory structure best understood as a dynamic of "appeal and response." This foundational dynamic is most purely experienced in the encounter between the human and the divine, which in turn serves as the enduring prototype for all legitimate order among human beings. Political order, when justly constituted, is not based on the ruler's power to compel the subject, but on a shared reality in which the "appeal" of a transcendent, divine order becomes luminous in the consciousness of all participants. As Voegelin describes this, it is a "divine-human movement and countermovement, as a movement of revelatory appeal from the divine side and a countermovement of apperceptive and imaginative response from the human side."[122]

[119] Nick Haslam, "Concept Creep: Psychology's Expanding Concepts of Harm and Pathology," *Psychological Inquiry* 27, no. 1 (2016): 7.

[120] Gary B. Nash, Charlotte Crabtree, and Ross E. Dunn, *History on Trial: Culture Wars and the Teaching of the Past* (New York: Alfred A. Knopf, 1997), 1–5.

[121] Voegelin, *Anamnesis*, 64.

[122] Eric Voegelin, *What is History? and Other Late Unpublished Writings*, in *The Collected Works of Eric Voegelin*, vol. 28 (Columbia, MO: University of Missouri Press, 1990), 178.

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Therefore, worldly authority is not an autonomous right but a representational function.[123] A just political order "represents" this transcendent truth, eliciting a willing response from citizens who recognize this truth within their own souls. This order is founded on persuasion (*peitho*), not on force, and its stability derives from a shared attunement to the divine ground of being.[124] When political arrangements become detached from this participatory prototype, they become a disordered Second Reality of power. The framework of practical rights and obligations is thus only legitimate insofar as it remains transparent to its grounding in the permeable, divine-human relationship of appeal and response.

Applying this Voegelinian framework demands concrete constitutional tasks. Constitution makers and guardians must first preserve the established procedural instruments essential for societal inquiry and openness to the ground, such as the freedoms of conscience, speech, and association. Second, and more fundamentally, they must ensure authentic engagement with the community's historical memory, consensus, and foundational symbols, as a people interprets itself through such symbols embedded in its past, echoing the analysis of Kendall and Carey.[125] Contemporary constitutional doctrine, however, fails at this deeper level. It focuses on safeguarding individual rights within the societal order but lacks a legal system within the historical order. This constitutional silence leaves the historical foundation of an authentic polity without institutional guarantee, its fate hinging instead on judicial methods like balancing, under which the Constitution "appears to mean what Justice O'Connor thinks it means, and nobody knows what that is until we ask her." This reliance is precarious, given the Court acknowledges its "power to overrule its precedents" and faces "instabilities" from personnel changes, ultimately leaving fundamental principles subject to judicial discretion rather than stable guarantees, a criticism echoed by Kendall and Carey and Mark Tushnet.[126]

To overcome this structural uncertainty, constitution makers must institutionalize protection for this historical-symbolic dimension. This requires establishing the constitutional primacy of the community's foundational, open historical-legal principles, elevating them above transient political agendas and guarding against closed ideological systems. Distinguishing open from closed principles hinges on their orientation towards immortality—whether they guarantee the right of consciousness's continuous participation across time. Mortal individual and societal consciousness achieve immortality through permeation into historical consciousness. Human consciousness never participates solely at the personal level; it also engages with broader collective and historical levels where the truth of consciousness documents itself historically.[127] The higher levels aim for greater

[123] Eric Voegelin, *The New Science of Politics: An Introduction* (Chicago: University of Chicago Press, 1987).

[124] Voegelin, *Anamnesis*, 91.

[125] Kendall and Carey, *Basic Symbols*, 21-23, 144.

[126] Mark Tushnet, *Taking the Constitution Away from the Courts* (Princeton: Princeton University Press, 1999).

[127] Voegelin, *In Search of Order*, 59.

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universality through the apperception of existence, while the lower levels provide particularity through rich and detailed experience. Critically, the higher levels exercise a normative critical force over the lower ones, much as self-awareness provides an apperceptive and governing power over mere sensory perception; in turn, the lower levels provide the substantive support for the higher ones. Since the structure of ordered consciousness actively preserves its permeability by means of its symbolic forms, maintaining this structure requires grounding its principles in criteria for authentic symbols, as constructively detailed by Kendall and Carey: demonstrable historical priority and continuity; validation through internal evidence of self-interpretation in historical documents; consistency between symbols and societal action; and a coherent narrative connecting past, present, and the search for transcendent truth.[128]

Ensuring the polity's permeability to historical consciousness requires concrete state commitments: selecting core historical narratives for civic education, maintaining foundational symbols, constitutionally enshrining the independence of state records from executive manipulation, and establishing legal barriers against rights abuses that obstruct deliberation or falsify history, preventing a "stop-history" system.[129] Courts must align judicial procedures and interpretation with this openness. Constitutional readings should prioritize historical context and foundational symbols (like deliberation) over abstract analysis or shifting norms. Reevaluating precedent should be framed as a clarification of enduring principles within the tradition, connecting revisions to the historically understood common good. Ultimately, the judge achieves authentic autonomy not through private preference (*idios kosmos*), but by grounding rulings in the community's shared reason (*the xynon*).[130] This requires justifying decisions by reference to shared legal and historical consciousness and restraining interpretations lacking roots in the community's documented self-understanding, ensuring judicial acts serve the polity's continuous orientation toward transcendent truth.

The diagnostic test of congruence now becomes clear and concrete. A good constitutional order is one where the legal structure of its human rights framework correctly symbolizes and reinforces the healthy, permeable hierarchy of consciousness. The diagnosis thus assesses whether the legal structure of practical rights at the personal and social levels correctly protects this hierarchy, ultimately remaining permeable to the ontological right embodied in historical consciousness. The openness of historical consciousness, in turn, depends on a dynamic grasp and noetic interpretation of a nation's specific state of consciousness. A complete diagnosis must therefore ensure the autonomy of each level while maintaining the flow of the permeable hierarchy. This implies a constitutional structure capable of real-time adjustment to match the political community's particular spiritual and historical condition.

[128] Kendall and Carey, *Basic Symbols.*
[129] Voegelin, *In Search of Order*, 129.
[130] Voegelin, *In Search of Order*, 40.

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Unlike empirical or scientific approaches that objectify political phenomena to study observable behavior,[131] reflective distance analyzes consciousness from within, treating reality as a participatory process, not an external object. The analyst's own consciousness serves as the diagnostic instrument, a method that prioritizes existential openness over value-neutral detachment. Furthermore, distinct from ideal theories that construct normative models for a just society,[132] Voegelin's approach is primarily diagnostic. It does not begin by prescribing a universally applicable institutional arrangement but by assessing the spiritual order or disorder of a concrete historical society. Its aim is not simply to build a more just system, but to restore a society's contact with the reality it participates in, a task for which most modern political languages are ill equipped.[133] The principle is that reflective distance can analyze any domain where consciousness is present. This, however, represents a vast and underexplored field for future research.

While traditional symbolic forms, such as myth and revelation, achieved permeability directly through the participatory luminosity of consciousness—the experience being the participation—such compact experience can no longer be presupposed in our modern context. Reflective distance, therefore, functions not as a direct realization of this luminosity, but as a critical diagnostic tool for assessing whether its symbols and practices achieve permeation toward a new transcendent ground: historical immortality. It allows for an objective analysis of a case's state of consciousness, diagnosing its health and balance across the three dimensions. In this framework, the question of the divine or transcendent ground—often a point of friction in modern secular politics—is translated into the principle of openness within the historical dimension. This transforms the divine into a commitment to the ongoing open-ended quest for reality[134] as it has unfolded and continues to unfold in human history. Reflective distance ensures historical immortality remains an unending quest toward transcendent reality, not a man-made "idol" defined within history.

The health of the political order is then judged by an integrated flow: the pursuit of reality in the personal dimension must find coherence within the social dimension, both of which in turn must align with the open-ended trajectory of the historical dimension. Only through this harmonious integration can a society achieve a unified participation in encompassing reality. The fundamental purpose of a constitution becomes the structuring and balancing of these three dimensions of consciousness. The modern constitutional project, however, is not a singular event that one can achieve once and for all; it is not a final, permanent construction. Instead, we must understand it as a continuous process with a dual character. This process requires a constant orientation toward the state of consciousness, while also demanding a perpetual adjustment of the constitution to match the specific political community.

[131] Karl R. Popper, *The Logic of Scientific Discovery* (London: Routledge, 2002).

[132] Rawls, *A Theory of Justice*, 8.

[133] Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, IN: University of Notre Dame Press, 2007), 6–22.

[134] Voegelin, *In Search of Order*, 120, 127, 130.

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Conclusion

The uniqueness of a Voegelinian diagnostic approach lies not in offering another procedure for justifying legal validity but in creating the philosophical-anthropological foundation for a method that could diagnose the spiritual condition of a political order. Unlike Dworkin's "law as integrity,"[135] Voegelin's standard is not a community's internal coherence. A Voegelinian asks if this coherence is achieved by closing off openness to the ground of being. A system can be coherent, yet if its consensus is an ideological Second Reality, its integrity merely reinforces spiritual closure. Voegelin's concern, therefore, is not the internal consistency of legal interpretation but the existential permeability of the entire polity. Habermas puts his faith in the procedures of "communicative reason" to filter out irrational claims and secure legitimacy in the public sphere.[136] A Voegelinian, however, would point out that the greatest danger is not an individual irrational claim but a systemic *pneumopathology* that, through seemingly rational discourse, collectively severs its connection to transcendent reality. From this perspective, Voegelin's method of reflective distance provides precisely the tool that Habermas's theory lacks: a capacity to diagnose the state of consciousness within which discourse itself takes place. It asks not "Are we speaking rationally?" but "Is the shared reality in which we conduct our dialogue itself a distorted and closed structure?" Thus, the true contribution of Voegelin's theory is to shift the study of constitutionalism from the question, "How is law justified?" to: "How can a political order, as an authentic symbol, enable its citizens to participate in the encompassing reality?" It does not aim to replace these important constitutional theories but to offer them a diagnostic dimension of reality and consciousness, allowing us to assess whether the very foundations of constitutionalism—"the people," "reason," or "rights"—are functioning as open symbols pointing toward a deeper reality or have degenerated into the idols of a closed ideology.

A skeptic might rightly ask how this framework, which requires openness to transcendent reality, can resonate in a secular age. This article does not presume to offer a political cure for spiritual closure, nor does it presuppose a societal revival. It argues instead for the essential theoretical foundation required for any such recovery: a diagnostic standard. As Voegelin's work sought to recover foundational experiences of order by analyzing their symbolizations, this framework provides the critical language for that task, applied to our contemporary constitutional discourse. It accepts the theorist's "watchman" duty to warn of spiritual danger.[137] Before a society can reorient, it needs a standard to diagnose its disorientation in terms it understands.

This article's purpose is to establish the theoretical necessity of such a project, inviting a more robust engagement between constitutional theory and the philosophy of consciousness. As Voegelin reminds us, while "the experienced

[135] Dworkin, *Law's Empire*, 225–75.

[136] Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (Cambridge, MA: MIT Press, 1989).

[137] Voegelin, *Hitler and the Germans*, 200, citing Ezekiel 33:7–9.

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tensional constants and their symbolizations illuminate, complement, and balance one another in the quest for truth … the questing wandering through the tensions does not arrive at an ultimate place of rest."[138] Ultimately, this article does not offer a final answer to the crises of modern constitutionalism. Instead, it argues that we have been asking the wrong questions. By providing the tools for a deeper diagnosis, it invites us to begin the more fundamental work of restoring our political symbols, and ourselves, to a life in reality.

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[138] Voegelin, *In Search of Order*, 120.

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