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The Declaration of Independence: Inalienable Rights, the Creator, and the Political Order

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Pierre Manent puts his finger on numerous problems that arise from an emphasis on human rights that is detached from any consideration of human nature, the Creator, or the traditions that inform human practice. In his book *Natural Law and Human Rights: Towards a Recovery of Practical Wisdom*, Manent writes: “Let us dwell a moment on the proposition in which so much passion is invested today: man is the being who possesses rights. It resonates as our self-definition and our perspective on humanity, one that we take to have fortunately replaced other definitions and perspectives, such as that man is God’s creature or that man is a political animal.”¹ Contemporary political discourse has arrived, so he thinks, at an impasse of contradiction, incoherence, and self-defeating beliefs.

Manent finds a vital help for thinking through these issues in Thomas Aquinas,² but perhaps also a useful resource is the work of Thomas Jefferson. In *Natural Law and Human Rights*, Manent cites the first article of the 1789 Declaration of the Rights of Man and of the Citizen: “Human beings are born and remain free and equal in rights.”³ But Manent does not cite the Declaration of Independence drafted by Jefferson. The 1776 Declaration provides a way of addressing many of Manent’s concerns about human rights, human nature, and equality because it combines an appeal to the Creator

¹ Pierre Manent, *Natural Law and Human Rights: Toward a Recovery of Practical Reason*, trans. Ralph C. Hancock (Notre Dame, IN: University of Notre Dame Press, 2020), 50.

² Manent, *Natural Law and Human Rights*, 119.

³ Manent, *Natural Law and Human Rights*, 74.

with the establishment of rights grounded in human nature and defended by limited government. In order to approach some of the important political, religious, and philosophical questions raised in *Natural Law and Human Rights*, we can reconsider the famous “American proposition”: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” What exactly does this famous American proposition mean? Can it help us to address some of the concerns about incoherent political discourse that Manent highlights?

We Hold These Truths to Be Self-Evident

What does “we hold these truths to be self-evident” mean? The interpretation of this phrase has generated no small amount of speculation.⁴ As Manent notes, appeals to self-evidence arise also today in disputes about same-sex marriage.⁵ Even if we cannot perfectly trace the remote or proximate historical origins of the phrase in 1776, we might still examine some possible meanings.

For John Locke, a self-evident truth is akin to what later philosophers called an analytically true proposition.⁶ Such propositions are true in virtue of the agreement of the ideas that make up the proposition. “A bachelor is an unmarried man of marriageable age” is self-evidently true, since the idea of “bachelor” agrees with the idea “an unmarried man of marriageable age.” It does not seem plausible that the self-evident truths of the Declaration of Independence were meant in this sense. The assertions of the Declaration are not true simply by agreement of ideas or by definition in a way that is obvious to anyone who is a native speaker.

Thomas Reid suggests a different sense of self-evidence. On his view,

⁴ For an example of a scholar tracing this phrase to Locke, see Michael Zuckert, *The Natural Rights Republic* (Notre Dame, IN: University of Notre Dame Press, 1996). Daniel Robinson favors an origin from Thomas Reid in “On the Evident, the Self-evident and the (Merely) Observed,” *American Journal of Jurisprudence* 47 (2002): 197–210. On the importance of Francis Hutcheson, see Gary Wills, *Inventing America: Jefferson’s Declaration of Independence* (New York: First Mariner, 2002). Defending the view that the phrase comes from Aristotelian-Scholastic logic text books common at the time of the founding, see Danielle Allen, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality* (New York: Liveright, 2014). See also Wilbur Samuel Howell, “The Declaration of Independence and Eighteenth-Century Logic,” *The William and Mary Quarterly* 18, no. 4 (1961): 463–84.

⁵ Manent, *Natural Law and Human Rights*, 17.

⁶ John Locke, *An Essay Concerning Human Understanding*, bk. 4, ch. 7, no. 2.

self-evidence does not mean obviousness to everyone, but rather clear to those with the requisite education and maturity: “Moral truths . . . are self-evident to every man whose understanding and moral faculty are ripe.”⁷ If a person is conscious of no moral obligation whatsoever, then reasoning with such a person will not bring the person to understand his or her obligations. Just as mathematical calculations cannot begin without acceptance of basic axioms of mathematics, so too ethical reflection presupposes but does not establish its first principles. As Reid says, “the man who does not by the light of his own mind, perceive some things in conduct to be right, and others to be wrong, is as incapable of reasoning about morals as a blind man is about colours.”⁸ Just as there are people who cannot see colors, so too there are people lacking the requisite moral faculty to perceive the demands of ethics. In order to assent to such truths, the terms must be set out distinctly so that the moral faculty of “all well-disposed men” may perceive them.⁹

Thomas Aquinas recognizes a similar sense of self-evidence.¹⁰ Thomas distinguishes two kinds of self-evident (*per se nota*—known through themselves) propositions.¹¹ Some self-evident propositions are self-evident to all (*per se nota omnibus*); other self-evident propositions are self-evident only to some (*per se nota quoad nos*).

It is implausible to read the American proposition as claiming to be self-evident to all. Some people denied it in 1776, and some people deny it now. Yet, if we interpret self-evidence not with respect to all but with respect to us, then we render the founders’ claim more plausible.¹² Indeed, “we hold” in English might be understood as making a similar qualification to the claim of self-evidence as *quoad nos* does in Latin.

Aristotle noted that various domains of inquiry have different levels of certitude.¹³ Human affairs cannot be ordered simply by positing the axioms and deriving the proofs. Politics is not geometry with men rather than lines. More than two thousand years later, echoing Aristotle, Alexander Hamilton wrote: “Though it cannot be pretended that the principles of moral

⁷ Thomas Reid, *Philosophical Works* (Hildesheim, NY: Georg Olms, 1980), 480.

⁸ Reid, *Philosophical Works*, 480.

⁹ Wills, *Inventing America*, 190.

¹⁰ Harry V. Jaffa, “What is Equality?,” in *The Conditions of Freedom: Essays in Political Philosophy* (Baltimore, MD: Johns Hopkins University Press, 1975), 149–60, at 153.

¹¹ A thorough exploration of this topic can be found in Luca F. Tuninetti, *Per Se Notum: Die logische Beschaffenheit des Selbstverständlichen im Denken des Thomas von Aquin* (Cologne: Brill, 1996).

¹² For a similar interpretation, see Michael P. Zuckert, “Self-Evident Truth and the Declaration of Independence,” *The Review of Politics* 49, no. 3 (1987): 319–39.

¹³ Aristotle, *Nicomachean Ethics* 1104a1–6.

and political knowledge have, in general, the same degree of certainty with those of the mathematics, yet they have much better claims in this respect than, to judge from the conduct of men in particular situations, we should be disposed to allow them."¹⁴ More than mathematics, politics generates controversy and partisan spirit. Hamilton continues: "The obscurity is much oftener in the passions and prejudices of the reasoner than in the subject. Men, upon too many occasions, do not give their own understandings fair play; but, yielding to some untoward bias, they entangle themselves in words and confound themselves in subtleties."¹⁵ Since political or ethical investigation has a lower level of certitude than geometry, both its principles and its conclusions will be more under the sway of human self-interest, bias, and prejudice than will those of a mathematical investigation. Only the most fundamental principles of evaluation of human action, such as that good is to be done and evil avoided, have an almost indubitable certitude akin to the certitude of the principle of non-contradiction. As Michael Zuckert puts it, the truths of the Declaration of Independence are self-evident "within the political community dedicated to making them effective. The truths must serve as the bedrock or first principles of all political reasoning in that regime. While they stand as the conclusion of some (unspecified) chain of philosophical or scientific reasoning, they must stand that the beginning of all chains of political reasoning."¹⁶ The claims of the Declaration, in other words, are self-evident within a particular realm of discourse, in this case political practice, but they may very well be conclusions in prior and more fundamental realms of discourse such as political theory or moral philosophy.

All Men

Arguably the most important claim of the entire Declaration of Independence is that "all men are created equal." The expression "all men" may be understood in an exclusive sense or in an inclusive sense. The exclusive reading is illustrated by Jon Meacham in *Thomas Jefferson: The Art of Power*. According to Meacham, Jefferson "basically meant all white men, especially propertied ones," when claiming that all men are created equal.¹⁷ By contrast,

¹⁴ Alexander Hamilton, "Federalist No. 31: Concerning the General Power of Taxation," *New York Packet*, January 1, 1788, guides.loc.gov/federalist-papers/text-31-40.

¹⁵ Alexander Hamilton, "Federalist No. 31."

¹⁶ Zuckert, "Self-Evident Truth," 329.

¹⁷ Jon Meacham, *Thomas Jefferson: The Art of Power* (New York: Random House, 2012), 107.

in a speech at Lewistown, Illinois, Abraham Lincoln proclaimed that the signatories of the Declaration meant it as including “the whole great family of man. In their enlightened belief, nothing stamped with the Divine image and likeness was sent into the world to be trodden on, and degraded, and imbruted by its fellows. They grasped not only the whole race of man then living, but they reached forward and seized upon the farthest posterity.”¹⁸ Lincoln’s inclusive reading understands “all men” to include each and every human being—full stop—including all and excluding none. This inclusive reading of “all men are created equal” means that all human beings regardless of race, sex, birth, ability, ownership of property, or any other characteristic are created equal. Manent has in mind this inclusive sense when he writes, “we hold that human rights are a rigorously universal principle, valid for all human beings without exception.”¹⁹ In contrast, the exclusive reading holds that some human beings, because of their race, religion, sex, age, disability, or some other characteristic, are not equal in basic status to other human beings who have the desired quality. Is the inclusive or the exclusive interpretation of the “all men are created equal” most historically defensible?

In his book *America Declares Independence*, Alan Dershowitz endorses the exclusive interpretation:

If the equality of “all Men” had any relevance to their rights, as Jefferson suggested they did, then these words could only have included white, Protestant, landowning males—since blacks, non-Protestants, nonlandowners, and women were denied some of the most basic rights we take for granted today. Some or all could not vote, serve on juries, hold public office, appear as witnesses, make contracts, or live freely.²⁰

On this view, the Declaration’s claims do not cover all human beings; indeed, they cover only a small fraction of human beings. Of course, Dershowitz is right about the lack of fundamental legal rights for Blacks, non-Protestants, nonlandowners, and women in 1776. But is he also right about the meaning of the Declaration?

By contrast, reading the Declaration of Independence as inclusive would reflect the understanding of rights expressed less ambiguously in other documents of the revolutionary era. As Thomas G. West points out,

¹⁸ Abraham Lincoln, *Collected Works of Abraham Lincoln*, vol. 2 (Ann Arbor: University of Michigan Digital Library, 2001), 546–47.

¹⁹ Manent, *Natural Law and Human Rights*, 4.

²⁰ Alan Dershowitz, *America Declares Independence* (Hoboken, NJ: Wiley, 2003), 159.

“Men,” in this document as in all leading statements of principle in the founding era, refers to all human beings, not just to males. One can see this in other pronouncements of Congress from the same period, in which parallel phrases were used, such as “humanity,” “mankind,” “inhabitants.” For example, Congress’s 1774 Declarations and Resolves states that “the inhabitants [i.e., not only the males] of the English colonies in North-America, by the immutable laws of nature, . . . have the following RIGHTS: . . . life, liberty, and property.”²¹

If West is correct, the Declaration expresses an inclusive view of who has basic rights—anyone with human nature—and this view was not radical or unique, but rather also found in other documents of the era.

In *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality*, Danielle Allen likewise argues that “men” does not refer simply to white, male Protestant property owners. She notes that the original draft written by Jefferson contains a paragraph about the violation of the natural rights of slaves: “Jefferson talks about markets where ‘MEN;’ which he capitalizes, are bought and sold. In other words, he is calling the slaves ‘men.’ And when he does this, he can’t mean males only, because those markets were for men, women, and children. So when, in the second sentence, he writes that all men are created equal, he must mean all people—whatever their color, sex, age, or status.”²² The Declaration, in other words, is inclusive rather than exclusive in its scope.

The state constitutions of six Southern states written after the Declaration provide more evidence for the inclusive interpretation. Aware of the contradiction between the American proposition and slavery, Carl Becker notes, “in the constitutions of Alabama, Arkansas, Florida, Kentucky (1799), Mississippi, and Texas (1845), the phrase ‘All men, when they form a social compact, are equal’ was changed to read ‘All *freemen*, when they form a social compact, are equal.’”²³ If early readers of the Declaration understood that the phrase “all men” did not include slaves, why did the slave states bother adding the prefix “free”?

Indeed, Allen points out that many defenders of slavery understood that

²¹ Thomas G. West, “The Universal Principles of the American Founding,” in *The American Founding: Its Intellectual and Moral Framework*, ed. Daniel N. Robinson and Richard N. Williams (New York: Continuum, 2012), 53–75, at 57.

²² Danielle Allen, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality* (New York: Liveright, 2014), 154.

²³ Carl Becker, *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Harcourt, and Brace, 1922), 239–40 (emphasis original).

the Declaration's proclamation that "all men are created equal" applied also to Blacks, and so therefore many of these slave owners rejected the Declaration.²⁴ In 1826, for example, Jefferson's cousin and a spokesman in the House of Representatives, Virginian slave-owner John Randolph, defended slavery by calling human equality "a falsehood, a most pernicious falsehood, even though I find it in the Declaration of Independence."²⁵ In 1837, South Carolina senator John C. Calhoun asserted that slavery was a positive good and explicitly rejected the "false and dangerous notion" that all men are created equal.²⁶

Some of the founders, including Jefferson, owned slaves. This fact does not, I think, undermine the historical validity of interpreting the American proposition as including Black human beings within the scope of "all men." Many of the slave-owning founders, including Jefferson, recognized the contradiction between signing the Declaration of Independence and owning slaves, but could not bring themselves (for a variety of rationalizations) to free their slaves. In his *Notes on the State of Virginia*, Jefferson reflected on the fate of white slave owners: "Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest."²⁷ Then as today, innumerable people sincerely believe in moral principles and yet also fail to live up to them. The constitutional question, as Lincoln also believed, involved a political compromise necessary at the time to establish the union. In the prevailing opinion of time, outlawing slavery in all the states was simply not politically feasible in 1776.

If Blacks were included within the ambit of the Declaration, what about Native Americans? Jefferson's thoughts on this matter were expressed in his *Notes on the State of Virginia*. Jefferson argued that "Aborigines" exhibit

²⁴ Allen, *Our Declaration*, 241.

²⁵ John Randolph in congressional debate, cited in Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Knopf, 1997), 199.

²⁶ Maier, *American Scripture*, 200. See also Lacy K. Ford Jr., "Republican Ideology in a Slave Society: The Political Economy of John C. Calhoun," *Journal of Southern History* 54, no. 3 (1988): 405–24.

²⁷ Thomas Jefferson, "Query 18: The Particular Customs and Manners That May Happen to Be Received in That State?" (1781), in *Notes on the State of Virginia* (London: John Stockdale, 1787), 270–73, at 272. For more on Jefferson and Slavery, see Joseph Ellis, *American Sphinx: The Character of Thomas Jefferson* (New York: Knopf, 1996), 144–52; Dershowitz, *America Declares Independence*, 123–50.

eloquence in political deliberation, courage in battle, heart-break at familial loss, and strong and faithful friendships. Given similar cultivation as white people, we shall probably find, thinks Jefferson, that Native Americans “are formed in mind as well as in body, on the same module with the *Homo sapiens Europaeus*.”²⁸ Later, in his second inaugural address, President Jefferson explicitly affirmed that Native Americans are “endowed with the faculties and rights of men,” and so are within the ambit of the American proposition. He recognized Native Americans as persons. True, his actions both as a private person and in public office did not always reflect this view. He wrote letters at various times suggesting the “extermination” of the American Indians should they not comply with the demands of whites.²⁹ We have, again, an all-too-common contradiction between noble principle and selfish practice brought about by the weakness of human nature. Despite these assertions, Jefferson held the view that Native Americans, Black Americans, and white Americans all are created equal.

If men of all races and colors are included, what about women? Is the word “men” as used in the Declaration of Independence meant to indicate that women are not created equal or that women do not have inalienable rights such as life, liberty, and the pursuit of happiness? In other words, does “men” mean adult males (*vires*) or does “men” mean all human beings (*homines*)?³⁰ Of course, in some contexts, the terms “men” and “man” are used to refer to adult, male human beings only, such as “men should have their prostates checked yearly after they turn fifty.” In other contexts, “men” or “man” properly refers not just to adult males, but to all human beings, as for example in the title of a 2015 *New York Times* article, “Did Earth’s ‘Anthropocene’ Age of Man Begin With the Globalization of Disease in 1610?”³¹ No one supposes that a woman cannot be a hit-man or that a man-eating tiger will not eat her.³²

Does the Declaration use the inclusive sense of “men” (*homines*) or the exclusive sense of men (*vires*)? Casey Miller and Kate Swift hold that “men”

²⁸ Thomas Jefferson, *Notes on the State of Virginia*, ed. Merrill D. Peterson (New York: Literary Classics of the United States, 1984), 185–86.

²⁹ Thomas Jefferson, letter to Alexander von Humboldt, December 6, 1813.

³⁰ See Paul Mankowski, “The Necessary Failure of Inclusive-Language Translations: A Linguistic Elucidation,” *The Thomist* 62, no. 3 (1998): 445–68.

³¹ Andrew C. Revkin, “Did Earth’s ‘Anthropocene’ Age of Man Begin With the Globalization of Disease in 1610?,” *New York Times*, March 11, 2015.

³² A similar linguistic phenomenon exists today with the term “guys,” which can refer to male human beings as opposed to female but is also regularly used by women in addressing other women. A female student may ask her sorority sisters, “do you guys want to leave right now?” Like “guys,” the term “men” can be used inclusively or exclusively.

is properly understood in the exclusive sense, including all adult males but excluding to women:

Thomas Jefferson did not make the same distinction [as Burke] in declaring that “all men are created equal” and “governments are instituted among men, deriving their just powers from the consent of the governed.” In a time when women, having no vote, could neither give nor withhold consent, Jefferson had to be using the word men in its principal sense of “males,” and it probably never occurred to him that anyone would think otherwise.³³

Perhaps for this reason, although she followed the original document closely in most respects, Elizabeth Cady Stanton in the 1848 *The Declaration of Sentiments* revised the language of the Declaration of Independence to read, “all men and women are created equal.”³⁴

In composing the Declaration, did Jefferson intend to exclude women from basic equality? In his consideration of Native American culture in Virginia, Jefferson wrote about his view of the role of women: “The women are submitted to unjust drudgery. This I believe is the case with every barbarous people. With such, force is law. The stronger sex therefore imposes on the weaker. It is civilization alone which replaces women in the enjoyment of their natural equality.”³⁵ On Jefferson’s view, if women have the natural equality of all who are created equal, then women also have inalienable rights of the Declaration whether or not these rights are reflected in law.

Insofar as the founders drew their inspiration from Locke,³⁶ we find yet more support for the inclusive view. Like the founders, Locke knew the text of Genesis: “God said, ‘Let us make human beings in our image, after our likeness. Let them have dominion over the fish of the sea, the birds of the air, the tame animals, all the wild animals, and all the creatures that crawl on the earth.’ God created mankind in his image; in the image of God

³³ Casey Miller and Kate Swift, *The Handbook of Non-Sexist Writing: For Writers, Editors, and Speakers*, 2nd ed. (New York: Harper and Row, 1988), 12. See also Carole Pateman, *The Sexual Contract* (Cambridge: Polity, 1988), 52.

³⁴ See Wolfgang Mieder, “All Men and Women Are Created Equal”: *Elizabeth Cady Stanton’s and Susan B. Anthony’s Proverbial Rhetoric Promoting Women’s Rights* (New York: Peter Lang, 2014), 65.

³⁵ Jefferson, *Notes on the State of Virginia*, ed. Peterson, 185–86.

³⁶ See West, “Universal Principle,” 56: “The colonists quoted Locke more often than any other political writer during the fertile period from 1760 to 1775, when they were explaining to each other the principles of government. But that does not mean they agreed with everything Locke said.”

he created them; male and female he created them.”³⁷ In his *First Treatise on Government*, Locke interprets this text as supporting the idea that all members of the human species “them”—male and female alike—are made in God’s image and given jurisdiction over the earth. Both Scripture and reason, says Locke, point to the same conclusion: all individuals of the human species are made in God’s image and have rational nature.³⁸ Their rational nature enables them to have dominion over other creatures on earth. If the Declaration is understood in this matter as reflecting Locke’s views, the Declaration should be understood as including women.³⁹

In 1776, women obviously did not enjoy equality of legal rights as codified in law with adult males. Among innumerable injustices, women could not vote or hold governmental office in most states. New Jersey, a happy exception to the general rule, did allow women to vote from 1776 to 1807.⁴⁰ Many other states did not allow them to vote until the passage of the Nineteenth Amendment in 1920. However, the American proposition is not a claim about the legal rights created by the positive law of the government. The American proposition is about natural rights that exist whether or not a particular government legally codifies them. What is relevant in terms of inalienable rights is not whether someone can vote but whether someone can be wronged.

In 1776, it was widely recognized that women, children, and men of all colors could be morally wronged in that their inalienable rights could be violated. For example, the moral obligation not to intentionally kill human beings—not to murder—was understood to apply equally to killing men, to killing women, and to killing children. An individual’s (moral or legal) right to life is the (moral or legal) duty of all others not to intentionally kill the individual. Given this understanding of the correlation of inalienable rights and duties, the Declaration must mean that not just adult males, but also women and children are also endowed with inalienable rights. It does not always follow practically that these human rights are protected also by legal rights. Manent notes: “In particular, nongovernmental organizations and international institutions lead very active campaigns throughout the

³⁷ Gen 1:26–27.

³⁸ John Locke, *Two Treatises on Government*, treatise I, no. 30. See also Jeremy Waldron, *Basic Equality*, New York University School of Law, Public Law Research Paper No. 08–61, December 5, 2008, ssrn.com/abstract=1311816.

³⁹ Jeremy Waldron, “*The Mother Too Hath Her Title*”—*John Locke on Motherhood and Equality*, New York University School of Law, Public Law Research Paper No. 10–74, ssrn.com/abstract=1687776.

⁴⁰ West, “Universal Principles,” 54.

world for the rights of women or the rights of children, campaigns that very explicitly and even emphatically address all human beings wherever they may live.⁴¹ Fair and equitable provisions about voting rights and qualifications for holding public office are absolutely essential for bringing into existence a just republican political order.⁴² At the time of the founding, not just women and non-whites, but also white men without property, Jews, and Catholics could not vote in many states.⁴³ Even today, both felons and minors may not vote or hold public office. The inalienable rights of the Declaration focus on different and more fundamental concerns about what positive law does not give and may not justly take away.

Created Equal

In *Natural Law and Human Rights*, Manent devotes much attention to the question of equality.⁴⁴ What does it mean to say human beings are created equal? In his book *All Men are Created Equal: Some Reflections on the Character of the American Revolution*, Jack P. Green argues that “what the phrase [created equal] clearly could not mean [was] that all men were equal by nature.”⁴⁵ In support, Green appeals to a letter in which John Adams remarks that individual human beings differ from one another by nature, “almost as much as man from beast.”⁴⁶ Green cites a few other lesser-known contemporaries of Adams to the same effect.

However, Green’s interpretation of Adams rests on an equivocal use of the term “nature,” which is immediately resolved when considering Adams’s remark in its original context. In a letter to his wife Abigail on February 4, 1794, the second president wrote:

I hope my old friend will never meet the fate of another preacher of égalité, who was, I fear, almost as sincere as himself. By the law of nature, all men are men, and not angels—men, and not lions—men, and not whales—men, and not eagles—that is, they are all of the same species; and this is the most that the equality of nature amounts to. But man differs by nature from man, almost as much as man from

⁴¹ Manent, *Natural Law and Human Rights*, 3–4.

⁴² See Ellis, *American Sphinx*, 262.

⁴³ Jack P. Green, *All Men are Created Equal: Some Reflections on the Character of the American Revolution* (Oxford: Clarendon, 1976), 14–17.

⁴⁴ Manent, *Natural Law and Human Rights*, 4–5, 1–12, 84–85, 115–16.

⁴⁵ Green, *All Men are Created Equal*, 5.

⁴⁶ Green, *All Men are Created Equal*, 5.

beast. The equality of nature is moral and political only, and means that all men are independent. But a physical inequality, an intellectual inequality, of the most serious kind, is established unchangeably by the Author of nature; and society has a right to establish any other inequalities it may judge necessary for its good.⁴⁷

Adams uses the term “nature” in equivocal senses in this passage. The equivocal use of the term continues, as Manent points, throughout contemporary discourse.⁴⁸ “Nature” can mean an innate personality trait. An extroverted person has one kind of nature, and an introverted person has a different nature. Nature can also refer to an ingrained habit disposing someone to act, as when we say, “this criminal has a depraved nature.” It is in the sense of an innate disposition of personality or an acquired habit that Adams denies that all human beings share the same nature. But as the fuller context makes clear, Adams also accepts the moral and political equality of all human beings because they share the same nature. All human beings have the same nature in that they all belong to the same species, the same kind of rational creature. The French Revolution, Adams suggests in mentioning *égalité*, was rooted in a misunderstanding about the true implications of the equality of all human beings. In any case, this letter from Adams supports, rather than undermines, the view that equality of nature is what is meant by the Declaration of Independence. A similar disambiguation of the term “nature” may resolve the apparent contradiction found in the lesser-known authorities cited to support Green’s claim.

This equality of nature leads to another sense of equality: namely, that we are equal subjects of the law. Adams states: “All are subject by nature to equal laws of morality, and in society have a right to equal laws for their government, yet no two men are perfectly equal in person, property, understanding, activity, and virtue, or ever can be made so by any power less than that which created them. . . . All are subject by nature to equal laws of morality, and in society have a right to equal laws for their government.”⁴⁹ But without an equality of nature, we would not—as beasts are not—be

⁴⁷ John Adams, letter of February 4, 1794, in *The Works of John Adams, Second President of the United States: with a Life of the Author, Notes and Illustrations, by His Grandson Charles Francis Adams*, vol. 1, *Life of the Author* (Boston: Little and Brown, 1856), oll. libertyfund.org/titles/2099#Adams_1431-01_945.

⁴⁸ Manent, *Natural Law and Human Rights*, 6. See too, Edward Feser, “Whose Nature? Which Law?,” *Edward Feser* (blog), October 12, 2012, edwardfeser.blogspot.com/2012/10/whose-nature-which-law.html.

⁴⁹ John Adams, *Works*, vol. 6 (Boston: Little and Brown, 1851), 285–86.

subject to the moral law nor enjoy equal protection of the civil law. In this, Adams in drawing out an implication of our fundamental equality, the equality of nature. The reason we are equally subject to the laws of morality and to the laws of government is because we equally share in the same nature. Among these moral and legal obligations is to respect the inalienable rights of other people.

In considering the inalienable rights of the Declaration, the word “created” is significant, as is the later word “endowed.” These words imply that human equality is not an achievement that is accomplished, but an inheritance that is granted. In most senses, human beings are not equal. As James Wilson said in 1791: “When we say, that all men are equal; we mean not to apply this equality to their virtues, their talents, their dispositions, or the acquirements.”⁵⁰ The fact of human inequality in innumerable respects was as well known in 1776 as it is today. Human beings are radically unequal in talents, in accomplishments, in strengths, in intelligence, and in effective agency. But these inequalities result, at least in part, from human choice. Human beings cultivate their talents, seek accomplishment, enhance strengths, develop intelligence, and cultivate agency. By our choices, we make ourselves better or worse than others in various respects. By contrast, to be “created” equal involves nothing that depends upon human choice, but rather is an innate possession, an endowment of the human being from his or her beginning. The youngest human being, the most disabled human being, and the most vigorous and healthy president of the United States are unequal in most senses, but the Declaration claims they are equal in some basic respect.

“Equal” and “equality” are terms used in radically different senses. Harry Jaffa noted a generation ago: “Clearly, we have reached a state of affairs where, as the demand for equality becomes ever more intense, its meaning becomes ever more indistinct, if not absolutely incoherent.”⁵¹

In *Speaking of Equality*, Peter Westen defines the term: “Equality” signifies the comparative relationship that obtains between two or more distinct persons or things by virtue of their having been jointly measured by a relevant standard of comparison and found indistinguishable [in both possession and degree] by that standard.”⁵² This definition can be refined slightly by deleting

⁵⁰ James Wilson, “Of Man, as a Member of Society, Lectures on Law” (1791), in *The Works of James Wilson*, ed. Robert Green McCloskey, vol. 1 of 2, ch. 15 (Cambridge, MA: Belknap, 1967), doc. 48, press-pubs.uchicago.edu/founders/documents/v1ch15s48.html.

⁵¹ Jaffa, “What is Equality?,” 150.

⁵² Peter Westen, *Speaking of Equality* (Princeton, NJ: Princeton University Press, 1990), 39.

“jointly measured” and “found indistinguishable.” Two things are in fact equal to each other before they are measured or found indistinguishable by anyone. Equality does not come into existence when measurements are made or when their equality is found by human observers. Rather, equality exists prior to human investigation. The measurements and human judgments do not constitute equality; they only *reveal* the equality to us.

Equality is better understood as a comparative relationship that obtains between two or more distinct persons or things by virtue of their being indistinguishable in both possession and degree by some standard whether recognized or unrecognized. Two cars are equal in weight if relative to the standard of mass they are indistinguishable. Equilateral, scalene, and isosceles triangles all possess sides and possess them in the same number (three). They are equally triangles. Human beings are created equal if they are indistinguishable in both possession and degree of some characteristic(s).

Following Jeremy Waldron, we can distinguish aspirational equality as an economic or social aim from basic equality as a premise or conclusion of moral and political thought.⁵³ Aspirational equality raises questions about how to ease income inequality, how to remedy disparate outcomes of various human groups, or how to distribute political power. Equality of opportunity, equality of outcome, and equality under the law are all matters of aspirational equality in that we may more or less adequately approach the standard. Basic equality (which might be called foundational equality or descriptive equality) obtains when human beings by virtue of a relevant standard of comparison are found indistinguishable in both possession and degree by that standard. Basic equality answers questions about who is included as part of the moral or political community, whose interests count, and why these beings are included and not others. Aspirational equality presupposes basic equality because, if two beings do not enjoy basic equality, we have no reason to seek aspirational equality, such as equal pay for equal work.

Are human beings created equal because they all possess inalienable rights? Or does the justification of equal rights arise from human equality? In other words, does the premise of human equality lead to the conclusion of inalienable rights, or are inalienable rights the premise that leads to the conclusion of human equality?

Dennis J. Mahoney provides one answer: “The equality that men possess by nature is equality of right. There is, among human beings, none with a right to rule the others; God may claim to rule human beings by right, human beings may rule the brutes by right, but no human being has a claim

⁵³ Waldron, *Basic Equality*.

to rule another.”⁵⁴ That human beings are “created equal” means that human beings are the same in their endowment with basic rights, including the right not to be ruled by others. This understanding of the relationship between rights and equality is found still earlier in Locke:

That all men by nature are equal, I cannot be supposed to understand all sorts of equality: age or virtue may give men a just precedency: excellency of parts and merit may place others above the common level: birth may subject some, and alliance or benefits others, to pay an observance to those to whom nature, gratitude, or other respects, may have made it due: and yet all this consists with the equality, which all men are in, in respect of jurisdiction or dominion one over another; which was the equality I there spoke of, as proper to the business in hand, being that equal right, that every man hath, to his natural freedom, without being subjected to the will or authority of any other man.⁵⁵

All human beings are equal because all human beings are indistinguishable both in having rights and in having them to the same degree. On this view, the first three phrases of the Declaration of Independence explicate what it is to be “created equal.”

Does “created equal” in the American proposition just mean “the same in having rights”? This understanding of the relationship of rights and equality renders the Declaration redundant. If “all men are created equal” just means that all men have the same basic rights, there is no need for a next clause claiming that all men are “endowed with certain unalienable rights.” The claims of the Declaration were not entirely novel, and therefore not in need of immediate explication in different terms. Jefferson’s claims echo virtually identical claims made in the Virginia Bill of Rights adopted on June 29, 1776: “Section 1. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” In the Virginia Bill of Rights, it is even more clear than in the Declaration that the assertion of equality is a distinct assertion from the claim about rights.

⁵⁴ Dennis J. Mahoney, “Declaration of Independence,” *Society* 24, no. 1 (1986): 46–48, at 47.

⁵⁵ John Locke, *Second Treatise of Civil Government*, ch. 6, no. 54, gutenberg.org/files/7370/7370-h/7370-h.htm.

The interpretation that “created equal” just means having the same rights also fails to recognize the logical structure of the Declaration. When connections are made between the self-evident truths of the Declaration, Matthew Franck points out that the entire sentence makes a logical argument:

1. All men are created equal (*therefore:*)
2. They are endowed by their Creator with certain unalienable rights, among which are life, liberty and the pursuit of happiness (*therefore:*)
3. Governments are instituted to secure these rights, and rest on the consent of the governed (*therefore:*)
4. Governments destructive of these rights may be overthrown and replaced by better ones that protect them.⁵⁶

It is not that equal human rights grounds human equality, but rather that human equality grounds equal human rights.

The logical connection between equality and rights is more explicit in Jefferson’s first draft of the Declaration: “All men are created equal & independent, that from that equal creation they derive rights inherent & inalienable.” In other words, people have inherent and inalienable rights because they are created equal. Equality in nature gives rise to equal rights. In a letter dated June 11, 1790, Adams explicated in a similar way the relationship between human nature shared equally by all human beings and what we today call “human rights”: “That all men have one common nature, is a principle which will now universally prevail, and equal rights and equal duties will in a just sense, I hope, be inferred from it. But equal ranks and equal property never can be inferred from it, any more than equal understanding, agility, vigor, or beauty. Equal laws are all that ever can be derived from human equality.”⁵⁷ In other words, all human beings have rights because all human beings are equal. The same argument is made by the antifederalist Brutus:

If we may collect the sentiments of the people of America, from their own most solemn declarations, they hold this truth as self-evident,

⁵⁶ Matthew Franck, “Declaring Equality without Supplying Its Ground: Danielle Allen’s *Our Declaration*,” *Public Discourse: Journal of the Witherspoon Institute*, November 4, 2016, thepublicdiscourse.com/2016/11/18037/. For a plausible alternative account of the logical structure of this section of the Declaration of Independence, see Allen, *Our Declaration*, 166.

⁵⁷ John Adams, letter of June 11, 1790, in *Works*, vol. 9, *Letters and State Papers 1799–1811* (Boston: Little and Brown, 1856).

that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society then is to be sought, not in any natural right which one man has to exercise authority over another, but in the united consent of those who associate.⁵⁸

We see then in the logic of the Declaration of Independence as understood by Franck, in Jefferson's first draft, in Adams, and in Brutus the same mode of argument. The Declaration does imply that to be created equal means having the same basic rights to life, liberty, and property. But these inalienable rights follow from equality and are not simply an explication of what is meant by being created equal in nature. Obviously, an appeal to human nature, as Manent points out, has become problematized in contemporary discourse.⁵⁹ But it may be that these problems are not insuperable.

Endowed by Their Creator

What role, if any, should God have in our political order? Does invocation of the Creator add anything to the Declaration of Independence? Or would a "distilled Declaration" lacking all references to the Transcendent be, in all important respects, equivalent? Are references to God in the Declaration merely ceremonial, without ethical, theological, or political import? Are references to God in the Declaration like the motto "In God We Trust," words which (at least as this motto is interpreted in *Aronow v. United States*) are empty of any theological impact?

Arguably, God does add something to the Declaration. The puzzles and problems Manent points to arise, in part, from the void left by the evacuation of the Creator in public life. If the *Creator* endows us with our inalienable rights, then our rights rest on the highest possible authority, indeed a transcendent unchangeable authority. These rights are not government-given, but God-given. The community does not endow us; the Creator endows us. No human authority, not even our own, gives us these rights, so no human authority, not even our own, can strip us of these rights. If these rights are not ultimately God-given, then the source of these rights is something less than divine. Obviously, inalienable human rights are not bestowed by the inanimate objects, by the plant kingdom, or by brute animals like dogs. So, they

⁵⁸ Brutus II, "To the Citizens of the State of New York," *New York Journal*, November 1, 1787, archive.csac.history.wisc.edu/Brutus_II.pdf.

⁵⁹ Manent, *Natural Law and Human Rights*, 6.

must arise from some human authority, such as a king, an aristocracy, or a democracy. But any human authority can be trumped. A democracy can vote to overturn its prior decisions. A constitutional convention or supreme court can overturn decisions of an earlier constitutional convention or supreme court. Even the authority of an absolute monarch can be trumped. Not only can a monarch change his mind, but the death of an absolute monarch may be followed by a radically different new leader. A Creator roots our rights in a transcendent, unchangeable, and untrumpable authority.

For the Declaration of Independence, the Creator makes a difference in a second way. Recall that natural rights impose a moral obligation upon other agents minimally not to intentionally murder us, enslave us, or do anything else that undermines our ability to pursue happiness. These natural rights may or may not also have corresponding legal rights enforced by law. If there is no enforcement of the law, the law can be put into disrepute. So if natural rights are not enforced by positive law, then they are in practical effect weakened.

However, if you believe that a supreme judge of the world exists, then you believe that God not only sees human activity but responds with justice to it. If such a God does exist, the murderer, the slave trader, and the thief will not ultimately evade punishment. Whoever violates human dignity cannot escape justice. If a supreme judge exists, wrongdoers are *always* caught and *always* punished, sooner or later, with perfect justice. Such considerations obviously did not prevent theistic believers from heinous wrongdoing such as witch burning, the Wars of Religion, and anti-Semitic pogroms, among many other atrocities. But, of course, the atheism of its agents did not stop the Reign of Terror, the Gulags of Stalin, the Khmer Rouge of Pol Pot, or the Great Leap Forward through forty-five million corpses of Mao.⁶⁰ Human beings do evil, sometimes massive evil, whether they are atheists, theists, or agnostics. However, if an agent has theistic beliefs, these beliefs introduce a new consideration of deterrence that an atheist lacks, namely that violations of natural rights are flawlessly detected, infallibly judged, and perfectly punished in this life or the next. From the perspective of someone who believes in God, human choice has eternal and cosmic significance because the effects of these choices can endure forever, even after death. These beliefs do not, of course, guarantee right behavior, but these beliefs add another consideration to the deliberations of agents who have such beliefs. Perhaps for this reason, Jefferson asked: "Can the liberties of a nation be thought

⁶⁰ See Frank Dikötter, *Mao's Great Famine: The History of China's Most Devastating Catastrophe, 1958–1962* (New York: Walker, 2010).

secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath?"⁶¹ It is noteworthy that Jefferson says, "in the minds of the people," implicitly suggesting that, perhaps in other minds, basic liberties might be secured by other means than the invocation of God's justice.

Thirdly, the invocation of God serves as an implicit reminder of what a human person is not.⁶² No human individual can create himself or the conditions that make possible human existence (air, water, gravity, atmospheric pressure). We can refashion created things, but we do not create *ex nihilo*. We do not share in divine nature. But we also do not share in the nature of an irrational animal. We are all greater, in terms of our nature, than a dog, cat, or squirrel. In Jefferson's words, "man [is] a rational animal, endowed by nature with rights and with an innate sense of justice."⁶³ We have powers of reflection that enable political deliberation, orchestral composition, and philosophical refutation that (as far as we know) other animals do not enjoy. But this recognition leads to further insight into our basic moral status vis-à-vis one another. Jaffa writes: "In short, as men are neither beasts nor gods, they ought not to play God to other men, nor ought they to treat other men as beasts. Here is the elementary ground, not only of political but of moral obligation."⁶⁴ Someone who places himself in absolute power over other human beings usurps God's place and implicitly denies his own humanity. No one may justly consider herself a god in relation to other human beings, and when this happens, the greatest tyranny can result.

The basic equality of nature among all human beings, an equality of rational nature, makes it fitting that consent of the governed is relevant for government. "Consent becomes necessary to the just powers of government because men are equal," writes Jaffa. "Because men are not unequal, as are man and God, or man and beast, nature by itself does not decide the question of who is to rule. Consent comes to light in the Declaration as an alternative to nature, as a source of the just powers of government."⁶⁵ It is important to note that the scope of consent is narrower than the extension of inalienable rights. Not all human beings are capable of giving informed

⁶¹ Thomas Jefferson, "Query 18," 272.

⁶² I am indebted in these three paragraphs to the insights of Jaffa, "What is Equality?," 153.

⁶³ Thomas Jefferson, letter to William Johnson, June 12, 1823, founders.archives.gov/documents/Jefferson/98-01-02-3562.

⁶⁴ Jaffa, "What is Equality?," 153.

⁶⁵ Jaffa, "What is Equality?," 154.

consent. So, although young children have the same inalienable rights as adults not to be intentionally killed or enslaved, young children are justly denied the right to vote, since they cannot give legal and (when they are very young) moral consent to anything.

Fourth, the contrast between human nature and divine nature is significant as a reminder of the contrast between divine perfection and human imperfection, and the political implications of this contrast. The divine appears not just in the American proposition, but also in the first sentence, last paragraph, and concluding sentence of the Declaration of Independence. This repetition, in a document of only 1,337 words, suggests that God plays an important role. The Declaration's opening sentence invokes God as legislator: "When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." The Declaration invokes God as judge: "We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions . . ." The final sentence of the Declaration invokes God as executive, providentially ordering and overseeing human affairs: "And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor." The Declaration invokes the legislative, judicial, and executive power of the Divinity.⁶⁶

Only in God could perfect justice, wisdom, power, and goodness exist. Since we do not share the divine nature, we lack the divine attributes. Jaffa draws out the political implications of this insight: "It is an absolutely necessary condition of the rule of law that the three powers of government never be united in the same *human* hands. For them to be so united, whether in a singular or a collective body, is the very definition of tyranny, as the Founding Fathers never ceased to repeat. For the equality of mankind is an equality of defect, as well as an equality of rights."⁶⁷ A perfect tyranny would be absolute power without absolute wisdom, justice, and love. Since no human being has absolute wisdom, justice and love, no human being rightfully exercises absolute power over any other. For this reason, Aquinas argues that, even those who have taken vows of obedience, as a priest or

⁶⁶ Jaffa, "What is Equality?," 153.

⁶⁷ Jaffa, "What is Equality?," 153.

solider might, are not obligated to obey every order issued by the bishop or general in command.⁶⁸ Orders from legitimate authorities not only may but *must* be disobeyed in certain circumstances.

A fifth and final reason the Creator makes a difference for the Declaration of Independence is that the Creator plays a crucial role in the two most common justifications for inalienable rights given at the time of the founding, the Scottish Enlightenment and Lockean natural rights. If the Declaration is read as reflecting the Scottish Enlightenment justification of rights,⁶⁹ then the basic truths of ethical conduct arise from an innate sense implanted within us. When Jefferson spoke of “my own creed on the foundation of morality in man,” he described it as a divinely implanted moral sense. Jefferson recognized that some people lack this sense, but they are similar to someone born without eyes or someone born without hands, the exception that does not disprove the rule.⁷⁰ For this reason, Jefferson thought both the ploughman and the professor are on an equal footing in terms of basic ethical responsibilities:

He who made us would have been a pitiful bungler, if he had made the rules of our moral conduct a matter of science. For one man of science, there are thousands who are not. What would have become of them? Man was destined for society. His morality, therefore, was to be formed to this object.⁷¹

For Jefferson, God made man for a social state, so God gave to human beings a moral sense so that they would be able to pursue happiness together.⁷² But if God is taken out of the picture, then Jefferson’s justification for trusting the moral sense vanishes. If our moral sense arises not from the design of a Creator, but from chance survival and random mutations in the primordial evolution of humankind, why should we trust our moral sense as reliable? If our moral sense is not reliable, then the Scottish Enlightenment justification of the Declaration’s claim vanishes.

On the other hand, if the Declaration is read as reflecting a Lockean justification of rights,⁷³ then the question arises about the role of the divine

⁶⁸ Thomas Aquinas, *Summa theologiae* II-II, q. 104, a. 5.

⁶⁹ A case for this view is made in Wills, *Inventing America*.

⁷⁰ Thomas Jefferson, letter to Thomas Law, June 13, 1814.

⁷¹ Thomas Jefferson, letter to Peter Carr, August 10, 1787, founders.archives.gov/documents/Jefferson/01-12-02-0021.

⁷² Wills, *Inventing America*, 186–91.

⁷³ A case for this view is made most famously in Becker, *Declaration of Independence*.

in Locke's account of rights. Arguably, the Creator also plays a central role in Locke's understanding of basic rights.⁷⁴ Locke wrote that, without God, each person "could have no law but his own will, no end but himself. He would be a god to himself, and the satisfaction of his own will the sole measure and end of all his actions."⁷⁵ For Locke, the respect of one person for another is founded on the view that each person serves a Sovereign Master and is sent into the world by his order and for his business. If Locke's theism is central to his justification of rights, then the Declaration falls flat without a Creator. Perhaps another justification for basic human equality can be found, but it will not be the justification that animated the founders of the United States of America.

Inalienable Rights

By "inalienable rights," the Declaration of Independence means rights that cannot be taken away by private parties or given away by the possessors themselves.⁷⁶ Such rights cannot be abdicated or waived by individual human choice. Citing the Virginia Bill of Rights, which is more explicit on this matter, Zuckert defines inalienable rights as rights we cannot give up or relinquish for ourselves or on behalf of our posterity.⁷⁷ Our legal code recognizes such rights. For example, we may not waive our right to equal protection of the law, our right against arbitrary arrest, or our right to be presumed innocent.⁷⁸ In the context of the Declaration, the inalienable rights asserted are rights that the law does not bestow and the law cannot take away. As inalienable, these rights are ours even if we consciously reject them. So, although someone may wish to sell himself into slavery, he has no right to do so. Thus, these rights cannot rest on our desires or conscious beliefs, since we have them regardless of and even in contradiction to our desires, beliefs, and so on. This understanding of rights conforms with the idea of a basic endowment of all human beings from their creation, for even

⁷⁴ See Jeremy Waldron, *God, Locke, and Equality: The Christian Foundations of Locke's Political Thought* (New York: Cambridge University Press, 2002).

⁷⁵ John Locke, Bodleian MS Locke c. 28, fol. 141. 1693.

⁷⁶ In drafting the Declaration, Thomas Jefferson wrote in his own hand of "inalienable" rights, but the text approved by Congress for publication, seemingly influenced it would seem by John Adams, speaks of "unalienable" rights. These terms, then as now, are synonymous.

⁷⁷ Zuckert, *Natural Rights Republic*, 24.

⁷⁸ See S. Matthew Liao, "Human Rights as Fundamental Conditions for a Good Life," in *The Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo (New York: Oxford University Press, 2015), 79–100.

very young human beings or severely handicapped human beings share with us the same basic endowment as human beings, though they may have very different (or even no) desires and beliefs.

The rights in question are pre-political in the sense that they do not depend upon a government that may or may not provide legal recognition and enforcement of these rights. Yet, as Manent rightly points out, rights cannot exist in a pre-social world: "The declaration and promotion of human rights in effect presupposes the prior existence of a human world already ordered according to rules and purposes that cannot be derived simply from human rights."⁷⁹ If man is a rational animal, then he is for that same reason a political animal, minimally one raised in community with others. The Declaration of 1776 endorses natural rights, entitlements, or immunities possessed by human beings in virtue of their nature, endowment, or creation, regardless of political arrangement or positive law. The Declaration claims that governments are to be judged and even abolished under certain conditions when they violate these rights. Indeed, the founders cast aside the rule of King George III on these grounds.

Today we call these rights "human rights." One of the central concerns of Manent's book is how we should understand these human rights and how they relate to the social world. On one view, these rights are to be distinguished from duties. Jaffa claims: "In this state, however, in which all men have equal and unalienable rights they have no real duties."⁸⁰ Jaffa may have in mind here the teaching of Locke, who held that natural law "ought to be distinguished from natural right: for right is grounded in the fact that we have the free use of a thing, whereas law is what enjoins or forbids the doing of a thing."⁸¹ Rights are liberating; laws are confining.

It is hard to see, on this understanding, what force natural right has. Since natural right is distinguished from positive right established by law, natural right has no legal force. But if natural right has nothing to do with ethical duty, it has no moral force either. If this is so, then Jeremy Bentham was correct that talk of a claimed, natural right is useless nonsense on stilts.⁸² It is better to understand natural rights as facilitating the free use of a thing

⁷⁹ Manent, *Natural Law and Human Rights*, 48.

⁸⁰ Henry V. Jaffa, "Abraham Lincoln and the Universal Meaning of the Declaration of Independence," in *The Declaration of Independence: Origin and Impact*, ed. Scott Douglas Gerber (Washington, DC: CQ Press, 2002), 39.

⁸¹ John Locke, *Essays on the Laws of Nature*, ed. W. von Leyden (Oxford: Clarendon Press, 1958), 111.

⁸² Hugo Adam Bedau, "Anarchical Fallacies': Bentham's Attack on Human Rights," *Human Rights Quarterly* 22, no. 1 (2000): 261–79, at 261.

precisely by imposing moral duties on other agents. Although it might also imply other duties, the right to life minimally includes the *prima facie* duty of others not to intentionally kill us. Although it also might imply other duties, the right to liberty minimally includes the *prima facie* duty of others not to enslave us.

In August of 1776, the statement of a right to the “pursuit of happiness” in the Declaration of Independence drew criticism as confused and vague:

Did ever any mortal alive hear of taking a pursuit of happiness from a man? What they possibly can mean by these words, I own is beyond my comprehension. A man may take from me a horse or a cow, or I may alienate either of them from myself, as I may likewise anything that I have; but how that can be taken from me, or alienated, which I have not, must be left for the solution of some unborn Oedipus.⁸³

Undoubtedly, the right to pursue happiness is more difficult to define in terms of the duties of other people. Yet its meaning is not entirely obscure. The Declaration speaks not of a right to happiness but a right to *pursue* happiness. A limited government does not seek to secure the perfect happiness for its citizens through securing eternal salvation or by attempting to construct an earthly utopia.⁸⁴ To secure such lofty ends requires both an authority and a power beyond what is possible for a limited government. Some scholars hold that the pursuit of happiness is a right to property,⁸⁵ others that it pertains to seeking happiness in a more robust sense.⁸⁶ Although it may mean more, the right to pursue happiness arguably includes the right to make use of (if not necessarily to legally own) property, which entails the *prima facie* duty of others not to steal from us. If we cannot make personal use of water, food, shelter, and clothing, we cannot survive to pursue happiness. So, if we have a right to pursue happiness, we necessarily have the right to make personal use of created things as a necessary supposition of any pursuit.

This correlation between rights and duties helps ease, though not

⁸³ Citation from Wills, *Inventing America*, 246.

⁸⁴ I draw here on Jaffa, “What is Equality?,” 156.

⁸⁵ Ellis suggests that Jefferson wrote “the pursuit of happiness” rather than speaking of property because “Jefferson was probably aware of the contradiction between his own version of the natural rights philosophy and the institution of slavery. By dropping any reference to ‘property’ he blurred the contradiction” (*American Sphinx*, 56).

⁸⁶ See Arthur M. Schlesinger, “The Pursuit of Happiness,” *The William and Mary Quarterly* 21, no. 3 (1964): 325–27. Perhaps the best treatment of what the pursuit of happiness means for Jefferson is found in ch. 16 of Wills, *Inventing America*.

eliminate, the tensions between reading the American proposition as a form of liberalism focused on defense of individual rights and interpreting the Declaration as an expression of republicanism focused on formation of a virtuous community. In practice, liberalism cannot be separated from republicanism. Without a virtuous community, individual rights will be frequently violated. People without the virtues of courage and temperance are apt to violate the rights of others whenever dangers or pleasures incite such violations. If Aristotle is right, then virtuous people cannot be formed outside of communities aiding in the formation of character. On the other hand, without individual rights, a virtuous community may degenerate into a totalitarian state bent on eradicating all vice and threats to communal well-being, even at the expense of respect for the individual. This connection between individual rights and a virtuous community is strengthened by an understanding that the pursuit of happiness requires habituation in doing good actions. "The order of nature," writes Jefferson in a letter to M. Correa de Serra, is "that individual happiness shall be inseparable from the practice of virtue."⁸⁷ For Jefferson, as for the other founders, "without virtue, happiness cannot be."⁸⁸ In an echo of Aristotle, the third president held: "Happiness is the aim of life. Virtue is the foundation of happiness."⁸⁹ The union of personal happiness and virtuous activity does not answer every question about reconciling a liberalism focusing on individual rights and a republicanism focused on communal virtue, but it does set a context in which these questions can be more fruitfully posed and intelligently answered.

Nevertheless, the ambiguity of the "pursuit of happiness" lends itself to the unlimited expansion of new rights which are viewed by agents as necessary for their subjectively defined "happiness," the unlimited expansion of government in order to enforce these new rights, and the inherent contradictions that thereby arise as emphasized by Manent in *Natural Law and Human Rights*.⁹⁰

⁸⁷ Thomas Jefferson, letter to José Corrêa de Serra, April 19, 1814, founders.archives.gov/documents/Jefferson/03-07-02-0216.

⁸⁸ Thomas Jefferson, letter to Amos J. Cook, January 21, 1816, founders.archives.gov/documents/Jefferson/03-09-02-0243.

⁸⁹ Thomas Jefferson, Letter to William Short, October 31, 1819, csun.edu/~hcfl004/jefflet.html.

⁹⁰ Manent, *Natural Law and Human Rights*, 11 and throughout.

Conclusion

We can, at this point, express the American proposition in different words so as to resolve some possible ambiguities. We hold that it is true that all human beings are created equal in rational nature. As rational and free creatures, God endows all human beings with inherent rights that other people should not violate, whether these rights are recognized legally or not. These universal human rights include the right to not to be intentionally killed, the right not to be enslaved, and the right not to have their property stolen. If the American proposition is accepted, it offers us a coherent way forward in answering some of the conundrums and questions raised by Manent in *Natural Law and Human Rights*. But that raises a question that I cannot begin to answer in this essay: Is the “American proposition” of the Declaration of Independence still credible today? N.V.