subtopic

Declaration of Independence

DECLARATION OF INDEPENDENCE
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No public document gives more prominence to the idea of natural law, nor relies more crucially upon natural law as a premise, than the Declaration of Independence. To understand why this is so and what it means for American constitutionalism requires reading the text of the Declaration in its political, historical, and philosophical context.

As a political statement, the Declaration was the culmination of a series issued by the several Continental Congresses, the voluntary associations of representatives of thirteen British colonies in North America that spoke for the colonists as a whole. These documents catalogued grievances against British colonial policy, appealing for the most part to liberties and privileges claimed under the English constitution and the common law. Declarations and petitions of this sort were themselves part of the English constitutional tradition, from Magna Charta in 1215 through the 1689 Bill of Rights. The middle section of the Declaration of Independence follows this pattern, detailing complaints against the king and Parliament alleging constitutional violations, unconstitutional statutes, and acts of oppression and war.

Because the Congress in July 1776 had resolved upon independence from Great Britain, however, they thought it inadequate to appeal only to the British constitution. Instead, they addressed the "opinions of mankind" and made their appeal on the basis of "the laws of nature and of nature's God." Seen as justification for recognition of the political independence of the new United States, natural law appears to ground the law of nations; in the absence of an imperial suzerain or an international league, nature itself must be the standard and world opinion its court. Little is said at the beginning of the Declaration about this aspect of natural law, other than that it supports the equality of separate states. But the powers belonging "of right" to "free and independent states" detailed in the Declaration's conclusion – "to levy war, conclude peace, contract alliances, establish commerce" and unspecified others – should probably be understood as natural in the minds of the Declaration's signers. The notion that "international law" arises chiefly from treaties among nations, even the term "international" itself, is a development subsequent to the Declaration; indeed, one commentator has traced the origin of modern thinking about international law to the question among European powers of what constituted formal recognition of American independence.[1] That the Americans needed legaal separation from Britain in order to find allies in the fight against her was clearly recognized at the time and by scholars since.

If the first and final role of natural law in the Declaration is to explain the independence of the United States from the perspective of the law of nations, its second and central function is to ground the theory of God-given rights and man-made government that comprises its most memorable passage, justifying not only independence but revolution:

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; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

While the "unalienable rights" said to be self-evidently true are not explicitly called natural rights, the

inference is unavoidable: the passage follows immediately after the sentence that explicitly mentions the laws of nature; Jefferson's earlier draft called the rights "inherent"; and "self-evident truth" is not a bad definition of natural law itself. Moreover, several of the Declaration's antecedents did refer more explicitly to natural rights. George Mason's Bill of Rights for the Virginia Constitution, published in the Philadelphia papers in mid-June 1776 and almost certainly in Jefferson's possession when he drafted the Declaration, began, "all men are by nature equally free and independent, and have certain inherent rights." The Declaration and Resolves of the First Continental Congress in 1774 had introduced its catalogue of rights as follows: "That the inhabitants of the English colonies in North-America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following RIGHTS" – and rights to life, liberty, and property began the list. As this last passage makes plain, the Americans generally did not see a practical distinction between natural law and the common law, nor between natural rights and British liberties. Violations of the English constitution proved the king a tyrant; natural rights indicated what could be justly done by a people thus oppressed.

Much comment has been devoted to precisely what Jefferson had in mind when he defined the first principles of government as he did. The reference to equality suggested the fundamentally democratic orientation of the founders; while the equality referred to is theoretically pre-political, allowing and maybe even requiring men to consent to inequalities in government, natural equality is established as a basic standard against which government institutions must be measured. Writing of life, liberty, and "the pursuit of happiness" rather than the familiar "life, liberty, and property" is more precise when grounding rights in human nature, since property was traditionally held to be a conventional rather than a natural right, but it surely puts oligarchs on the defensive. Many have seen in the famous passage the theory of the state of nature propounded by modern political philosophers such as Thomas Hobbes and especially John Locke, according to which natural rights precipitate a state of war of every man against every man, settled only by a compact creating a government: radically individualistic persons create a radically positive (and thereby suspect) state.[2] Nor was the revolutionary effect of the Declaration's second paragraph confined to theory or to the moment of rejecting the king. As Abraham Lincoln recognized, its significance could be seen in its promise of future reform: the statement of equality provided "a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere."[3] Lincoln appealed to the equality principle to place the Declaration on the side of the abolition of slavery. Others have argued from the Declaration against sexual inequality and inequality in other forms, not only in America but also among peoples seeking liberation from imperial exploitation.[4]

Still, there is a conservative as well as liberal moment in the natural law doctrine of the Declaration. Though the phrase "nature's God" might indicate the deist's first cause, other invocations of the deity are more orthodox: inalienable rights are said to be an endowment of the Creator, while the signers promise a "firm reliance" on "Divine Providence" and submission to the verdict of the "Supreme Judge." Whereas men are acknowledged to have the right to dissolve bad government, they have the duty to establish a better one, and besides, they now claim only to alter, not abolish, their current regime. Though the phrase "pursuit of happiness" might suggest a government limited to protecting the conditions of what is privately pursued, the Declaration says that principles and forms of government established in the wake of revolution have as their object a people's "safety and happiness," a more comprehensive formulation. Prudence, the classical virtue of statesmanship, is invoked, and the catalogue of grievances suggests that constitutional order has been upset by tyrannical actions, not that new order is desired only for the sake of change. Though he always remembered the revolutionary intention of the Declaration, speaking of its call to burst the chains of "monkish ignorance and superstition," Jefferson denied its novelty: The Declaration aimed to capture "the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc."[5] To be sure, Jefferson did not connect "harmonizing sentiments" to natural law, but one finds that usage in the writings of his contemporary, Edmund Burke.[6]

The various meanings of natural law in the Declaration – in relation to world politics or to first principles, as proto-liberal or as conservative – come together if the Declaration is seen as an assertion of political liberty, and if political liberty is seen as a good endorsed by natural law or promised by natural right. To an age like our own where law is often seen in opposition to politics, and nature seen in opposition to liberty, this suggestion might seem paradoxical. Political liberty is the right of men to rule themselves or at least to participate in the management of their common life, and today we either take this for granted or see it as allowing arbitrary choice in the rational administration of an interdependent whole. To those who wrote and signed the Declaration of Independence, however, political liberty and natural law went together: Nature summons man, individually and collectively, to self-government and guides him in the exercise of his power of choice. The exercise of political liberty leads men to make their own laws and so in that respect can obscure its natural law foundation. The meaning of the appeal to natural law in the Declaration is that political freedom – as independent statehood on the one hand, and as republicanism on the other – rests on transcendent, rational ground.

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[1] David Armitage, *The Declaration of Independence: A Global History* (Cambridge: Harvard University Press, 2007).

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[2] See articles on Thomas Hobbes and John Locke.

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[3] Lincoln, *Speech on the Dred Scott Decision, June 26, 1857*, in *Selected Speeches and Writings* (New York: Library of America, 1992), 120.

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[4] See, for example, "The Declaration of Sentiments" of the Seneca Falls Convention of 1848, in Elizabeth Cady Stanton, *A History of Woman Suffrage,* vol. 1 (Rochester, N.Y.: Fowler and Wells, 1889), 70-71.

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[5] Jefferson, *Letter to Henry Lee, May 8, 1825,* in *Thomas Jefferson, Writings* (New York: Library of America, 1984), 1501.

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[6] See Burke, *Reflections on the Revolution in France*, vol. 2 of *Selected Works of Edmund Burke* (Indianapolis: Liberty Fund, 1999), 193.

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