Book Reviews

Timothy Sandefur. *Proclaiming Liberty: John Adams, Thomas Jefferson, and the Declaration of Independence*. Washington, D.C.: Cato Institute, 2026.

Timothy Sandefur's *Proclaiming Liberty* is engagingly written and enlightening in many respects. In his telling, the American Revolution was more than anything a dispute about political philosophy (p. 8). He views the Declaratory Act, which stated but did not implement parliamentary authority over the colonies, as the British action that did the most to spark the Revolution (pp. 148, 151). The victorious American philosophy, he says, was classical liberalism, which he endorses (p. 10).

The book deserves credit for making some important points along the way, including the prevalence of what we would now call human rights claims in the revolutionaries' rhetoric. The book also makes some points that remain relevant to today's constitutional disputes. Sandefur shows that the Continental Congress was very much involved in the formation and legitimization of new elected state governments (pp. 249–50, 300, 307, 309). Indeed, in Pennsylvania, where the state authorities were against independence, John Adams and others fomented an alternative legislature that gradually took over (pp. 317–18). Sandefur is also correct in arguing that judicial review was not a nineteenth-century innovation (p. 347). And in his final chapter he justifiably criticizes the 1619 Project for centering slavery in the American founding and for ignoring the emergence in America of a substantial body of opinion for the first time denouncing slavery. It is difficult to disagree with his view that much of the best of United States history involves appeals to an American identity defined in opposition to slavery and its legacy (p. 410).

The book also provides a useful corrective to the notion that the Declaration of Independence marked a sudden change from British governance to rebellion. Sandefur portrays a cyclical process that led to the Revolution. The British asserted power, which the colonists resisted, leading the British to escalate, and so forth. The upshot was that, by the

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time of the Declaration of Independence, British civil government had vanished in the colonies, with local legislatures and courts closed, leaving the colonists to improvise their own governing institutions while armed conflict was erupting. In that sense, the Declaration of Independence was simply reporting the facts on the ground, seeking to justify governments that had already formed and a war that had already broken out.

Despite these contributions, the book is undermined as a work of history by its polemic drive. Like the able lawyer that he is, Sandefur in effect has given us a powerful brief in favor of his position that libertarianism was the driving force behind the Revolution. This leads him to discount other intellectual strands of American thinking, to assume that Americans were wedded to a fully worked out theory of natural law, and to embrace a reductionist account of motivations. There is much talk of human nature in the book, but one aspect of human nature seems to be slighted: the fact that humans are complex, apt to contain contradictions, and changeable. This is not to say that his account is inaccurate, only that it is incomplete.

One aspect of Sandefur's polemical bent is the neat division in the book between heroes and villains. Sandefur has strong opinions about many historical figures. He dislikes the Greek Stoics for advocating *philanthropia* (love of humanity) (p. 141). Cicero, on the other hand, is said to have been the ancient thinker with the greatest influence on Americans (p. 19). Sandefur (following Thomas Jefferson), views Lord Mansfield as a baleful influence on the law (p. 233), though many today see him as a key figure in the development of contract and commercial law. The other targets of Sandefur's ire are many. They include Jeremy Bentham (p. 377), Edmund Burke, the Romantics, the Federalist Party (p. 378) (not withstanding that his paragon Adams was a Federalist stalwart), early twentieth-century progressives (pp. 385–88), post-New Deal conservatives like Russell Kirk (p. 392), and Supreme Court Justices Antonin Scalia, Amy Coney Barrett, and William Rehnquist (p. 396).

The heroes of the story, as the subtitle indicates, are Adams and Jefferson, who according to Sandefur were dedicated to a liberal individualist view that government's only function is protecting property and freedom of commerce (p. 273). They are consistently

portrayed in a favorable light, with even mild criticism rare. Like the portrayal of Sandefur's villains, the portrayal of his heroes leaves little room for nuance or complexity.

Sandefur is too quick to pigeonhole historical figures as villains or heroes. For instance, he reviles the English Judge Lord Mansfield as a supporter of parliamentary supremacy but shortchanges the importance of Mansfield's opinion in *Sommerset's Case,*[1] decided four years before the Declaration of Independence. There, Mansfield held that "the state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political," and "so odious, that nothing can be suffered to support it, but positive law." Sandefur contends that this statement referred only to slaves who were being removed from England, but that seems to me a clear misreading. Like the Declaration of Independence, Mansfield's statement deeply influenced antebellum Republicans like Abraham Lincoln, providing a basis for their argument against allowing slavery into the territories.

On the intellectual level, parliamentary supremacy is the villain of the book. Sandefur associates this view with legal positivism (at least of the Austinian variety), which he detests (p. 206). In this, he follows the Revolutionaries, who he says viewed parliamentary supremacy as inconsistent with protection of rights (p. 100). Yet, the parliamentary role in the colonies was not new. Parliament had passed laws dealing with the colonies, such as a law reserving certain trees for use as masts by the Navy, for decades in which there had been no serious pushback from Americans (p. 92).

In the view of pre-Revolutionary Americans, the king was chief executive of the colonies and Great Britain (p. 176). George III is portrayed as a particular villain because of his adherence to parliamentary supremacy (p. 31). The Declaration attributes all the abuses of English colonial policy to the king. This was unfounded. While George III had a great deal of political influence, he had no ability to set himself against Parliament. The colonists' view that the king had an independent constitutional role (p. 328) was an anachronism. Their anger that the king went along with Parliament (p. 260), was seemingly misplaced given political realities in eighteenth-century England. As

[1] *Somerset v. Stewart* 98 ER 499 (1772).

Sandefur observes, the whole point of the 1688 Glorious Revolution was that the king had no constitutional power to override Parliament (pp. 209, 213).

And in any event, it does not appear that either the king or Parliament was pursuing a coherent strategy against the colonies. The Declaration of Independence portrays English abuses as "having in direct object the establishment of an absolute Tyranny over these States." But there was no master plan. Although Sandefur sees the seeds of dictatorial control in British policy, he also concedes that no coherent strategy governed British policy, given that American affairs received only fitful attention (pp. 41–42). Instead, British policy "ended up being a patchwork of measures, often ill-considered, sometimes expressed in bold language, but carelessly enforced or completely ignored" (p. 43).

Sandefur argues persuasively that natural law was a substantial presence in the arguments that Americans made during the Revolutionary era, so its prominence in the Declaration of Independence should be no surprise. This is an important point. However, Adams, Jefferson, and their American contemporaries were not philosophic theorists, and their espousal of these principles did not prevent them from relying on other political theories.

According to Sandefur, "virtually all Americans believed in the Lockean natural law theory" (p. 304). It is difficult to know what empirical basis might exist for this sweeping claim, even if we limit it to literate white Americans. It seems to attribute quite a bit of philosophical sophistication to ordinary Americans to say that they not only believed in inalienable rights but in a very specific version of that concept, which led them to reject all other ideas about government.

In any event, if Americans believed in Lockean theory, this did not necessarily preclude their belief in other theories. Natural rights theory is in clear opposition to utilitarianism, but there is little evidence that Americans of the Revolutionary period rejected the view that government should promote the general welfare, a phrase that would later be used in the U.S. Constitution thirteen years after the Declaration. Jefferson, whose beliefs were probably the closest to libertarianism, still viewed as one of his greatest achievements the founding of the University of Virginia, which to this day is often referred to as "Mr.

Jefferson's University."[2] This obviously went beyond the scope of the nightwatchman state.

Other thinkers referenced by Sandefur also seemed inclined toward a view of government that was broader than merely the defense of property rights. For instance, Cicero, who Sandefur views as the ancient figure who most influenced the founding generation, held that while pirates seek only to enrich themselves, legitimate rulers seek the public good (p. 19). This description of Cicero's views, and a variety of references to the common good by figures such as Adams (p. 22), sound as much concerned with the public's welfare as its rights. The Declaration itself accuses the king of vetoing "Laws, the most wholesome and necessary for the public good." It also accuses him of not allowing the colonies to "pass Laws of immediate and pressing importance" and "other Laws for the accommodation of large districts of people." Perhaps it is possible to reinterpret this language in libertarian terms, but it is most naturally read as welfarist. To Americans of the time, the public good connoted civic republican virtue and individual sacrifice for the public interest.[3]

As Sandefur acknowledges, traditional English rights like jury trial also figured heavily in Revolutionary-era rhetoric. Samuel Adams, for instance, said that "the most essential rights of British subjects are those of being represented in the same body which exercises the power of levying taxes upon them, and of having their property tried by juries. These are the very pillars of the British Constitution, founded in the common rights of mankind" (p. 38). Although Sandefur does not use this language, he portrays colonial American lawyers as believers in what we would now call Britain's unwritten constitution (p. 44), which they tended to identify with natural law. As late as 1774, the Continental Congress invoked the "immutable laws of nature" side-by-side with the "principles of the English constitution" and the terms of the colonial charters (p. 251).

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[2] John Meacham, *Thomas Jefferson: The Art of Power* (Random House, 2013), pp. 468–70.

[3] Gordon S. Wood, *The Creation of the American Republic, 1776–1787*, 2nd ed. (University of North Carolina Press, 1998), pp. 53, 611.

By 1776, Sandefur says, Americans had abandoned any effort to assert their rights as Englishmen (p. 326). Given that the Declaration was aimed at the wider world (p. 323), the shift might represent not a change in views but a change in audiences. The French, for instance, would have been unlikely to be moved by references to peculiarly English rights. Given that many of the abuses listed in the Constitution involved violation of specifically English practices such as jury trial, a link to human rights might have seemed advisable to lend force to the argument.

In any event, trying to distinguish between a belief in traditional English rights and natural law may attribute a level of intellectual clarity to most Americans that probably did not exist then (or now). As Sandefur says, it is difficult to distinguish between invocations of English tradition and natural law because many Americans drew little distinction (p. 326). And after Independence, Americans reaffirmed their allegiance to the common law: The Seventh Amendment, for instance, defines the right to jury trial in civil cases in terms of the common law as it then stood.

And then there is nationalism. Sandefur refers to the advocates of independence, as they referred to themselves, as Patriots. That in itself is telling. The Declaration was issued "in the Name, and by Authority of the good People of these Colonies." It frames independence not as an escape from English governance, but rather as "one people" dissolving its political bonds with another, a collectivist framing that is it odds with Sandefur's staunch individualism. The colonies purported to secede as political entities, not as individuals, and that clearly left no room for individuals who preferred to maintain their ties to the English government. The people as collectivity were seceding from the British Empire, notwithstanding the views of individuals. Loyalists were involuntarily dragged along by Independence and punished if they resisted. As the war progressed, the Patriots confiscated Loyalists' estates and sold them to raise funds for the war effort, including a bill of attainder drafted by Jefferson himself (p. 364).

The tension between natural law theory and real-world actions was nowhere greater than regarding slavery. Sandefur defends the Revolutionaries against the accusation of hypocrisy by arguing that their willingness to concede the moral wrongness of slavery was a real

breakthrough (p. 189). While I think he's right about that, their attachment to libertarian precepts was notably flexible. Jefferson, who thought slavery immoral in the abstract, never freed his slaves except for the Hemmings family with whom he had children. He and others had quickly tempered their public criticisms of slavery, having learned that outright attacks on slavery were political suicide (p. 191). And clearly not all Americans shared this moral opposition to slavery. For instance, representatives of South Carolina and Georgia bitterly opposed any language that might cast doubt on the righteousness of slavery in general and the slave trade in particular (p. 369).

Perhaps all this is belaboring the obvious. Neither ordinary people nor political leaders are first and foremost political philosophers. Only a minority attempt to hold themselves consistently to explicit political theories. To assume that all Americans hewed rigorously to a specific philosophical view is as unrealistic in terms of Jefferson's era as Franklin Delano Roosevelt's or Ronald Reagan's. Americans did not need that degree of philosophical rigor to support Independence, because considerations such as natural law, traditional legal norms, and public welfare all pointed in the same direction.

While *Proclaiming Liberty* may be flawed as a work of history, perhaps this is the wrong standard to apply. The book contains hints that the author's project was different from that of a historian. In discussing a work on colonial history by Thomas Jefferson, Sandefur says Jefferson was not really engaged in writing history. Instead, "he was offering a historically informed legal argument about the nature of the connection between America and Great Britain—one he admitted was radical even at the time, but which was well-grounded in the facts." He continues: "Historians may quibble about details, but constitutional thinking is an exercise in crafting narratives that *normalize* history—that is, that draw the facts together within a normative framework" (pp. 237–39). Critiquing the 1619 Project near the end of the book, Sandefur speaks of "foundings" (of nations) as legal fictions that are "necessarily spoken of in metaphor, ritual, and symbolism" (p. 403).

This is a view of historical narrative that may fit uncomfortably with Sandefur's embrace of empiricism. It is not one that Sandefur explicitly embraces for his own book. Yet it fits well with many features of the book: its one-sided portrayal of historical figures, its editorial

interventions to praise or criticize various texts, and its relentless insistence on political philosophy as the driver of its events (with a specific form of libertarianism as the deserved winner).

While it is not likely to win accolades from professional historians, the book appears in a different light if we view it as an exercise in deploying historical evidence to support a normative vision, as the Declaration itself did. If the goal is to provide libertarians with their own version of America's founding rather than to engage in purely historical scholarship, the book may well succeed in its effort. While I've argued that *Proclaiming Liberty* is too reductionist in several ways, it does identify an influential strand of thought in the Revolutionary era. Despite its lack of nuance, the narrative is sufficiently tethered to reality to be persuasive to a receptive audience. Still, we should not confuse the tidiness of a legal brief with the messiness of historical events.

Daniel A. Farber

University of California, Berkeley