

The Moderate Achievement of the Declaration:  
Natural Rights at 250

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The Declaration of Independence turns 250 this year, and everyone agrees it is worth celebrating. It is. But the celebration obscures something the founders themselves would have taken for granted: the Declaration's rights language was not radical in the way we tend to imagine, as a theoretical leap, deduced from abstractions. It was instead deeply moderate: concrete, practical, and grounded in rights the colonists had already claimed for generations. Its very success has created a problem. We have taken rights forged as tools for resolving specific political conflicts and transformed them into weapons for escalating those conflicts. Edmund Burke spent his career warning about precisely this danger. Far from becoming less relevant with time, his warnings are more urgent now than they have been in a very long time.

We should of course start with the Declaration itself. Thomas Jefferson's language about self-evident truths and unalienable rights is usually read as a statement of Enlightenment philosophical principle, rationalism delivered from on high. But that reading misses what the document actually was: a legal and political instrument designed to justify a specific act of separation to a specific audience. Jefferson himself described its purpose not as the invention of new ideas but as the expression of "the common sense of the subject."<sup>1</sup> The truths it declared self-evident were truths the colonists had already been living

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<sup>1</sup> Thomas Jefferson, "Letter to Henry Lee, May 8, 1825," in *Writings*, ed. Merrill D. Peterson (Library of America, 1984), p. 1501.

out in their local institutions, their common law traditions, and their practices of self-governance for more than a century. The rights language was experience-driven. It articulated principles that had already been tested in the messy reality of colonial political life. That grounding in experience is what made it work.

The distinction between experience-driven rights and abstract rights becomes clearer when we hold James Madison and Jefferson side by side. I have written about this contrast before, and I keep returning to it because it illuminates a tension at the heart of the American project itself.<sup>2</sup> Madison, the architect of the U.S. Constitution, was deeply suspicious of abstract principle applied directly to political life. His genius lay in institutional design, in creating structures that channel human ambition and self-interest toward productive ends rather than destructive ones. In Federalist 51, he captured the moderate core of the whole liberal project: the goal of constitutionalism is to “first enable the government to control the governed; and in the next place oblige it to control itself.”<sup>3</sup> That is the language of a statesman who understood that human nature is a mixed bag, and that our capacities for both freedom and bondage require institutions that support and channel the full complexity of human life.

Jefferson was more of an idealist, and I do not mean that entirely as a compliment. His Kentucky Resolutions of 1798 argued for nullification, the claim that states could declare federal laws unconstitutional and simply refuse to enforce them.<sup>4</sup> Madison’s parallel Virginia Resolutions proposed the more cautious doctrine of interposition: states could step between the federal government and their citizens to slow things down, to create friction and space for democratic

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<sup>2</sup> See Lauren Hall, *Family and the Politics of Moderation* (Baylor University Press, 2014), chap. 3, for extended treatment of Madison’s constitutional moderation in relation to Burke.

<sup>3</sup> *The Federalist Papers*, ed. Clinton Rossiter (Signet Classics, 2003), No. 51.

<sup>4</sup> Thomas Jefferson, “Kentucky Resolutions (1798),” in *The Portable Thomas Jefferson*, ed. Merrill D. Peterson (Viking, 1975), pp. 281–89.

contestation and deliberation, without claiming the final word.<sup>5</sup> The difference matters enormously. Madison refused to draw a firm line demarcating where federal power ends and state power begins. This was not indecision. The whole point of the proposed constitutional system was ongoing contestation rather than settled answers. The power struggle is the feature, not the bug. Jefferson wanted clear principles clearly applied, principles that would, usually, prioritize individual rights above much else. Madison understood that the application of principles to real political life requires prudential judgment, the kind that resists bright-line rules.

This is where Burke becomes essential. Burke never wrote about the Declaration directly, but across his career he applied a single, consistent test to revolutionary rights-claims: Were they grounded in inherited experience or deduced from abstraction? By that test he defended the American colonists in 1775, in his speeches urging conciliation, even as he would condemn the French revolutionaries of 1790. The Declaration sits on the side he defended. And, despite many claims to the contrary, he did not deny the existence of natural rights. He was explicit on this point.<sup>6</sup> His concern was with what happens when rights are ripped from the social and emotional contexts that make them safe for practical application. Burke distinguished between what he called “the real rights of men” and the “pretended rights” of the revolutionary theorists. The pretended rights were, in one of his most penetrating formulations, “metaphysically true” but “morally and politically false.” Their “abstract perfection” was “their practical

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<sup>5</sup> James Madison, “Virginia Resolutions (1798),” in *The Writings of James Madison*, ed. Gaillard Hunt, vol. 6 (G.P. Putnam’s Sons, 1906), pp. 326–31. For Madison’s later clarification distinguishing interposition from nullification, see his 1830 letter to Edward Everett, in *Writings*, vol. 9, pp. 383–403.

<sup>6</sup> For the extended argument on Burke’s natural rights theory, see Lauren Hall, “Rights and the Heart: Emotions and Rights Claims in the Political Theory of Edmund Burke,” *Review of Politics* 73 (2011): pp. 1–23.

defect.” By claiming a right to everything, they ended up wanting everything.<sup>7</sup>

Burke’s alternative was to insist that natural rights must be filtered through what he understood as the social affections: the emotional bonds of family, community, habit, and tradition that tie individuals to particular times and places. These are not irrational sentimentality. They are the passionate intermediaries through which abstract principles can be safely transported into political life.<sup>8</sup> Burke offered a precise analogy: metaphysical rights entering common life are like rays of light piercing a dense medium. They refract. They bend. In the complicated mass of human passions and concerns, they undergo so many refractions and reflections that it becomes absurd to talk of them as if they continued in the simplicity of their original direction.<sup>9</sup> Without these intermediaries, rights become untethered from the duties and relationships that give them meaning. And here Burke makes a point critical for us today: abstract rights do not simply fail to help. They actively harden the heart. They corrupt the moral sentiments that bond members of a society together. The revolutionaries were so taken up

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<sup>7</sup> Edmund Burke, *Reflections on the Revolution in France* (Liberty Fund, 1999), pp. 150–51. The passage continues: “Government is not made in virtue of natural rights, which may and do exist in total independence of it; and exist in much greater clearness, and in a much greater degree of abstract perfection: but their abstract perfection is their practical defect.”

<sup>8</sup> Burke, *Reflections*, p. 172. Burke explicitly associates “our breasts” with “the great conservatories and magazines of our rights and privileges,” placing the emotional and sentimental bonds of community at the center of rights preservation.

<sup>9</sup> Burke, *Reflections*, pp. 152–53. The light analogy is among Burke’s most philosophically precise formulations of how political life transforms abstract principle.

with their theories about the rights of man, Burke wrote, that they had “totally forgot his nature” as an emotional as well as a rational being.<sup>10</sup>

The Declaration of Independence, at its best, avoided this trap. Its rights language was anchored in concrete grievances, rooted in actual experience of governance, and directed toward a specific political end. Jefferson appealed to necessity, noting that the colonists were “impelled” to separate, rather than to ideological enthusiasm.<sup>11</sup> In this sense, the Declaration’s natural rights were closer to Burke’s “real rights of men” than to the abstract rights of the French Revolution that Burke would later excoriate. They were rights filtered through local affection and connection, through a century of self-governance, through the common law and inherited traditions of English liberty. This is what made them moderate. This is what made them work.

Many readers encounter the first few paragraphs of the Declaration and never arrive at the specific grievances at all. In some measure, then, the Declaration’s own success planted the seeds of our current difficulty. Because the language was so powerful, so elegantly universal, it invited abstraction from the concrete context that gave it meaning. During 250 years, rights language has been progressively detached from the practical, experience-driven, compromise-oriented tradition in which it was born. Rights have migrated from tools for resolving political conflicts into partisan trump cards that foreclose deliberation. When everything is framed as a right, nothing remains to negotiate. Burke saw this coming. Madison did too. The abstract rights of the revolutionaries, as Burke observed, “admit no temperament, and

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<sup>10</sup> Burke, *Reflections*, p. 157: “This sort of people are so taken up with their theories about the rights of man, that they have totally forgot his nature. Without opening one new avenue to the understanding, they have succeeded in stopping up those that lead to the heart.”

<sup>11</sup> The Declaration of Independence (1776), para. 2.

no compromise; anything withheld from their full demand is so much of fraud and injustice.”<sup>12</sup>

The paradox of our current moment is visible here. We invoke rights language more expansively than at any point in American history, and yet our political culture has never been less capable of the compromise and deliberation the founders understood as essential to self-governance. Left and right alike have weaponized rights, turning them from shared premises for political argument into conversation-ending assertions. Burke warned that purely rationalistic rights, severed from emotional attachment to a specific community, would “temper and harden the breast.”<sup>13</sup> The inflation of rights language has done precisely this. In contrast, Burke argued, the British (and by extension the American) model required that “we give and take; we remit some rights, that we may enjoy others; and, we chuse rather to be happy citizens, than subtle disputants.”<sup>14</sup>

Madison understood this trade-off clearly. His institutional design was premised on the recognition that rights alone cannot sustain a republic. Instead, we need structures that force compromise, that create friction, and that allow ambition to counteract ambition. And we need what Burke called the social emotions, attachments to community, to place, to the people and institutions we actually know, as the connective tissue that holds a rights-bearing political order together. Jefferson’s

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<sup>12</sup> Burke, *Reflections*, p. 153.

<sup>13</sup> Burke, *Reflections*, p. 157: “The worst of these politics of revolution is this; they temper and harden the breast, in order to prepare it for the desperate strokes which are sometimes used in extreme occasions.”

<sup>14</sup> Edmund Burke, “Speech on Conciliation with the Colonies (March 22, 1775),” in *Select Works of Edmund Burke*, vol. 1 (Liberty Fund, 1999), pp. 91–92. The line belongs to Burke’s account of government as “founded on compromise and barter”: “we choose rather to be happy citizens than subtle disputants.” That Burke applied this formulation to the American crisis itself, a year before the Declaration, underscores how closely his disposition tracked the founders’.

more ideological approach tended to treat rights as self-executing principles that needed only to be declared in order to be realized. We have inherited far too much of Jefferson on this score and not nearly enough of Madison.

The best way to honor the Declaration's 250th anniversary is to recover the moderate and grounded spirit in which it was written. Rights are powerful. They are among the most important tools we have for protecting individuals against the predations of power. But they need to be filtered through local affection and connection before they are safe for practical application. They need the grounding of community, the wisdom of experience, and the humility that comes from recognizing that political life involves balancing competing goods rather than declaring absolute principles. The Declaration's real achievement was to deploy rights language in exactly this way: concretely, practically, and in the service of a specific political community's struggle for self-governance. We honor that achievement by remembering the choice the founders made. When Burke rose to urge conciliation with the colonies in 1775, he reminded Parliament that all government "is founded on compromise and barter." A year before independence, he laid out the choice the founders could make and they made it: they chose to be happy citizens rather than subtle disputants. That choice—not the abstract declaration of rights, but the decision to treat them as instruments of a shared political life—is what made the American experiment worth undertaking.