

Natural Rights and the American Founders

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The Declaration of Independence claims that people are “endowed by their creator with certain unalienable rights” and that the purpose of government is to protect those rights. One question this raises is: What conception of rights is presupposed here?¹ The Declaration notes that “among these” are life, liberty, and the pursuit of happiness, suggesting there could be others. So, what kind of rights could this mean? One distinction we need to make is between rights that (according to the Declaration) we *already have* and need a government to *protect*, and rights that we don’t have until *after* there’s a government. The Declaration is referring to rights that don’t depend on government for their existence, rights that are conceptually prior to government. So, for example, voting rights cannot be *that* sort of right. A right to vote presupposes that we have a system of government in which there’s voting. So that’s *not* conceptually prior to government. But the right to live and be free is said to be something that is already ours and that we institute government to protect. So we can distinguish (1) rights that we need to have created a system of government for them to be established, from (2) rights that already exist before any governments get created. We can refer to (2) as “natural rights.”

The argument in the Declaration has it that the purpose of creating systems of government is to protect natural rights. Minimally, the government must protect people’s rights to live, be free, and pursue happiness. This last one may seem unclear, but a little careful reasoning

¹ Another question this often raises is: What does “endowed by their creator” mean? Is it one particular deity? Is it some ecumenical conception of the divine? Is it a broad claim about “nature”? There’s some evidence that it’s the latter, but that’s orthogonal to the question I’m taking up here.

will clear up a lot of confusion. How shall we construe “pursuing happiness”? If my happiness consisted in, for example, killing other people or enslaving them, that could not plausibly be something the government must protect. It’s logically contradictory to say that Bob has a right to live *and* that Susie has a right to pursue happiness by killing or enslaving Bob. So we’re obliged to understand “pursuit of happiness” in such a way that Susie’s exercise of hers does not violate Bob’s ability to exercise his.² Natural rights, then, must be understood as non-conflicting, otherwise it would be false that we all have them by nature.

Another useful distinction is between “positive” and “negative” rights. We can define positive rights as those which logically entail a duty of others to do or provide something, a positive duty, while defining negative rights as those which logically entail a duty of others of non-interference, a negative duty. Natural rights would then have to be negative rights. We respect others’ rights to be free by not enslaving them. Positive rights would need to be established through an agreement of some kind. If you and I enter into an agreement under which you paint my house and I give you a thousand dollars, then once the house is painted you have a positive claim that I give you the money. You have a right to claim it and I have a duty to pay it. But without some agreement, you wouldn’t “naturally” be obligated to paint my house, nor I to give you a thousand dollars—either would contradict our rights to live and be free.

So the Declaration’s claim that governments exist to protect rights must be understood as a claim that governments exist to protect negative, compossible rights. Life, liberty, and the pursuit of happiness were said to be “among” the rights we possess by nature, but if that’s true, whatever other rights we possess by nature would have to be logically compatible with those. There can’t logically be a right to violate someone’s rights. Not taking this distinction seriously can lead

² This is known as the “compossibility” condition. See, e.g., Hillel Steiner, “The Structure of a Set of Compossible Rights,” *Journal of Philosophy* 74, no. 12 (1977): pp. 767–75; Billy Christmas, “A Reformulation of the Structure of a Set of Compossible Rights,” *The Philosophical Quarterly* 69, no. 275 (2019): pp. 221–34.

to massive social conflict. Most obviously, the new nation allowed some people to own slaves. This is clearly contradictory to the claim that everyone by nature has a right to live and be free. One can't logically have the right to enslave others, as this violates their rights. Laws prohibiting murder and theft are therefore consistent with the principles of the Declaration, while laws countenancing slavery are not.

But perhaps less obviously, we have myriad other laws that are inconsistent with the Declaration in just the same way. We have laws prohibiting any number of voluntary transactions. We have laws forbidding certain forms of commerce. We have laws commanding the extraction of property or the deprivation of liberty. The rationale for these is that, like my contract with the house painter, they're "really" consensual, because they are the outcome of government processes to which we consent. But this is not only false, it's *obviously* false. We get to vote on who represents us in the legislature, but this is hardly the same thing as consenting to *all the laws* that they then pass.³ This would not matter if legislators were only passing legislation that protected natural rights. The trouble arises because they have lost sight of the distinction between negative and positive rights, and hence are frequently passing legislation that (at best) helps one constituency at the expense of another, or (at worst) benefits no one but people in power. According to the argument in the Declaration, governments ought not to be engaged in this type of activity at all, but only protect people's lives and liberties. The problem is not new. It began almost the moment the new nation was born. For instance, the U.S. Constitution gives Congress a vague power to regulate interstate commerce, which is now the putative rationale for thousands of restrictions on people's natural liberty to work and trade. As soon as the elision between "protecting liberty" and "making people do things" took hold, the problem magnified. It is not only legislators who ignore the distinction; many citizens don't recognize it either, and have come to expect government to interfere with other people's

³ Robert Nozick famously deconstructs this myth in the "tale of the slave" thought experiment. See Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), pp. 290–92.

freedom for their own ends. The rights-protecting function of government is thus worn away from both directions.

We probably cannot expect to completely remake the Constitution as a thoroughly rights-protecting document, but as we celebrate the 250th anniversary of the Declaration, it's worth reminding ourselves why we even have a government in the first place, and what its proper limits are.