

## The Nature of Rights in American Politics: A Comparison of Three Revolutions

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Partly as a consequence of President Bush's democracy initiative in Iraq and the greater Middle East—the "forward strategy of freedom," as he calls it—the ideas of natural rights on which our government is based have achieved a prominence that they have not enjoyed in American politics at least since the civil rights movement. This President probably has done more to revive the language of natural rights democracy—the 18th century vernacular of American politics—than any Republican President since Abraham Lincoln.

One of the complications of this revival, of course, is that American policy in the Middle East has not gone swimmingly. It is an important question, then, whether the reverses and difficulties that America has encountered in Iraq have occurred *because* of the ideas of natural rights and democracy or somehow *in spite* of those ideas. Conservatives of all sorts, most notably and recently David Brooks in *The New York Times*, have raised the question whether or not American conservatism, particularly in the wake of the Bush Administration's enthusiasm for natural rights-based "democratization," has strayed too far from the philosophy of Edmund Burke, too far from a "temperamental" conservatism in the direction of a "creedal" conservatism.

It is worth stepping back to speculate about what it means to base democratic government on the notion of natural rights, what these rights are, and what they mean for public policy. One way to make this concrete is to compare three revolutions' theories of natural

rights: the English Glorious Revolution of 1688, the French Revolution, and the American Revolution.

While these revolutions are 17th and 18th century phenomena, they continue to shape the modern world and the meaning of democratic politics—and, not coincidentally, the horizons of conservatism. Modern conservatism was born to some degree in opposition to the French Revolution. Edmund Burke, often regarded as the first conservative, took it upon himself both to shape a public account of 1688 for domestic consumption and to turn that account into a positive doctrine to critique the French Revolution. There is also the continuing question of how conservatives should view the American Revolution.

These revolutions differ in their very characters. England's was a temperamental revolution, while the American and French Revolutions were creedal in nature, based on a belief in fundamental natural rights. While both the French and American Revolutions espoused natural rights, they actually appealed to two very different notions of natural rights. But while the French theory of rights differs fundamentally from the American, the former has increasingly taken hold on this side of the Atlantic.

To make discussion manageable, this essay will compare the revolutions by focusing on three key principal documents: the English Bill of Rights, the French Declaration of the Rights of Man, and the American Declaration of Independence.

Published by



214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

## THE ENGLISH GLORIOUS REVOLUTION

The most interesting thing about the Glorious Revolution of 1688 is that it does not call itself a revolution. The English Bill of Rights that emerged from the upheavals of 1688 places very little emphasis on natural rights. In fact, the document does not include the term “natural rights,” nor does it appeal to nature or any form of abstract right at all. Indeed, one can say that the purpose of the English Bill of Rights is to blur the distinction between natural rights and prescriptive or historical rights.

This sort of prudent confusion, which Edmund Burke would later develop into a whole account of politics, enabled the supporters of the English Bill of Rights to disguise their revolution as a succession crisis. The official story of the revolution was that James II had abdicated his throne, so Parliament filled the empty throne by asking William and Mary to occupy it. Presenting the revolution this way allowed the English to avoid rehashing the divisions of power between Parliament and the monarchy that had launched a civil war five decades earlier. This indirect strategy also permitted them to settle the religious question—unresolved in England since the Protestant Reformation—without resorting to the disputes over revealed truth which colored and embittered that civil war.

Through these means, the peculiar legitimacy of the English monarchy, which had rested since Henry VIII’s break with Rome on the King’s position as Head of the Church, was preserved and transformed in 1688 into a new regime of religious toleration. That the regime itself was based on a new argument for toleration can be seen in the complete absence of any divine-rights language in the English Bill of Rights. Gone was the formula “by the grace of God, king of England, Scotland, France, and Ireland,” etc. In its place, God was invoked to witness the new oaths of allegiance and thanked for delivering the kingdom, through the instrument of the Prince of Orange, from “popery and arbitrary power.”

The English Bill of Rights speaks not of the natural rights of man but of the “ancient rights and liberties”

of the “Lords Spiritual and Temporal and Commons.” “The true, ancient, and indubitable rights and liberties of the people of the kingdom” are to be secured by the Protestant succession and by Parliament’s own vigilance. Sealing the whole arrangement are two oaths of allegiance: one to William and Mary, the other renouncing the Pope’s influence over English affairs.

The wording of the second oath is most revealing. It is not a rejection of any dogma of the Catholic Church. It does not, for example, renounce transubstantiation, as did one of the Test Acts enacted by Parliament a decade earlier. The new oath speaks only of the Catholic Church’s “damnable doctrine” whereby excommunicated princes may be deposed or murdered by their subjects. British subjects, under this new oath, do not have to give up being Catholic, and they may continue to believe in the Eucharist, transubstantiation, or any other theoretical dogma of the faith.

Finally, the English Bill of Rights is not addressed to the world as such. It is addressed by Englishmen to Englishmen and does not make universal claims or take a stand on divine right or natural right grounds. It really constitutes the final act of the civil war that had been raging in England for much of that century.

## THE AMERICAN AND FRENCH REVOLUTIONS

Unlike the English Bill of Rights, both the French Declaration of the Rights of Man and the American Declaration of Independence are rhetorical shots meant to be heard around the world. They are universal in their appeal; their language is open and universal. But they present two very different versions of natural rights, and the revolutions they began had two very distinct outcomes.

Issued in August of 1789, the French Declaration of the Rights of Man was meant to announce and solemnize the rights of man, not to announce the independence of one people from another as the American Declaration of Independence was intended to do. As a diplomatic document as well as a domestic document, our Declaration falls both under domestic law

and under the law of nations, which is not true of its French counterpart.

The French Declaration can be distinguished from the American Declaration especially by its different treatment of natural rights, prudence, constitutionalism, and honor. The latter three play a greater role in the American document than they do in the French.

### *Natural Rights*

Like the French Declaration of the Rights of Man, the American Declaration of Independence is proudly and emphatically a document of natural right. It is premised on John's Locke's ideas of natural right, made consistent with common sense and the presuppositions of the natural law tradition. It is not radicalized either into scientific determinism or into deontological freedom—meaning freedom without direction or limit. One might say the Declaration of Independence is based on Lockean natural right interpreted through the lenses of Richard Hooker, Algernon Sidney, and the tradition of philosophical realism. It is the product of an American Enlightenment which, politically, is a moderated version of Lockean classical liberalism fused with the Scottish Enlightenment's theory of moral sense and the classical tradition of liberty.

This philosophy reflects the Scottish Enlightenment, which may be characterized intellectually as an attempt to bridge the gap between Locke's empiricism and hedonism on the one hand and his spirited and rational politics on the other. Adam Smith and David Hume, among others, despaired of Locke's confidence in reason's ability to associate ideas together into a coherent world of personal and social identity. Neither the individual's piling up of ideas nor his accumulation of property seemed likely to them to lead to a social contract. So they sought an additional prop for individual and social identity and a more reliable cause for men's sociability in the mechanism of the senses themselves.

Hence the Scottish Enlightenment's fascination with the moral sense, moral sentiments, and the power

of custom and emulation. Broadly speaking, the Scots tried to show that man was social without his social nature being rational or political in the Aristotelian sense: It was not logos but sentiment or sentiment mixed with custom that made man gregarious. To put it differently, man was less of a rationalist or calculator than Locke had depicted him as being in the *Two Treatises*, but he was also more social or less solipsistic than Locke seemed to suggest in the *Essay*.

A striking distinction of the American Enlightenment was how successfully, at least at the public level, it incorporated this moderation from the British constitutional tradition even while harmonizing nature and freedom. It would be easy to illustrate—from a variety of sources ranging from pre-revolutionary pamphlets and the *Declaration of the Causes and Necessity of Taking Up Arms* to the writings of George Washington to the post-revolutionary law lectures of James Wilson—that Americans understood the doctrine of human rights to be anchored in man's place in the nature of things, in his peculiar station between the beasts and God.

The American Declaration maintains that from man's place in the natural order arises the principle of human equality: "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights." But at the end of the Declaration, the Revolution's leaders proclaim their willingness to risk "our Lives, our Fortunes and our sacred Honor" for the cause, implying a certain inequality among men. A special set of risk-takers, the signers of the Declaration, were willing to lead the Revolution and take upon themselves the important responsibility of saying that King George III was now a tyrant.

So is man equal or unequal in the American scheme? He is both. In his fundamental rights, he is equal, but not every human being has the same talents and capacities. The very equality that exists by nature and forms the baseline of our politics also makes it possible for certain *inequalities*—like abilities for statesmanship and political leadership—to come to the fore and play their natural role in life.

The French view of natural rights, in contrast, is a Rousseauian view. In the Rousseauian model for the social contract, when individuals form a society—when unaffiliated individuals in a state of nature decide to affiliate—they give up or alienate everything to society, including their powers, possessions, and natural rights. Under the American doctrine, however, individuals never give up their nature: The natural rights of individuals are inalienable. In some sense, they are always behind one's civil rights—behind the positive rights.

Furthermore, if government becomes oppressive or tyrannical, the people have the right to alter or abolish that government—a right of revolutionary action against the government. Strangely enough, there is no right of revolution in Rousseau's republic or the French Republic. Once individuals have joined society, nothing personal remains to them. Citizens receive only what society decides to return to them on an equal basis. Individuals give up all of their natural advantages in exchange for the artificial or conventional advantages that society, through government, grants to them. As Rousseau teaches, individuals are to be subverted to the authority of the state. "If it is good to use men as they are," he wrote in his *Discours sur l'économie Politique*, "it is much better to transform them into what one intends them to be."

### *Prudence*

The very first sentence of the French Declaration of the Rights of Man proclaims that "the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments." This is a fantastic statement, amounting to the categorical rejection of the possibility that the partisans of the rights of man could make a mistake or suffer misfortune, or that the government could be corrupted by too much of a good thing.

The French Declaration further maintains that the art of government is as straightforward as seeing to it that the "the grievances of the citizens [are] based hereafter upon simple and incontestable principles."

("Simple" is not among the words the American Declaration uses to describe its principles.) A society that does not live up to these principles in their entirety, the French Declaration continues, "has no constitution" at all. The document therefore begins with a *tabula rasa*, saying nothing at all about the *ancien régime's* offenses, nothing comparable to the point-by-point indictments in the Declaration of Independence of George III for his "long train of abuses."

Indeed, prudence does *not* dictate for the French revolutionaries that (in the words of the Declaration of Independence) "Governments long established" ought to have at least some presumptions in their favor. Nor is it necessary for revolutionaries to mediate between universal principles and particular political circumstances. "Simple and incontestable principles" lead to simple and incontestable practice, so there is no need to attempt to distinguish the best possible regime from other regimes that may be tolerable but not as good.

In the American Declaration, however, there is a kind of implicit hierarchy of regimes. A fully republican government might be the very best government possible, but it is evident by appealing to prudence and other principles that not every society may be ready immediately for such a government. There is much more room for deliberation in the American Declaration than in the French Declaration about what form of government is best suited to a particular set of circumstances and to a particular people.

### *Constitutionalism*

Under the French Declaration, government derives its authority from the "general will"—a term lifted directly from Rousseau's work. But if "law is the expression of the general will," the distinction between constitutional law and statutory law—implicit in the American Declaration and fundamental to our idea of constitutionalism—cannot be sustained, because the basis of all law is will. The American Founders, as opposed to the French Revolutionaries, maintained that the fundamental law—the Constitution—is an

expression of public *reason*, not general will. It is a product of “reflection and choice” as Alexander Hamilton wrote in *Federalist* No. 1. The public reason is set over and above public passion to govern and limit public passion, as James Madison argued in *Federalist* No. 49.

The French Declaration further says that “all sovereignty resides essentially in the nation,” which contrasts starkly with the American Declaration’s careful statement that governments “derive their just powers from the consent of the governed.” Given the absolute sovereignty of the nation in the French model, it follows that “no body nor individual may exercise any authority which does not proceed directly from the nation.”

The French document further fails to describe or even imply how one goes from being a man to being a citizen. Instead, it argues that “men are born and remain free and equal in rights.” Unlike in the American Declaration, there is no social compact in the French Declaration whereby consenting individuals form a people. There is no joining or leaving the nation, a pre-political group based on common ancestry, language, religion, and culture. Men are never given a chance, in other words, not to be a part of the nation.

The two revolutions also advanced different theories about the end or purpose of government. The French Declaration states that “the aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.” In the American Declaration, however, the ends of every form of government are said to be not only security in rights, but also security in “safety and happiness.” There is no happiness in the French Declaration—even the “pursuit of Happiness”—just as there was not much happiness in the French Revolution itself.

Safety and happiness are traditionally the alpha and omega of political life. Aristotle outlined this idea in the first book of his *Politics*, and it has been a central idea of political philosophy. Safety is a fundamental object that must be secured before anything else. But

the purpose of politics is not just safety. It is also to bring about happiness in the broad, moral sense of the term. The French Declaration, though, does not really identify these or other ends. There is nothing driving us forward in the French model, no higher goal in politics, so there is no need for a constitutional form to shape us or to help us pursue the goals of human life.

### *Honor*

For all its radicalism, the French Declaration of the Rights of Man is utterly staid and gray compared to the American Declaration of Independence. That is because of its complete depreciation of the notion of honor.

Because there is always the “general will,” the French Declaration has no need for honor, much less “sacred honor.” Although it is written “in the presence and under the auspices of the Supreme Being,” its French authors never appeal to Him as the signers of the American Declaration “appeal[] to the Supreme Judge of the world for the rectitude of our intentions.”

The rectitude of the French revolutionaries’ intentions is apparently guaranteed by their own sense of righteousness, by their subscription to the right theories. They do not have to subscribe to the French Declaration itself, though, and indeed they do not: The French Declaration is not signed. There are no “Founding Fathers” of the French Republic to take upon themselves the responsibility, the risk, and the honor of signing the document on behalf of the “good people” of France. It is a proclamation of the National Assembly, not of honorable men paying a decent respect to the opinions of mankind and responsibly pursuing the people’s safety and happiness.

The signers of the American Declaration, in contrast, appeal to the “good people of these colonies” and at the end of the document pledge to one another “our lives, our fortunes and our sacred honor.” It is a pledge of the signers to one another, not to the people. It is a vow that the signers are going to “hang together,” as Benjamin Franklin quipped.

Furthermore, unlike the American Declaration, which refers to “we” (the authors) throughout, the



French Declaration is written entirely in the third person. It draws an authoritative contrast between the law and man, between the general will and the particular will. For example, it states, “No man may be accused, arrested, or detained except in the cases determined by law, and according to the forms prescribed thereby. Whoever solicit, expedite, or execute arbitrary orders, or have them executed, must be punished.” The French document continues: “but every citizen summoned or apprehended in pursuance of the law must obey immediately; he renders himself culpable by resistance.” In other words, citizens have a duty to obey immediately, and they can never be trusted to be responsible with liberty without being immediately reminded that they possess it on pain of the general will or public sufferance.

The French Declaration also states that French citizens are members of the social body and that every social distinction must be based upon “general usefulness.” This is the real meaning of the term “nation”: that everyone becomes part of what the French Declaration calls “the social body” and that all self-government or human distinctiveness becomes questionable. Therefore, the limitations of freedom must be constantly emphasized to the citizens.

The American Founders presumed that we are capable of self-government, however. The American Bill of Rights, enacted 15 years after the Declaration of Independence, does not come attached with a bill of corresponding duties to remind us to live up to these rights or to enforce these rights. This does not mean that the American Founders were wildly libertarian, that they thought that every man could judge the law in some anarchical way. Rather, they trusted Americans to govern themselves through their traditional legal channels and the existing political system.

### THE FOUNDERS’ CRITIQUE OF THE FRENCH REVOLUTION

The American Founders were highly suspicious of the French Revolution. Statesmen like Alexander Hamilton and John Adams saw the political fallacies

inherent in the French notion of rights and the constitutional architectures that arose from the French theory. They correctly predicted that the French Revolution could not be moderate. For these statesmen, it was on a foreordained path to immoderation.

Hamilton was wary both of the French Revolution’s anti-clericalism and of its radicalism, which sought to solve all human problems by reducing them to matters of “simple and incontestable principles.” Like Edmund Burke, he thought that this armed atheist ideology was something new and horrible in the world.

This concern is reflected in 1790s American politics, when the insult of “atheist” was probably hurled more than in any other decade of our political life. When the Federalists accused Thomas Jefferson of being an atheist and the Jeffersonian Party of being dominated by atheists, they were claiming, essentially, that the Jeffersonians were moving in the French direction and becoming too much like the Jacobins—the violent faction that executed tens thousands during the Terror, all in the name of French Revolutionary principles.

John Adams, while agreeing with Jefferson on the principle that the French ought to have a “free Republican Government,” firmly opposed the imprudence of the French Revolution. In correspondence with Jefferson, Adams denounced the Revolution not for being too rational, as Burke and most modern conservatives do, but for being too *irrational*. He argued that its leading lights—Voltaire, Diderot, Rousseau, and so forth—“were all totally destitute” of “Common Sense.” He attacked their philosophy as “pure unadulterated Atheism” in which “Spirit was a Word Without a Meaning. Liberty was a Word Without a Meaning. There was no Liberty in the Universe; Liberty was a Word void of Sense. Every thought Word Passion Sentiment Feeling, all Motion and Action was necessary. All Beings and Attributes were of eternal Necessity; Conscience, Morality were all nothing but Fate.”

“This was their Creed,” Adams concluded sardonically, “and this was to perfect human Nature and convert the Earth into a Paradise of Pleasure.”

Adams also recognized the dangers of the French concept of sovereignty. He saw that tyranny and oppression likely follow once it is claimed that all sovereignty resides in the nation and that politics merely consists of applying that sovereignty in some simple and direct way to any problem that comes along.

Turgot and other French *philosophes* argued that republicanism's inherent virtue required only a powerful unicameral legislature, where this virtue would be displayed, and a very weak executive. Adams wrote a treatise, totaling more than 1,000 pages, defending our state constitutions and their bicameral systems against the *philosophes'* criticism. He explained that if a constitution concentrates all political power in one body, in one set of hands, the government that it produces will surely become despotic. Liberty, he continued, is secured through checking power—and the way to do this in the legislature is through bicameralism, where an upper house and a lower house divide the legislature's power, check its unconstitutional ambitions, and make it more deliberative.

#### **AMERICA'S WELFARE STATE: MORE AMENABLE TO FRENCH THAN AMERICAN THEORY OF RIGHTS**

The contemporary understanding of the welfare state and "entitlement rights" has more in common with the notions of rights and alienation of rights promulgated by the French Declaration of the Rights of Man than with the Declaration of Independence. Initially developed in the Progressive Era in the late 19th and early 20th centuries, the concept of the welfare state can be traced back to Rousseau's version of the social contract.

Elaborated quite candidly by President Franklin Roosevelt in some of his major addresses, this understanding claims that the people give government power and that government gives the people rights in exchange. The entitlement theory is entirely a positive-law theory of rights: Rights are created by the government—they are the gift of the government to society at large—so they are hardly natural

rights. Twentieth century Progressives and liberals abandoned the language of natural rights not because they forgot these concepts but because they believed that the most important rights of citizens are not individual rights granted by nature but collective rights granted by society. The only question of justice, therefore, is how government should distribute these rights: whether equally or unequally, to which groups, and under what circumstances.

In the Declaration of Independence, however, government is always limited government. It is limited because its purpose is to secure the things that individuals already possess, the things that nature and nature's God have already given them. These are the natural gifts: "Life, Liberty and the pursuit of Happiness"; property in our own bodies; the ability to acquire more property by the use of our faculties; and so forth. Nature has given us these gifts because of the kind of beings that we are: rational beings who possess rights and duties and, therefore, a certain moral dignity.

A right to health care, a right to a job, a right to an education, a right to unemployment insurance—these things are not gifts of nature. They cannot be natural rights. They are highly artificial, highly conventional rights. They are the products of a certain kind of society and are possible only in a technologically advanced culture.

In a way, 20th century liberals understood this. Even as they campaigned to increase the number of rights and to expand the categories of rights, they were very careful not to argue that these rights stemmed from or could be compared to the natural rights in the tradition of the American Founding. They recognized that natural rights point to a very limited government, while the new rights point to a constantly expanding and enlarging government.

The new doctrine of rights derived from Rousseau and the French Revolutionary experience establishes a perverse and vicious circle. Because these rights are creatures of government, the theory goes, the people need not worry about big government and need not be jealous that government is going to take away their

rights or infringe on their rights as George III had done. The people need not fear government, so they need not try to limit it. The people can let it expand and let it do more for them because the more power individuals give to government, the more rights it returns to them. Of course, in trying to do more for the people, government may end up doing more to the people.

The 20th century growth of American government is justified very much along these lines. Political tyranny came to be no longer regarded as a danger. In fact, Franklin Roosevelt said this explicitly in some of his speeches. According to Roosevelt, political tyranny was defeated in 1776; instead, our problem today is economic tyranny imposed by big business, the Republican Party, and the fat cats ruling behind the parapets of property. They are ruling not out in the open and democratically but surreptitiously and conspiratorially in the dark, ruling for their own benefit and trying to impress a new serfdom on the average American. According to Roosevelt, the only way to relieve this economic oppression is through the growth of government, which alone can conquer big business and big labor. This is the 1930s formula, which in many ways persists today, albeit in updated form.

Liberals have shifted their arguments and methods somewhat over the years in order to protect their gains from a conservative resurgence and prepare the way for future gains. To protect their notions of evolved rights, they turned to the Progressive theory of a "Living Constitution." First promulgated on the national stage by Woodrow Wilson, this theory holds that all branches of government must be freed from the "straightjacket" of the Constitution, that our institutions should evolve in pace with social evolution, that politics should anticipate the course of social evolutions in order to direct society and make it more equitable.

In the first six decades of the 20th century, the presidency took the lead in this regard, in many instanc-

es opposed by a conservative judicial branch. But as electoral support for liberalism withered away, the left looked to advance its aims through the judiciary, where they had gained control as a result of liberal judicial appointees.

Now that the courts have tacked right, liberals are looking to other branches of government and may leave the judiciary on the back burner for a while. The left now defends upholding important precedents rather than gaining new ground through court rulings. By shifting their institutional strategy, liberals may be able to consolidate their gains in the 21st century.

## CONCLUSION

Conservatives have often expressed suspicion that natural rights philosophy necessarily leads to something like the French Revolution, but these fears are misplaced. Not all creedal revolutions are created equal; it is the precise nature of their principles that really matters.

Conservatives should not be wary of adherence to the natural rights creed of the American Founders, moderated as it was by the temperamental virtues of the Scottish Enlightenment. Instead, they should be on their guard against the Rousseauian creed that, under the guise of liberalism and Progressivism, has slowly supplanted the natural rights theory on which our nation is grounded.

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*This essay was published September 30, 2008.*