

## The Forgotten Principles of American Government

by Daniel Bonevac

The United States is the only country founded, not on the basis of ethnic identity, territory, or monarchy, but on the basis of a philosophy – a philosophy of representative, democratic, limited government. That philosophy, moreover, is spelled out explicitly in the Declaration of Independence, the Constitution, and earlier works they echo, such as Locke's *Two Treatises of Government* (a "little book on government" that is "perfect as far as it goes," in Thomas Jefferson's words). Those documents reveal the ideas on which the Founders built this nation. They also reveal how far we have strayed from those ideas.

The Declaration of Independence lays out the political philosophy of a new nation in the words,

"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."

The best way to understand this philosophy is to examine its phrases one by one.

*"We hold these truths to be self-evident. . . ."*

Philosophers normally treat questions of knowledge and rational belief in terms of evidence and warrant. A belief is rational if the believer has evidence that warrants the belief. Plato first recognized that this conception could lead to an infinite regress: belief A is warranted by belief B, which in turn is warranted by belief C, and so on. The solution, he saw, is that some beliefs must be self-evident -- they must be warranted all by themselves, without any further appeal. This, Jefferson maintains, is the status of the rights to life, liberty, and the pursuit of happiness. That people have these rights requires no argument and has no justification outside itself.

This has three important implications. The first is that these rights are *unconditional*. Because they do not depend on any further justification, they are not constrained by any other considerations.

To see the importance of this, contrast Jefferson's view with that of John Stuart Mill, who holds a view of liberty and rights very close to Jefferson's, but who bases his argument not on questions of abstract right but on utility. Mill, that is, justifies rights by arguing that, if such rights are respected, people will be happier than if they are not respected. Mill bases rights on considerations of happiness to give them a foundation they would otherwise lack. There is a point to this, as I shall explain below. But the result is that rights become conditional on their effects on happiness. If respecting the right to liberty in a particular case would not promote happiness, Mill's scheme implies, that right should not be respected. Whether respect for a right ought to be respected in any particular case thus becomes a complex empirical question: Does respect for the right in that case promote the overall happiness of the community? The great advantage of Jefferson's approach is precisely to avoid entangling questions of rights with such empirical issues. According to the Declaration, rights to life, liberty, and the pursuit of

happiness must be respected, period.

The second implication is that the rights to life, liberty, and the pursuit of happiness are *natural* rights. Thomas Hobbes and John Locke earlier distinguished natural from conventional rights. Natural rights are independent of government; they inhere in us as human beings. They are for that reason unalienable. Conventional rights arise from agreements. Locke maintained that people have natural rights, including rights to life, health, liberty, and property. Those rights do not depend on government or any other person's acquiescence. They are intrinsic to being human.

Again, to see the importance of this, it is useful to contrast Jefferson's position with an alternative. Jean-Jacques Rousseau held that all rights are conventional. Even rights to life, liberty, and the pursuit of happiness, according to Rousseau, arise from agreements between agents in the social contract, the agreement in which people create government. These rights therefore depend on the will of government. What government grants, Rousseau insists, government can take away. Rights, then, cannot restrain the authority of government. For Locke and Jefferson, however, rights are prior to and limit the authority of government. As we shall see, the only legitimate purpose of government on their conception is to protect natural rights.

*“ . . . that all men are created equal. . . . ”*

The third implication is that the rights to life, liberty, and the pursuit of happiness are *universal*. Everyone has these rights, no matter what form of government has power over them and no matter what their circumstances. Everyone has them to the same degree. In this sense, all are equal. No one has special rights by virtue of class, ethnic origin, wealth, or even intelligence or virtue. This is not to say that people do not differ in all these respects. Jefferson was aware that they do. But those differences are irrelevant from the perspective of rights.

It is important to distinguish this conception of equality from the twentieth-century conception concerned with material well-being. Jefferson does not mean that everyone is or should be equal in material respects. In the words of Edmund Burke, “All men have equal rights, but not to equal things.” There is no right to equality in material goods or in happiness. There is, however an equal right to seek happiness. Everyone should be free to pursue happiness, but no one is guaranteed its capture.

*“ . . . that they are endowed by their Creator with certain unalienable Rights. . . . ”*

That rights to life, liberty, and the pursuit of happiness are unalienable follows from the self-evidence of the proposition that people have these rights, as we have seen. These rights are inherent to being human. But one can still ask why. What about being human gives us such rights? Jefferson, like Locke, gives a religious answer. We are endowed by God with these rights. We have these rights as beings created in the image of God.

That answer can make some with modern sensibilities uneasy. It can even seem to threaten the wall between church and state that Jefferson insisted upon on other occasions. But secular answers to the question all encounter the difficulties of Mill's answer. If we have rights because respect for them tends to promote happiness, then whether a right ought to be respected in a given case depends on whether respect for the right in that case promotes happiness, a difficult empirical issue. Similarly, if we have rights as rational, moral agents capable of autonomy -- a popular contemporary

view – then whether a right ought to be respected or recognized in a given case depends on whether the action in question is a rational exercise of autonomy. This is a difficult question on which reasonable people can differ, on life, liberty, or especially the pursuit of happiness.

*“ . . . that among these are Life, Liberty, and the pursuit of Happiness.”*

If there are natural rights -- rights that people possess intrinsically, simply by being human -- what are they? Locke's list, consisting of life, health, liberty, and property, is echoed in the Declaration and in the fourteenth amendment's guarantee that no state shall "deprive any person of life, liberty, or property, without due process of law." There are, however, subtle differences between these lists. The omission of health is evidently not significant; Jefferson and the framers of the fourteenth amendment did not mean to suggest that, although killing someone violates their rights, injuring them short of death does not. Threats to health might be taken as threats to life or liberty. Similarly, a threat to property is a threat to liberty; the loss of property deprives the owner not only of the property itself but of the freedom to do something with it.

The important difference between Jefferson's list and Locke's is Jefferson's inclusion of the pursuit of happiness. Locke links the rights to life, health, liberty, and property to self-preservation. Everyone, Locke maintains, has the right to act to preserve his or her own survival. That entails the rights he enumerates. But a right to pursue survival does not entail a right to pursue happiness. Jefferson's list thus expands Locke's conception of natural rights. Why?

Recall Mill's uneasiness with allowing rights to be fundamental. If rights are self-evident, Mill thought, there could be no principled way of resolving disagreements about what rights people have. Happiness, he thought, would provide such a way. In the face of disagreement, we can ask people to calculate the effects on happiness -- not just for one person, but for everyone in the community. As we have seen, that involves questions of rights in complicated empirical issues. But the strength of Mill's view comes from the self-evidence of happiness. Aristotle first maintained that there is one thing that people seek for its own sake, and never for the sake of something else, and that is happiness. Happiness, in other words, is the one thing that is intrinsically and self-evidently good. Mill thus seizes on happiness, not simply as a procedure for resolving disagreements, but as a firm and truly self-evident foundation for moral and political reasoning.

Jefferson takes the rights he lists as self-evident. But one way of taking his appeal to the right to the pursuit of happiness is that he takes happiness to play the role of self-preservation in Locke's theory. That is, we have rights to life, liberty, and the pursuit of happiness because happiness is the one intrinsic good, and people have a right to seek it. Just as, for Locke, people have rights to life, health, liberty, and property because they have a right of self-preservation, so, for Jefferson, people have rights to life, liberty and the pursuit of happiness because they have the right to pursue what is intrinsically good -- namely, happiness. The right to pursue happiness subsumes the rights to life and liberty.

On this interpretation, Jefferson's approach to rights has the advantages of the theories of both Locke and Mill while avoiding their problems. The rights enumerated as fundamental are not arbitrary, but based on happiness, recognized by philosophers

since Aristotle as an intrinsic good needing no further justification. Yet the rights are unconditional, requiring no large-scale empirical investigation or philosophical inquiry.

*“That to secure these rights, Governments are instituted among Men. . . .”*

The philosophy on which the United States was founded is a philosophy of government as well as a philosophy of rights. Governments, Jefferson writes, are (1) “instituted among Men” (2) “to secure these rights.” Both phrases express crucial aspects of Jefferson’s view.

(1) The rights to life, liberty, and the pursuit of happiness, as we have seen, are natural; they do not depend on any kind of human agreement. Government, however, is a product of human agreement in what Hobbes, Locke, and Rousseau term the social contract. Unlike a natural right, government is conventional. It is created by people for a purpose. It rests for its legitimacy on their initial and continued agreement. One implication that Jefferson was eager to draw is that the people have the right to revoke their agreement in revolution.

(2) But the key implication is that government authority is limited. People create governments to protect their natural rights. That is, they agree to submit to a government, surrendering certain rights in particular – rights to protect and enforce their rights themselves, “to execute the law of nature,” in Locke’s phrase – in exchange for the protection of the rest. The sole legitimate function of government, therefore, is the protection of rights.

Protecting the rights to life and liberty entails protecting citizens from harm at the hands of others: creating and enforcing the civil and criminal law as well as defending the nation through diplomacy and military force. The former protects citizens from threats within the country; the latter protects them from external threats.

Protecting the right to pursue happiness entails more. How much more is a matter of debate. But the Founders’ intention seems to have been minimal. To protect the pursuit of happiness, on their view, seems to have been not only to protect the citizens from harm from others but to provide a framework within which people could pursue their own ends. It is not to guarantee people that they will reach those ends, or even to push them part way down the path toward them, but to create and tend the path. Thus, the government may legitimately create a common currency and common standards of weights and measures; build roads; keep records of land titles; provide funds for education; and erect other institutions that make economic and other interactions among citizens possible.

What the government may not do is redistribute wealth from one citizen to another for the sake of redistribution itself. There is no guarantee of happiness or even equal opportunity to happiness; there is only the guarantee of the right to pursue it. Consequently, the government may do nothing beyond establishing the general institutional structures within which people may make their own agreements and act to achieve their own ends. Anything more violates the right of someone else to pursue happiness. Thus, vast areas of government in the United States today are illegitimate by the Founders’ lights, including virtually the entire business of the Departments of Agriculture, Commerce, Education, Energy, Interior, Labor, Health and Human Services, and Housing and Urban Development, and easily more than half the federal budget.

“ . . . deriving their just powers from the consent of the governed.”

Because the legitimacy of government depends on the agreement of its subjects, its authority rests solely on their consent. This implies democracy, for only democratic forms of government take account of their subjects' consent. But democracy itself is not sufficient. The citizenry may consent to the violation of some or even all citizens' rights. Moreover, given governmental power, people may act unwisely, even dangerously. The Founders were suspicious of “public man” – that is, people acting as public officials, for at least three reasons.

First, government officials do not have enough knowledge to regulate private affairs wisely. Human interactions and motivations are immensely complicated and varied; no one can know enough to substitute his or her own judgment for those of individual citizens or groups of citizens.

Second, government officials, even if wise and caring, do not care as much about the well-being of a citizen and his or her family and associates as that citizen does. Each of us has a strong incentive to act in the best interests of ourselves and those we care about. The same is not true of government officials, who often have other competing incentives. Government officials frequently have incentives to expand their own power and expand their own budgets, whether or not they accomplish anything that serves a legitimate function of government.

These two considerations are important motivations for federalism. Government officials cannot know or care as much about the well-being of individual citizens as those citizens themselves. But, the more they know and care, the better. And, the closer the government is to the people, the more government officials are likely to know and care. Hence, all other things being equal, local government is better than state government, which is better than national government. Each level of government should have only those tasks that are legitimate functions of government and cannot be performed at lower levels. The lowest level should do only what is legitimate and cannot be done by the people themselves without serious risk of harm.

The point is worth stressing: Jefferson's limits on government apply to all levels of government. The sole purpose of government is the protection of rights to life, liberty, and the pursuit of happiness. That means that government – federal, state, or local – may act only to protect citizens from being harmed by others and to construct a framework within which they may pursue happiness. State and local governments may not exceed these bounds any more than the federal government may. Moreover, within the limited sphere of legitimate functions of government, the more local the action of government, the better.

Third, government is subject to factions who try to use government power to promote their own interests. James Madison in the *Federalist Papers* argues for the Constitution as a scheme to moderate democracy precisely to minimize the power of factions to distort the functioning of government for their own ends. The Founders designed the representative republic established by the Constitution, with its division of powers among various branches of government and its institutional checks and balances, to control factions and keep them from turning government from a protector of rights to a conveyor of advantage. They saw that a government dominated by factions

would not only violate the natural rights of its citizens but allow some to enhance their own well-being at the expense of the whole.

The consent of the governed, Locke observes, has a very important consequence: the legislature may not delegate its law-making authority. To do so insulates that authority from the consent of the citizenry. The entire federal regulatory apparatus – the Environmental Protection Agency, the Food and Drug Administration, the Federal Communication Commission, and so on – can legitimately have enforcement power but not the rule-making functions that now form their primary activity.

In summary, the philosophy underlying the creation of the United States includes the following principles:

1. People have natural rights to life, liberty, property, and the pursuit of happiness – rights that are antecedent to government and do not depend on any kind of social agreement, empirical investigation, or philosophical inquiry.
2. People devise governments to protect their rights.
3. Governments act legitimately only when they protect rights to life, liberty, property, and the pursuit of happiness by (a) protecting citizens from harm from others or (b) creating institutional frameworks within which people may pursue happiness.
4. Government should be democratic, acting only with the consent of the governed.
5. Each level of government should do only what is legitimate and cannot be done at lower levels of government. The lowest level should do only what cannot be done by the people without serious risk of harm.
6. Institutional constraints are required to prevent government from allowing factions to profit at the expense of the whole.
7. Regulations may be imposed only by vote of a representative legislature. Rule-making powers may not be delegated.

We have strayed far from this philosophy. Returning to the principles of the American Revolution would indeed be revolutionary. Much of the federal government today is, by this standard, illegitimate. State and local governments usually go beyond their proper bounds as well. Even within the range of proper activities of government, many federal activities could be performed better at state and local levels.

The problem with this is not only philosophical. Nor is it only a matter of wasting time and money, though this is serious enough. When government far overreaches its proper bounds, it violates the trust on which government rests. It tramples rights it should preserve. It corrupts the character of citizens who look to government to hand out happiness when they should look to themselves, and to their friends and families, to pursue it. Worst of all, perhaps, it threatens to weaken the character of a country founded on the individual pursuit of happiness, with the initiative, ambition, and risk-taking that implies, by sapping both the means and desire of people to seek what is good.