

Liberty in America's Founding Moment

*Doubts About Natural Rights in Jefferson's
Declaration of Independence*

Howard I. Schwartz, Ph.D.

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Preface and Acknowledgments

Earlier in my life I had no interest in either Thomas Jefferson or the Declaration of Independence. Who cared about early American history anyway? But a change in American political discourse combined with a series of events in my life, and I found myself drawn irresistibly back to the Declaration and its author, Thomas Jefferson, to understand more about the vision with which America was founded.

This was perhaps a natural transition in some sense for a historian of religion and religious studies scholar who spent a good part of his academic life studying religion. After all, the Declaration was the “American Scripture,” as Pauline Maier had so aptly called it. And I had already spent a good part of my adult life as an academic studying Judeo-Christian scriptures and their histories of interpretation. It was thus in some sense natural for me to turn to those texts that held mythic significance for Americans and to adopt some of the same skeptical and analytic techniques I had learned in the study of religion.

Yet what drew my attention to these early American texts was a growing awareness of and uneasiness with a new kind of political language that increasingly stressed the importance of individual rights to the exclusion of other values in America. Moreover, the increasingly emphatic language about government infringing individual rights often looked back to and justified itself in terms of the founding documents of early American history. The Declaration of Independence often figured prominently in the stories that Americans were telling about their sacred rights and why those rights must never be infringed. In that story, individuals had rights that transcended government. And the Declaration was often the key

document that proved that America had been founded with the vision of protecting our individual rights.

I turned back to the Declaration and Thomas Jefferson to find out if this story was true. Was it the case that America was founded with a vision of individual rights that transcended and always trumped other values, such as community, public good, and responsibility? Did the founders have a fully worked out theory of individual rights? Were individual rights the focus of what they meant by liberty? As I read the literature leading up to the Revolution and delved more into Jefferson's own life and thought, I discovered, as I had suspected, that the answer was more complex. There was no simple and straightforward notion of rights on which the founders agreed. Jefferson, like other writers in the founding period, had read John Locke and was familiar with Locke's theory of natural rights. Most interpreters of Jefferson assumed he was espousing a theory of natural rights and perhaps even relying on John Locke in writing the Declaration of Independence. On that basis, the assumption is often made that America was founded with a vision of natural rights that reaches back to and can be understood in terms of John Locke's *Second Treatise on Government*. But as I discovered, the founders, including Jefferson, had doubts about Locke's notion that government was founded in social contract and had been influenced by other streams of thought that made Locke's ideas about natural rights problematic. These doubts about natural rights led the founders to disagree on which theory of rights actually justified the American Revolution and the War of Independence. These doubts and disagreements, however, are often missing in the histories and stories that are normally told about Jefferson and the Declaration.

As I came to understand these fissures and doubts in the thought leading up to the Revolution and the Declaration, I came to see that there was no single American mind on the matter of rights or at least the foundation of those rights. There were in fact significant disagreements among the pre-independence writers. Indeed, the Declaration's author, Thomas Jefferson, had a theory of rights that had been rejected by most of his colleagues. With this realization, a new way of understanding the Declaration emerged. Instead of seeing the Declaration as a document

that unambiguously embraced a theory of natural rights and summarized the American Mind, one can read it as a document that tried to obfuscate and gloss over fundamental disagreements about rights among those who were declaring independence.

In telling this story in the pages that follow, the purpose is ultimately larger than just a reinterpretation of the Declaration, although that is important, too. As a scholar with a background in the history of religion, I have been continually impressed with how history and historical interpretation are often called upon to justify contemporary philosophies and ideologies. In this case, the classic understanding of the Declaration plays a key role in the attempt to justify an obsession with individual rights. But history cannot bear the weight that is too often placed on it. History is itself an interpretive enterprise in which facts are always only partial and interpretation of evidence shapes our understanding of the past. This becomes clear through the interpretation of the Declaration and Jefferson's early writings. We see how difficult it is to really say either what Jefferson himself finally thought or what the Declaration itself was supposed to mean. In this way, the very project of uncovering "the" founders' view of rights is called into question.

In the end, this book is intended to be more than a contribution to the Declaration's understanding and to the early thinking of Jefferson. It is also envisaged as a conversation between history and political philosophy. In this sense, the book is not strictly history though it makes its argument through careful historical analysis and argument. It is also an argument about how little we can rely on the past in making decisions about what values should guide us in the present.

As a scholar trained in the history of religion and religious studies, my methodology and style will be somewhat unfamiliar to many traditional historians. Historians on the whole tend to quote a sentence here and there from a primary source in order to paint a larger picture of a period. Those scholars in the academic discipline of religious studies like me are trained to read texts carefully and pay attention to small variations in language as indications of shifts in thought and larger cultural themes. I was trained to read texts this way as part of my own academic background

in religious studies. My conclusions are drawn from such careful textual readings of primary sources that have been often overlooked by a more traditional historical method. Furthermore, traditional American historians do not always delve very deeply into the philosophical sources that the American founders were reading and quoting. They miss some of the nuances of the founders' thinking because they do not always look at the context of those sources that the founders were quoting. I dive deeper than most traditional historians in looking at the ways in which the founding documents quote and use their philosophical sources.

Numerous people supported me and contributed to my thinking during the journey that produced this book. My grown daughter Penina has over the last few years become one of my best interlocutors. I am continually amazed and gratified that she thinks so deeply about many of the same issues that also preoccupy me. Maggie deserves much more than the credit she receives here for putting up with me and supporting me during the years of moodiness that always accompanies creative activity. She gave much more than she received in return. Good friends encouraged me to keep at my intellectual pursuits despite my full-time work in the software industry, which keeps paying the bills. Scott, Ray, and Rick, in particular—thanks for accepting me for who I am.

Introduction

On Natural Rights, History, and the American Founding

It is commonly assumed that Americans as individuals have a set of “God-given” or “natural rights” which are declared in the Declaration of Independence and ultimately embodied in and protected by the Constitution of the United States. It makes sense to call this the founding myth of the United States. It is the story of how the American colonies came to throw off the rule of Great Britain and begin the process of becoming independent and free “united states.” It is the story too that Americans tell when defending and arguing over their rights and when protecting themselves against what is viewed as the inappropriate encroachment by government. This founding story, in other words, articulates a political philosophy that justifies the rights and protections that Americans cherish so highly.

But what if part of this story is incorrect or misleading? What if the Declaration of Independence is much more ambivalent about natural rights than has been commonly thought? And what if the Declaration's author, Thomas Jefferson, held an alternative theory of rights that was rejected by the majority of his colleagues? Would these facts matter?

Posed here are two different types of intersecting questions, and both are at the heart of my inquiry. The first group of questions is historical in character and concerns the political ideas held by the leadership in the American colonies in the decade leading up to the Revolution and embodied in the Declaration. This group of questions can be approached