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Natural Rights, Culture, and the Common Good

ROBERT P. GEORGE

During the first presidential administration of Donald Trump, Secretary of State Mike Pompeo asked me to assist in the creation of a commission to reevaluate the concept of human rights as it functions in United States foreign and diplomatic policy. The promotion of human rights abroad—and the deployment of the United States’ soft and hard power in behalf of human rights—has sat at the center of State Department policy for much of the post–World War II era. Our task, to quote the commission’s notice of establishment in the *Federal Register*, was twofold: to identify where the department’s human rights discourse had “departed from our nation’s founding principles of natural law and natural rights” and to propose reforms to recover the historic understanding of human rights.¹

Given the ideological sympathies of many State Department career employees, I was not surprised when news of the commission’s creation was leaked to the hostile press. Critics on the left attacked the very idea of the commission, mostly by repeating the same cynical (and tired, having been refuted many times) notion that a robust and reason-based account of human rights grounded in timeless principles of natural law was nothing more than a pretext for smuggling sectarian, irrational, and blindly dogmatic religious doctrines into American public policy. In *The New Republic*, for example, Alexis Papazoglou wrote that political arguments based on natural law theory are rooted in “theological” sources that “tend to obscure the political agendas of those invoking them,” while the LGBTQ magazine *Advocate* published an article titled “Is State Department’s ‘Natural Law’ Effort Code for Homophobia?”²

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But in his quest to dismiss natural law theory and a natural law account of human rights as medieval religious dogma that should not be taken seriously in the 21st century, Papazoglou made the important observation that

the wording in the State Department's announcement of this new Commission on Unalienable Rights implies the premise that international human rights have expanded over the years to include rights that would not be recognized under the tradition of natural law and of natural rights embodied in the U.S.'s eighteenth-century founding documents.³

Exactly. That overreach—the detachment of human rights from any rigorous philosophical substance or comprehensive vision of human goods and human flourishing, with the accompanying marginalization of the understanding of human rights that the founders endorsed in, above all, the Declaration of Independence—was precisely what the State Department commission was intended to identify and rectify. Its mission was to correct the ideologically motivated redefinition of human rights—or, to use the traditional term that invokes the concept's philosophical origins, natural rights—that viewed rights as rooted in nothing more than ill-defined and highly abstract notions of autonomy, self-determination, self-authorship, and the ability to fulfill one's desires (whether those desires are rational and morally defensible or not).

Rights, according to this view, are not derived from any substantive conception of human goods and human flourishing—even for those who claim to eschew moral relativism, one can have the “human right” to do something morally wrong precisely as one has the right to do something virtuous or morally upright. Rights are simply the person's entitlement to freely pursue desires, feelings, and passions, without any requirements or responsibilities (whether legally enforceable or not) beyond the duty to avoid violating the rights of others. One's right to freedom from coercion in matters of religion, for example, is not a correlative of a moral

obligation to pursue the truth about the most important existential and transcendental questions and act in accord with one's best judgments of the truth; instead, the right to religious freedom is rooted in a person's claim to believe what they want, so long as they don't impose their beliefs on others.

In this framework, the freedom—the right—is treated as something substantively good and morally desirable for its own sake, whose only limits appear when one's desires clash with others' ability to exercise their autonomy to pursue and fulfill their own desires. (Consider, for example, the revisionist view of sexual morality that the only legitimate moral metric to evaluate a sexual act is whether both or all parties consent to it.) The idea of right is detached from the good—"prior to that of the good," in the famous phrase of the liberal political philosopher John Rawls⁴—and, at times, set directly against the good.

Still, the descriptive fact that the *New Republic* article acknowledged is an important one: The authors of our nation's founding documents—especially the Declaration of Independence, with its emphatic pronouncement that our "unalienable Rights" to "Life, Liberty and the pursuit of Happiness" constitute self-evident moral realities that demand, as a matter of justice and political morality, state recognition and protection—understood natural rights to be substantively grounded in the goods they protect. The pursuit of happiness, for the founders, was not a matter of fulfilling one's subjective desires—whatever they happened to be—as if happiness were merely a pleasant psychological state (one that might, just as well, be produced by Prozac or other drugs). On the contrary, the concept of happiness was for the American founders morally inflected—something akin to flourishing or fulfillment, rather than to a pleasant psychological state. Contemporary progressives, while they seek to jettison this understanding as a relic of the past and replace it with a doctrine that celebrates personal autonomy and expressive individualism, do right by at least being honest about how our forefathers conceived fundamental rights.

Political Authority, the Common Good, and the Pursuit of Happiness

Grasping these distinct ideas of happiness can direct us to the relationship between governments' moral duty to protect the pursuit of happiness and the natural law account of goods and rights. Here, I think we ought to consider the pursuit of happiness (again, as the founders understood the term) in light of a particular understanding of political authority and the nature of the common good, which any ruler has a moral duty to uphold and serve.⁵

If we understand the concept of the common good properly—and I will say a word about that in a moment—then we will see that no decision by political authority that violates a requirement of justice (and respect for human rights is a requirement of justice) is truly for the common good, and no decision that genuinely upholds and serves the common good will fail to advance the cause of justice.

The common good requires officials who are charged to make laws, execute them, and resolve disputes under them. To grasp this is to begin to see the sense in which public officials are what we call “public servants.” Members of societies face a range—sometimes a vast one—of challenges and opportunities requiring both means-to-ends and persons-to-persons coordination, including, in the case of complex societies, coordination problems presented by the large number and complexity of other coordination problems. Since such problems cannot, as a practical matter, be addressed and resolved by unanimity, *authority*—political authority—is required.⁶ Institutions have to be created and maintained, and persons need to be installed in these institutions' offices to make the decisions that must be made and do the things that must be done, for the sake of protecting public health, safety, and morals; upholding the rights and dignity of individuals, families, and nongovernmental entities of various descriptions; and advancing the common good.

This would be true even in a society of perfect saints, where no one ever sought more than his fair share from the common stock, violated the

rights of others, or deliberately acted contrary to the common good. Even in such a society, effective coordination for the sake of common goals—and, thus, for the good of all—would be required, and seeking unanimity, assuming a large and fairly complex society, would not be practical.⁷ So authority would be required, which means persons exercising authority would be required.

But the moral justification for officials holding and exercising power is service to the good of all, the common good. And the common good is not an abstraction or Platonic form hovering somewhere beyond the concrete well-being—the flourishing—of the flesh-and-blood persons constituting the community. It *is* the well-being of those persons, families, and other associations of persons—Edmund Burke’s “little platoon[s]” of civil society⁸—of which they are members.

The right of public officials to exercise power is rooted in their duty to exercise their authority in the interest of all—in other words, the basis of the *right* to rule is the *duty* to serve. And the realities that constitute service are the various elements of the common good. By doing what is for the common good—and by avoiding doing anything that harms it—rulers fulfill their obligations to the people over whom they exercise authority. They thus serve the people’s interests, welfare, and flourishing—in a word, *them*.

I don’t know how to improve on the definition of the common good proposed by John Finnis in his magisterial book *Natural Law and Natural Rights*. The common good, he says, is

a set of conditions which enables the members of a community to attain *for themselves* reasonable objectives, or to realize reasonably *for themselves* the value(s), for the sake of which they have reason to collaborate with each other (positively and/or negatively) in a community.⁹ (Emphasis added.)

Now, every community—from the basic community of a family to a church or other community of religious faith, a mutual aid society or

other civic association, and a business firm—has a common good. The common good of some communities is fundamentally an intrinsic rather than an instrumental good. That is true, for example, of the community of the family or, in Christian and Jewish traditions, communities of faith.

The common good is, in this sense, facilitative. Its elements are what enable people to do things, individually and in cooperation, that significantly constitute their all-around, or integral, flourishing. Under favoring conditions, people can more fully and successfully carry out reasonable projects, pursue reasonable objectives, and, thus, participate in values—including some values that are inherently social, in that they fulfill persons' capacities for noninstrumental forms of interpersonal communion—which indeed constitute their well-being and fulfillment.

Properly understood, then, the common good requires, as a matter of justice, limited government—government that respects the needs and rights of people to pursue objectives and realize goods *for themselves*. The fundamental role of legitimate government, and thus the responsibility of legitimate rulers—rulers who serve—is not to do things for people that they could do for themselves; it is, rather, to help establish and maintain conditions that favor people's doing things for themselves and with and for each other. Governments should do things *for people* (as opposed to letting them do things *for themselves*) only when individuals and the non-governmental institutions of civil society cannot be reasonably expected to do them for themselves. Finnis used the word “enables,” and it is the right word here: Government's legitimate concern is with the establishment and maintenance of the *conditions* under which members of the community are *enabled* to pursue the projects and goals by and through which they participate in the goods constitutive of their flourishing.

Now, what about the common good of the political community—which good rulers serve (and to which citizens also have responsibilities)? Is it fundamentally an intrinsic good or an instrumental good? There is, in what Sir Isaiah Berlin referred to as the central tradition of Western thought about morality (including political morality), a powerful current of belief that the common good of political society is an intrinsic good.¹⁰

This seems clearly to have been the view of Aristotle, and many Thomists of the strict scholastic persuasion are convinced that it was the view of Aristotle's greatest interpreter and expositor, Thomas Aquinas.

Finnis, however, argues that the common good of political society is nevertheless fundamentally an instrumental, not an intrinsic, good.¹¹ He further argues that the instrumental nature of the common good of political society entails limitations on the legitimate scope of governmental authority—limitations that, though not in every case easily articulable in the language of rights, are requirements of justice. Although I differ, at the margins, from Professor Finnis (who, along with Joseph Raz, was my graduate supervisor in Oxford) on the question of just what the limits are (and in particular whether they exclude moral paternalism in principle), I agree that the common good of political society is fundamentally an instrumental good and that this entails moral limits on justified governmental power.¹²

If we understand the common good—if we have a grasp of what constitutes or conduces to human flourishing and what does not—we will recognize that limited government is important also because it permits the functioning and flourishing of nongovernmental institutions of civil society. Those little platoons of the family, the church, and so forth perform society's most essential health, education, and welfare functions better than government ever conceivably could. They play the primary role in transmitting to each new generation the virtues without which free societies cannot survive—basic honesty, integrity, self-restraint, concern for others, respect for others' dignity and rights, civic-mindedness, and the like.¹³

These nongovernmental authority structures represent a crucial way power is properly diffused rather than concentrated in the hands of the state and its officials. They can play their role only when government is limited—for unlimited government always usurps their authority and destroys their autonomy, usually recruiting or commandeering them into being state functionary organs. And where they play their proper role, they help create conditions in which the ideal of limited government is

much more likely to be realized and preserved and its benefits enjoyed by the people.

I think we ought to understand the right to the pursuit of happiness proclaimed in the Declaration of Independence in light of the nature of the political common good that I've outlined here—in which sufficient conditions of justice, freedom, and public morality facilitate citizens' reasoned pursuit of human goods and flourishing. Our forefathers highly esteemed freedom—which they understood as oriented toward authentic human goods and valuable only when exercised morally in furtherance of those goods. In their rejection of the tyrannies of the British Crown, liberty and the pursuit of happiness constituted goods worth fighting a revolution to defend.

Still, liberty and—even more obviously—the pursuit of happiness, like the common good of political society, do not constitute ultimate ends of human action in the same way that intrinsically desirable goods such as life, intellectual knowledge, friendship, marriage, the family, beauty, and religion do. Liberty and the pursuit of happiness are not valuable for their own sakes—they are valuable only when exercised instrumentally in service of other goods. Indeed, the word “pursuit” necessarily implies its conditional nature—if a person failed in their pursuit of a good (perhaps even by directly acting against it), they would not have realized any good by their failed attempt.

The authors of the Declaration viewed the failure of the British authorities to uphold conditions of the common good—equal justice, the rule of law, and just limits on governmental coercion, for example—as morally sufficient reasons to seek the colonies' independence from what they considered a corrupted political authority. They listed specific ways the king's unjust actions had damaged the common good: He had refused his assent to laws passed by colonial legislatures, sought to control judges and influence the administration of justice, and curtailed civil liberties without the consent of the colonists' representatives, for example. He had breached the moral limits of both his office and justified governmental power. In essence, the founders' argument was that the king and his agents had,

through “abuses and usurpations” of political authority, gravely damaged the common good of the political community—thus impeding the ability of citizens to engage in the pursuit of human goods and flourishing (happiness).

Political Culture and Civic Virtue

The concepts of duty and obligation noted above—which, once again, are inextricably intertwined with the rights and freedoms proclaimed in the Declaration of Independence—bring me to the critical, yet oddly neglected, subject of political culture and civic virtue.

In 2008, the celebrated legal philosopher Jeremy Waldron visited his native New Zealand to read his countrymen the riot act about what he condemned as the abysmal quality of that nation’s parliamentary debate. The bulk of his lecture was devoted to an analysis and critique of a range of factors leading to the impoverishment of legislative deliberation, warranting the stinging title he assigned to his lecture: “Parliamentary Recklessness.” Its penultimate section, titled “Parliamentary Debate,” delivered a thoroughly gloomy appraisal.

But instead of ending there and offering no grounds for hope, Waldron concluded with a section titled “The Quality of Public Debate,” in which he pointed to the possibility that the deficiencies of parliamentary debate might be at least partially compensated for by a higher quality of *public* debate, even hinting that this could prompt the reforms necessary to at least begin restoring the integrity of parliamentary debate. But he warned that things could also go the other way. The corruption of parliamentary debate could infect “the political culture at large,” driving public debate down to the condition of parliamentary debate.

So, in a sense, it is up to the people to decide whether they will rise above the corruption that has demeaned parliamentary politics or permit it to “infect the political culture at large.”¹⁴ But “the people” are not some undifferentiated mass; they are people, you and me, individuals.

Of course, considered as isolated actors there is not a lot that individuals can do to affect the political culture. But individuals can cooperate for greater effectiveness in prosecuting an agenda of conservation or reform, and they can create associations and institutions that are capable of making a difference—advocacy groups, think tanks, and the like.

A critical element in any discussion of the quality of democratic deliberation and decision-making is the indispensable role that the nongovernmental institutions of civil society—those little platoons, yet again—play in sustaining a culture in which political institutions do what they are established to do, do it well, and stay within their limits. And so we must be mindful that bad behavior by political institutions—which means bad behavior by the people who exercise power as holders of public offices—can weaken, enervate, and even corrupt these institutions of civil society, rendering them for all intents and purposes impotent to resist the bad behavior and useless to the cause of political reform.

This is true generally, and it is certainly true with respect to the bad behavior of public officials who betray their obligations to serve by transgressing the bounds of their constitutional authority and the limits embodied in the doctrine of subsidiarity. Constitutional structural constraints are important, but they are effective only where they are effectually supported by the people—that is, by the political culture. The people need to understand and value them—enough to resist usurpations by their rulers even when unconstitutional programs offer immediate gratifications or relief from urgent problems. This, in turn, requires certain virtues—strengths of character—among the people. But these virtues do not just fall down on people from the heavens. They have to be transmitted through the generations and nurtured by each generation.

James Madison said that “a well-instructed people alone can be permanently a free people.”¹⁵ And that is true. It points to the fact that even the best constitutional structures, even the strongest structural constraints on governmental power, aren’t worth the paper they are printed on if people do not understand them, value them, and have the will to resist the blandishments of those offering something tempting in return

for giving them up or letting them be violated without swift and certain political retaliation.

But it is also true that virtue is needed, and that's not merely a matter of improving civics teaching in homes and schools. In *Federalist* 51, Madison famously defended the Constitution of the United States as "supplying by opposite and rival interests, the defect of better motives." He made this point immediately after observing that the first task of government is to control the governed, and the second is to control itself. He allowed that "a dependence on the people is no doubt the primary controul on the government; but experience has taught mankind the necessity of auxiliary precautions"—hence the constitutional structural constraints, among other things. But even in this formulation, they do not stand alone; indeed, they are presented as secondary. What is also necessary—indeed, primary—is a healthy and vibrant political culture, "a dependence on the people" to keep the rulers in line.¹⁶

That brings us back to the role and importance of virtue. John Adams understood as well as anyone the general theory of the Constitution. He was the ablest scholar and political theorist of the founding generation. He certainly got the point about "supplying . . . the defect of better motives," yet he also understood that the health of the political culture was an indispensable element of the success of the constitutional enterprise—an enterprise of ensuring that the rulers stay within the bounds of their legitimate authority and indeed be servants of the common good, servants of the people they rule.

Adams remarked that "our Constitution is made only for a moral and religious People. It is wholly inadequate to the government of any other."¹⁷ Why? Because a people lacking in virtue could be counted on to trade liberty for protection, financial or personal security, comfort, being taken care of, or having their problems solved quickly. And there will always be people occupying or standing for public office who are happy to offer that deal—in return for an expansion of their power.

So the question is how to form people fitted out with the virtues that make them worthy of freedom and capable of preserving constitutionally

limited government, even in the face of strong and inevitable temptations to compromise it away. Here we see the central political role and significance of the most basic institutions of civil society—the family, the religious community, private organizations of all types that are devoted to the inculcation of knowledge and morals, private (often religious) educational institutions, and the like, which are in the business of transmitting essential virtues. These are, as is often said, mediating institutions that provide a buffer between the individual and the power of the central state.

It is ultimately the autonomy, integrity, and general flourishing of these institutions that will determine the fate of limited constitutional government. This is not only because of their primary and indispensable role in transmitting virtues; it is also because their performance of health, education, and welfare functions is the only real alternative to removing these functions to larger and higher associations—that is, to government. When government expands to play the primary role in performing these functions, the ideal of limited government is soon lost, no matter the formal structural constraints of the Constitution. And the corresponding weakening of these institutions' status and authority damages their ability to perform all their functions, including their moral and pedagogical ones. With that, they surely lose their capacity to influence for good the political culture, which, in the end, is the whole shooting match when it comes to whether the ruler can truly be a servant.

Pursuing Happiness Properly

At the foundation of America's greatness are the virtues of its people. Those virtues are what sustain the principles and practices of constitutional government. But it is not, or not primarily, those principles and practices that impart the virtues on which they depend. It is first and foremost the little platoons—above all, the family.

Do you want to make America great? Good. That's what we should all want. But in recent decades, the American family has suffered massive

disintegration, which has devastated the poorest and most vulnerable sectors of our society. That disintegration has weakened us morally and spiritually. All the material wealth and military power in the world cannot make up for it. So let us make no mistake: American greatness will not be restored without the restoration of strong and healthy families—marriage-based families. American greatness ultimately depends on the greatness of American families, for they alone can transmit the virtues on which all else depends.

I will conclude by underscoring that when we recognize the common good of political society—the conditions that best facilitate the pursuit of happiness among the citizenry—as properly instrumental, the other pieces fall into place. When we properly characterize that end toward which political action is legitimately directed, then the nature of rights, the necessity of duty and obligation in any discussion of rights, the need of a political culture in which civic virtue is encouraged and rewarded, and the purpose of freedom can all be more easily understood. We should be grateful that our forefathers provided us with the seeds of such wisdom in the Declaration of Independence and other documents of the founding era.

Notes

1. US Department of State, “Notice of Intent to Establish an Advisory Committee,” *Federal Register* 84, no. 104 (May 30, 2019): 25109, <https://www.federalregister.gov/documents/2019/05/30/2019-11300/departments-of-state-commission-on-unalienable-rights>.

2. Alexis Papazoglou, “The Sneaky Politics of ‘Natural Law,’” *The New Republic*, June 13, 2009, <https://newrepublic.com/article/154192/sneaky-politics-natural-law>; and Trudy Ring, “Is State Department’s ‘Natural Law’ Effort Code for Homophobia?,” *Advocate*, June 1, 2019, <https://www.advocate.com/politics/2019/6/01/state-departments-natural-law-effort-code-homophobia>.

3. Papazoglou, “The Sneaky Politics of ‘Natural Law.’”

4. John Rawls, *A Theory of Justice* (Harvard University Press, 1971), 31, 396.

5. This section and the following one draw from Robert P. George, *Constitutional Structures and Civic Virtues*, Baltimore Bar Library, <http://www.barlib.org/Constitutional%20Structures%20and%20Civic%20Virtues.pdf>.

6. On the rational (and moral) basis of political authority, see generally John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford University Press, 2011), 231–59.

7. See John Finnis, “Law as Co-Ordination,” *Ratio Juris* 2, no. 1 (1989): 97–104, <https://onlinelibrary.wiley.com/doi/10.1111/j.1467-9337.1989.tb00029.x>.

8. Edmund Burke, “Reflections on the Revolution in France,” in *The Works of the Right Honourable Edmund Burke*, vol. 3 (1887; Project Gutenberg, 2005), <https://www.gutenberg.org/files/15679/15679-h/15679-h.htm#REFLECTIONS>.

9. Finnis, *Natural Law and Natural Rights*, 155.

10. Isaiah Berlin, *The Crooked Timber of Humanity: Chapters in the History of Ideas* (Alfred A. Knopf, 1991), 208.

11. John Finnis, “Is Natural Law Theory Compatible with Limited Government?,” in Robert P. George, ed., *Natural Law, Liberalism, and Morality: Contemporary Essays* (Clarendon Press, 1996), 1–26 (esp. at 5–9).

12. Robert P. George, “The Concept of Public Morality,” *The American Journal of Jurisprudence* 45, no. 1 (2000): 17–31, <https://academic.oup.com/ajj/article-abstract/45/1/17/218013>.

13. See Peter L. Berger and Richard John Neuhaus, *To Empower People: The Role of Mediating Structures in Public Policy* (American Enterprise Institute, 1977), <https://www.aei.org/wp-content/uploads/2023/07/AEI-STUDIES-POLITICAL-139-1.pdf>.

14. Jeremy Waldron, “Parliamentary Recklessness: Why We Need to Legislate More Carefully,” lecture, Heritage Hotel, Auckland, New Zealand, July 28, 2008, 32–33, <https://maxim.org.nz/content/uploads/2021/03/SJGL-2008-Monograph-Jeremy-Waldron.pdf>.

15. James Madison, “Second Annual Message to Congress,” speech, December 5, 1810, <https://millercenter.org/the-presidency/presidential-speeches/december-5-1810-second-annual-message>.

16. *Federalist*, no. 51 (James Madison or Alexander Hamilton), <https://founders.archives.gov/documents/Hamilton/01-04-02-0199>.

17. John Adams to the Officers of the First Brigade of the Third Division of the Militia of Massachusetts, October 11, 1798, Founders Online, <https://founders.archives.gov/documents/Adams/99-02-02-3102>.