

The Myth of Independence Day

The Declaration of Independence was released on July 4, 1776 -- was Thomas Jefferson's masterpiece. Jefferson himself wrote much about it in essays and letters during the 50 years that followed.
By Judge Andrew Napollitano
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Not the least of what he wrote offered his view that the Declaration and the values that it articulated were truly radical -- meaning they reflected 180-degree changes at the very core of societal attitudes in America. The idea that farmers and merchants and lawyers could secede from a kingdom and fight and win a war against the king's army was the end result of the multigenerational movement that was articulated in the Declaration and culminated in the American Revolution.

The two central values of the Declaration are the origins of human liberty and the legitimacy of popular government.

When Jefferson wrote that we are endowed by our Creator with certain unalienable rights, he was referring to the natural law. The natural law teaches that right and wrong can be discerned and truth discovered by the exercise of human reason, independent of any commands from the government. The natural law also teaches that our rights come from our humanity -- not from the government -- and our humanity is a gift from our Creator.

Even those who question or reject the existence of the Creator can embrace natural rights; they can accept that our exercise of human reason leads us all to make similar claims. Rights are essentially claims made against others, including the government. These claims -- free speech, free association, free exercise or nonexercise of religion, self-defense, privacy, property ownership and fair treatment from the government, to name a few -- are rights that we all exercise without giving a second thought to the fact that they are natural and come from within us.

The view of the individual as the repository of natural rights was not accepted by governments in 1776. Back then, governments rejected that idea and used violence to suppress it. For the government here in the mid-18th century, the king was divine and could do no wrong, and Parliament existed not as the people's representatives but to help the king raise money and to give him a read on the pulse of landowners and nobility.

Jefferson and his colleagues had no difficulty breaking from this ancient regime. Unlike the French, who destroyed their monarchy, the American colonists seceded from theirs -- and they did so embracing natural rights. Regrettably, they did not recognize the natural rights of African slaves or women. We all know and profoundly lament and are still correcting the sorry history of those errors.

The idea that each human being possesses inherent natural rights by virtue of one's humanity is not just an academic argument. It has real-life consequences, which Jefferson recognized. Those consequences are implicated when government seeks to curtail rights for what it claims is the common good or the good of the government itself.

Jefferson recognized that you can consent to the curtailment of your own rights, but you cannot

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consent to the curtailment of mine. To Jefferson, government can take away your rights without your consent only if you have violated someone else's rights; it cannot do so by majority vote.
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The second radical concept that underscores the Declaration of Independence is that no government is valid unless it enjoys the consent of the governed. This, too, was unheard of in 1776, because British kings did not claim consent of the governed as the basis for their legitimacy. They claimed the myth that their monarchies were an extension of God's will.

In America, consent of the governed is married to the natural law. Under the natural law, what is yours is yours and what is mine is mine. If I attempt to take your land or car or cellphone, you can stop me, either directly or through the government to which we have both consented. If one of us has not consented to the government's existence, it can still enforce natural rights as the agent of the person whose rights are being violated -- just as it does for bank depositors when it captures a bank robber. If we have not consented to the government and it takes our liberty or property, it has no moral legitimacy and is merely a common thief.

The last of Jefferson's many letters was written to his enemy-turned-friend John Adams, in anticipation of the 50th anniversary of the Declaration -- a day on which both Jefferson and Adams would die. In that final letter, Jefferson argued that the greatest achievement of the Declaration was its arousing men to burst free from the chains imposed upon them by superstition and myth -- by bringing about a recognition of their natural rights and an embrace of government by consent.

Today, the Jeffersonian ideals of personal natural rights and governmental legitimacy conditioned upon the individual consent of the governed have themselves become myths.

In Jefferson's day, the voters knew all that the government did, and it knew nothing about them. Today, government operates largely in secrecy, and it captures our every communication.

In Jefferson's day, the government needed the people's expressed permission to tax and regulate them. Today, the people need the government's permission to do nearly everything.

In Jefferson's day, his colleagues fought for independence from England. Today, half the country is dependent on the government.

Did you consent to a Congress that steals liberty and property on a whim without due process; to a president who starts wars, raises taxes and spends money in defiance of Congress; or to courts that let folks be tried twice for the same crime or punished for crimes not yet committed?