

On "*the Common Sense of the Subject*":
"*The Natural Rights Philosophy of the Declaration of Independence*"

Popular sovereignty means that government of the people is legitimate if, and only if, it is both government *by* the people and government *for* the people. And this is true with respect to both levels of such sovereignty: both the *constituent* level and the *governmental* level.

Popular sovereignty also means that the sovereignty of the people is to be exercised at both levels by free elections under conditions of universal suffrage.

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Implicit in what is properly understood by "the sovereignty of the people" is the subordination of the people to the moral law and the demands of virtue. Exercise of their natural rights is subject to the natural law.

Thus what made the people "the good people of these colonies" was their acknowledgement of and fidelity to "the laws of nature and of nature's God." (Nor is this inconsistent with the other explanation, according to which the people were "the good people of these colonies" because of their membership in or support of the whig movement and its demands for republican government.)

In the very act of declaring themselves independent of Great Britain and of any other mortal power, the American people did so in accordance with "the laws of nature and of nature's God," to which they declared themselves subject.

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Civil society and government are the result of a voluntary association of equals, and in this sense of a compact or agreement of each to be responsible to and for all, and of all to be responsible to and for each.

The divine government of the universe, however, is not the result of a voluntary agreement in this sense.

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No human being is by nature ruler of another, and so all human beings are by nature nonrulers of their fellows. But while legitimate political authority cannot therefore arise immediately *from* nature, it can and does arise *according to* nature when it arises from the consent of all those subject to it, and, in this sense, from compact or contract.

All men are created equal in the sense that every normal adult human being can enter into a compact or contract, thereby both entrusting and accepting entrustment in the ways that it requires.

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The nearest earthly approximation to divine rule, to reason unaffected by passion—or, better, to reason universally affected as well as unaffected by passion!—is the rule of law, which is to say, the people ruling and then being ruled at both levels of sovereignty, constituent and governmental.

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Majority rule is the rational substitute for the unanimous consent that brings civil society into existence but cannot govern it.

When individuals agree to form a political community, they do so by unanimous consent. At the same time, they unanimously consent to be governed by majority rule. But while the majority may then decide for all, it may decide only those things entrusted to it for decision by the original contract. And its decisions must be "rightful."

The limits of majority rule are prescribed by whatever may be done "rightfully" by "unanimous consent." Unanimity thus limits the sphere of government, and of majority rule, to those purposes for which human beings surrender their natural rights. This excludes from the sphere of government

"the reserved rights of individuals," such as conscience. But unanimity itself is in turn limited by the requirement of rightfulness. It cannot authorize violations of the "rights of humanity" of those outside the political community, such as slavery, torture, or predatory wars. This is why the opinion of the sovereign people exercising their sovereignty must be enlightened and subject to the claims of justice and the rights of humanity.

In James Madison's words, "True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority" (*Writings* [New York: Library of America, 1999]: 30 [*Memorial and Remonstrance against Religious Assessments* (1785)]).

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The teaching of the Declaration of Independence defines our human place in the universe in terms of our distance from God no less than our distance from the beasts.

Within the horizon of the Declaration of Independence, to be civilized is to recognize the place of humanity in the scale of beings: a place that is lower than that of God, but higher than that of beasts. To be civilized is to recognise that, as a human being is not God and is not marked out by God or nature to rule other human beings, the just powers of government are derived from the consent of the governed, and that means, *all* the governed.

Civilization means the recognition of right as distinct from force, fraud, or ignorance.

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