

## Reply to Lowenthal

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Resistance to tyrants is obedience to God.

Thomas Jefferson

[Jefferson] supposed there was a question of God's eternal justice wrapped up in the enslaving of any race of men, or any man, and that those who did so braved the arm of Jehovah—that when a nation thus dared the Almighty every friend of that nation had cause to dread His wrath.

Abraham Lincoln

Professor Lowenthal fails to understand that the separation of church and state is not the same as the separation of religion and politics. This is a point that is made by Tocqueville and one that was thoroughly understood by the Founders. In a famous passage, Tocqueville wrote that “[r]eligion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions.” The principal task of the Founders, of course, was to create constitutional government and secure the conditions for the rule of law. They believed that this could not be done without a separation of church and state. And the Founders’ understanding of separation was that there should be no “religious Test” as a “Qualification to any Office or public Trust.” The Framers knew that no constitutional government was possible as long as sectarian disputes animated political life. Constitutional government requires that the minority acquiesce in the decisions of the majority in the sense that they recognize the legitimacy of majority rule. But no religious minority will ever accept majority rule on sectarian issues. The recognition of the rights of conscience is thus a precondition of constitutional government because it establishes the basis for the political friendship that is necessary for citizenship. Jefferson argued in his “A Bill for Establishing Religious Freedom,” penned some ten years before the drafting of the Constitution,

that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt

the principles of the *very* religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it. (emphasis original)

This statement was fully accepted by the Christian ministers—or at least the “Lockeanized” ones—who believed that the separation of church and state was no less a dictate of New Testament theology than it was a dictate of reason and natural right.

Professor Lowenthal argues that the principles of the Founding, notably the “Enlightenment rationalism” of the Declaration, undermined the basis for morality that republican government requires. Lowenthal chides me for relying on Christian ministers “writing at about the time of the Declaration” who saw no necessary contradiction, as Lowenthal does, between the morality of the Declaration and biblical morality; rather, I should have cited similar arguments from the Founders. Protestant ministers had been basing their sermons on “the great Mr. Lock” for more than a half century, and the public was suffused with the notion of the compatibility of true religion and right reason. The Founders were engaged in a regime debate. For them to have opened the theological-political question when it had already been solved on the political level would have been unwise. Agitation of this question could have threatened moral consensus that supported both the Revolution and the Constitution. It was unnecessary for the Founders to convince those who were already convinced: public opinion was virtually unanimous on the question of political morality. Religion and the morality derived from religion were the job of the preachers, and they fulfilled their task admirably, never indicating that they believed there was any inherent contradiction between Christianity and republican government based on the principles of natural right. In some philosophic sense, the doctrines of the Declaration and those of revelation may be incompatible, but the debate never reached that level, as it surely could not. But on the level of morality, the agreement of “Lockeanized Christianity” and the doctrine of natural rights could not have been more complete. Here, reason and revelation occupied the same moral universe. Lowenthal, however, claims that this agreement was insufficient and that neither side saw the potentially corrosive effects of the Declaration’s reliance on “reason and philosophy.” Lowenthal thus refuses to understand the Americans of the founding generation as they understood themselves.

Professor Lowenthal is correct when he argues that the Christianity that accepted “a rational philosophy of human rights” was a “Lockeanized Christianity” and that without this transformation “the Americans of 1776 could [not] have accepted a document like the Declaration of Independence.” It may be a question in Lowenthal’s “mind whether Christianity teaches the equality and unity of mankind,” but it certainly was not a question in the minds of the colonial ministers. One outstanding example should suffice: In 1780 the Reverend Samuel Cooper remarked in a widely circulated sermon, that

We want not, indeed, a special revelation from heaven to teach us that men are born equal and free. . . . It is, however, a satisfaction to observe such everlasting maxims of equity confirmed . . . in the sacred oracles; one internal mark of their divine original, and that they come from him "who hath made of one blood all nations to dwell upon the face of the earth," whose authority sanctifies only those governments that instead of oppressing any part of his family, vindicate the oppressed, and restrain and punish the oppressor.

This is, of course, the theology of Protestant Christianity. As Lowenthal notes, the Declaration "makes no mention of Christ and in no way depends on the advent of sin and the fall of man." But the Declaration does mention a "Creator," a creation ("all men are created equal . . .") and "Divine Providence." The reference to "Nature's God" was a way of speaking of God that would appeal to all religions—certainly all monotheistic religions. The Declaration and the Bible share the same assumptions about God, man and the universe. The Declaration appeals to an eternal order and an economy of nature that is, if not identical, then certainly compatible with monotheistic religion. Whatever minds of a more sophisticated structure may conclude, this is the way the colonial ministers, and I believe the Founders, understood the issue. Madison, Hamilton, Jefferson, Wilson and Washington, among a host of colonial ministers, never tired of the phrase "sacred rights." I believe that John Quincy Adams came closer to the heart of the matter than Lowenthal when, in his *Jubilee of the Constitution* (1839), he elaborated the principles of the Declaration in the following terms: "All this, is by the laws of nature and of nature's God, and of course presupposes the existence of a God, the moral ruler of the universe, and a rule of right and wrong, of just and unjust, binding upon men, preceding all institutions of human society and of government." Moreover, in his introduction to the *Memoirs of Reverend Elijah Lovejoy* (1838) Adams explicitly argued that the Declaration was the logical conclusion of the "progressive advancement" of the "Christian system of morals" which included the idea that "life, liberty and the pursuit of happiness were *inextinguishable* rights of *all mankind*" (emphasis original).

The Declaration provided a foundation for obligations that might have otherwise been lacking in Christianity. No one in the founding generation thought that rights were incompatible with moral obligations; rights were always understood in terms of the laws of nature where rights and obligations were reciprocal. This reciprocity is certainly the basis of the social contract, and the idea that the protection of individual rights was in tension with the existence of the common good was never expressed by the Founders. None of the Founders viewed rights as idiosyncratic preferences divorced from duty or moral obligation. I challenge Professor Lowenthal to find one statement to this effect. Statements to the contrary, however, are legion, both in public documents and private letters. The idiosyncratic view of rights was the product of the Progressive "re-

founding" that Lowenthal justly decries, but it is not any part of the "rational liberty" which the Founders saw as the product of social contract. (See Madison's Essay "On Sovereignty," 1835.) The Declaration, for example, speaks of the people both in their moral capacity ("the good People") and their political capacity ("one people"). Indeed, Americans are "one people" by virtue of the fact that they are "the good People."

Lowenthal seems to endorse the idea that a regime based on natural human equality must inevitably degenerate into a headlong slide into permissive egalitarianism. That all regimes face dangers, the Founders readily admitted, and they recognized that republics faced unique dangers that required peculiar vigilance. But while "manly vigilance" was required to guard against dangers to the "organic law," I do not believe the Founders thought there was anything in the principle of equality rightly understood which made its degradation inevitable or in any way "fated." It almost goes without saying that the founders were not historicists.

Lowenthal praises what he describes as "Tocqueville's attempt . . . to conceal the Declaration" because it was a "document of the philosophical Enlightenment." This is a somewhat ingenious argument but fails on Tocquevillian grounds. In Tocqueville's view the Declaration, as a statement of natural right, was superfluous. Equality was not a principle of natural right but a fated fact. The decision for equality and democracy had been decided by history: "it is the most uniform, the most ancient and the most permanent tendency that is to be found in history." It is the result of a "providential march" and has nothing to do with natural right or with "the principles of human nature." Regime questions were irrelevant for Tocqueville because the triumph of democracy had been decided by the impersonal—albeit providential—forces of history. Rather than deliberately concealing the Declaration because of its destructive influence, Tocqueville found it irrelevant and undoubtedly must have been surprised by the ahistorical sense of those who insisted that it was the principled foundation of American politics. After all, Tocqueville taught that social forces produced politics, and politics was always subordinate to the mores of the people. Tocqueville was uninterested in understanding the American Founders as they understood themselves because his principal audience was the French aristocracy, not Americans. When viewed as a sociological fact rather than a principle of natural right, equality is opposed to liberty. But the Founders viewed equality of rights as a regime principle—a statement of natural right—not a fated fact or the mere product of history. It is the modern followers of Tocqueville who see equality of rights as necessarily degenerating into a demand for equality of results. Equality as a regime principle is defensible on the grounds of the Founders, and this defense is demanded by original-intent jurisprudence. There is no defense of regime principles on Tocquevillian grounds. To accept Tocqueville's analysis is surely to abandon original-intent jurisprudence.

Tocqueville demonstrated great foresight about many aspects of American

politics, particularly the centralizing tendencies of the administrative state. He even predicted civil war. But he thought it would take the form of slave rebellions against masters. Tocqueville could not have predicted that in America a civil war would be fought among the master class over the morality of slavery, that is, whether the Declaration was to remain the "sheet anchor" of American republicanism. Clearly, without the Declaration the Civil War would not have been possible, at least not in the form it took. The Civil War is more revealing about America's soul than anything chronicled by Tocqueville.

Did Lincoln add a religious element—a "political religion"—to the Declaration and thereby provide a ground for morality that was otherwise missing? Lincoln, of course, regarded Jefferson as "the most distinguished politician of our history." Are we to understand Lincoln literally? Did Lincoln understand Jefferson's Declaration as mere rationalism? Or did he understand it as the work of a "politician" in the widest sense of the term? I believe an argument could easily be made that Lincoln's call for a "political religion" and his powerful rhetoric in the Second Inaugural were anticipated by Jefferson in the *Notes on the State of Virginia*. Lincoln certainly recognized that the source of his own rhetoric of redemption came directly from Jefferson:

And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest.

Who can fail to hear the echoes of this powerful statement in Lincoln's Second Inaugural? It may be true that Lincoln had greater need of such rhetoric but it would be difficult to deny that his direct source was Jefferson. Lincoln's "political religion" was fully anticipated by Jefferson.

I believe Lowenthal fails to appreciate one fact of American politics: That the decline in the belief in the principles of the Declaration of Independence has gone hand in hand with the decline of religion—that a restoration of the principles of the Declaration is necessary for a restoration of the role of religion in both public and private life. Both the Declaration and mainstream religions have suffered under the onslaught of the forces of historicism and positivism. These forces of modernity have succeeded in undermining both reason and revelation as supports for moral and political life. The kind of value relativism promoted by the Holmes-Brandeis school of jurisprudence has eroded the principles of the Declaration no less than "liberation theology" has weakened America's mainstream religions. These religions no longer exhibit the manly spiritedness that

the colonial ministers summoned forth in support of the Declaration of Independence.

Leo Strauss once wrote that "wisdom requires unhesitating loyalty to a decent constitution and even to the cause of constitutionalism" (*Liberalism: Ancient and Modern*, p. 24). The defense of constitutional government must always be undertaken in the spirit of Aristotle's contention that natural right is a part of political right, that is, in full recognition of the comprehensiveness of political right. This is certainly the spirit that animated the statesmanship of Jefferson and Lincoln. Mere intellectuals, on the other hand, subordinate political right to natural right, thus exhibiting what Strauss called an "unmanly contempt for politics." Lowenthal certainly does not make that mistake, but I continue to believe that the Founders understood the theological-political problem more profoundly than he is willing to admit.