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in American Law

Owen Anderson

Excerpt

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INTRODUCTION: THE FORMULA OF THE DECLARATION OF INDEPENDENCE

Epistemology, Metaphysics, Ethics

“They say they want the kingdom
But they don’t want God in it.”¹

The Declaration of Independence serves the role of a creed in American thought and history. It was framed after a century and a half of colonial history. Although attributed to Thomas Jefferson, its final form included edits by a committee, and delegates from the colonies signed it. The largest part of its body is a list of grievances against the king, and it describes itself as a defense of the separation between England and the colonies. However, in giving this defense, it gives a succinct foundation of the epistemology, metaphysics, and ethics on which the defense rests. These three areas form the foundation of a worldview about knowledge, God and man, and the pursuit of the good life. This foundation is stated in the well-known phrase “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.” The Declaration of Independence serves to give the beginning ideas for the country. Part of this study is to understand what role God the Creator plays in that country and what role God plays in the kingdom.

BASIC BELIEFS

Before getting into the historical analysis, we need to set the context by doing work in philosophical prolegomena. Since this study includes the idea of self-evidence, we need to get into focus related ideas about

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reason, belief formation, and the laws that govern belief formation. The sections that follow provide a look at these topics. We will be studying the most basic questions that humans can ask. Epistemology is the theory of knowledge. It asks what is knowledge and how it is different from correct opinion. How can we be certain in our beliefs rather than possibly mistaken? The source of knowledge is the source of authority. Authorities are cited to justify knowledge claims, and the highest authority cannot be questioned because it makes questioning possible. The Declaration of Independence claims that there are some beliefs that are self-evident. For something to be self-evident means that its truth is evident to a person once its meaning is understood. This is different than most beliefs, which, even when their meaning is understood, require support from other beliefs to demonstrate their truth. A distinction might be made between what is self-evident and what is self-attesting. To be self-attesting means the belief proves itself. It cannot be false without violating the very laws that define thought. To be self-evident is a more subjective claim. A statement might appear self-evident to one person and not self-evident to another. Whether a statement is self-attesting can be objectively determined by understanding the laws of thought. The subjective nature of *self-evident* has reverberated in American history.

Metaphysics is the study of what is real. There is a difference between what is real and what only appears to be real. There is also a difference between what is temporary and what is permanent or eternal. Something can be real now but not real in the past or in the future. What is eternal has always been real; what is eternal had no beginning and, therefore, will have no end. The Declaration of Independence sums up its claims about what is real by affirming that humans are created by God. In making this statement, it affirms that some things – God – are eternal and other things – the creation, including humans – had a beginning. Beyond this, it does not define *God*. This has left open an ambiguity that has developed into great divisions within American thought and life.

Ethics is the study of what is good. It distinguishes between means and ends. Although there are many proximate ends, the final or highest end is that toward which all choice aims. The good is distinct from the duties, virtues, and obligations required to achieve the final end. It is also distinct from happiness, which is an effect

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of achieving what one believes to be good. Because a person can be mistaken about what is actually good, there is a difference between happiness and lasting happiness. Lasting happiness is only possible if what is actually good has been attained. The Declaration of Independence forms its ethical theory around a theory of rights. Humans are said to have a right to their life and the freedom to pursue what they believe will make them happy. This tells us about the limits of government in human life. However, it does not make a statement about what is actually good or about what will bring lasting happiness. Ever since the Founding there have been internal and external struggles over how to understand the good.

In the following, we will consider the relationship between knowing what is real and the good. It is formally true that the highest good is knowledge of the highest reality. However, competing worldviews understand the highest reality differently. Here we will see competing definitions of “God,” as well as philosophical materialism, which states that only the material world is real, and pantheism, which says that all being is God. This means that what is at stake in navigating these competing claims about reality is the highest good itself. This is both intensely personal for each of us and incredibly important for a society. It is the highest good that gives meaning to life and provides unity and direction for society. If the highest good is not known, then meaning and unity are lost. Where there are competing beliefs about the good, then there will be division that prevents growth and ultimately undermines culture. Therefore, I am proceeding with the belief that the study of the good and consequently the study of knowing God is basic and must be in place if other important matters are to be known and divisions to be settled.

There can be no more important subject to set in place than good and evil. Plato discusses the good in book 7 of *The Republic*. Aristotle’s *Nicomachean Ethics* makes it the original and central question. It is not a new question for humans or in philosophy. It is a foundational question. As the founder of the Academy, Plato made it a subject that continues down in the Academy to this day. Getting the good in place is a central issue for each of us in our individual lives, in the Academy as it proposes to benefit human society and search for knowledge, and in society as it works together to pursue and increase what is good for all.

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CREEDS AND THE AMERICAN REVOLUTION

It is important for any creed to establish its beliefs in the three areas of epistemology, metaphysics, and ethics. It is also important for a creed to be succinct and direct so as to be widely understandable. However, when *succinct* is replaced with *ambiguous*, the outcome will be disagreement and division. The following is a study of how these central ideas in the American creed have been diversely understood, the challenges that have been raised by competing understandings, and the ways that unanswered and remaining challenges continue to divide Americans over knowledge, what is real, and what is good. Understanding these ideas helps us unlock the flow of American history.

A creed is an attempt to express as consciously and consistently as possible the foundational beliefs of a group. Creeds reveal the extent to which the writers are conscious of what is foundational. The foundational questions are the most basic that can be asked. They involve those just discussed about knowledge and authority, the eternal and what is real, and the good and lasting value. They also reveal the extent to which the writers are conscious of what is necessary in giving a coherent and true answer to foundational questions. A creed attempts to give a system or consistent set of beliefs. In this sense, a creed is the most conscious and consistent formulation of a foundation that the writers can give.

The American Revolution is not the beginning of American history. It is a product of patterns of thought dating to the start of the English colonies. Although the American Revolution is said to have occurred within a generation that took a more secular turn than any of its predecessors, it still relied on categories of thought and a dialectic that had been working itself out through events like the First Great Awakening. These include dichotomies that continue to form the essence of divisions in America: tradition versus individual experience; individual and collective duty versus pleasure and happiness; worldly goods versus heaven; liberty versus license. Accordingly, the American Revolution has been interpreted in competing ways: there is an economic interpretation, a political interpretation, a “spirit of the people” interpretation, and others. Each of these focuses on what is undoubtedly an aspect of the events. In order to unite them, we must bring into focus the most basic beliefs that animated the revolution. These are beliefs about knowledge, what is real, and what is good. These basic beliefs

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help explain why a given economic or political theory was taken and are at the heart of understanding the spirit of a people.

Changes in basic beliefs over time explain changes in the country. History studies change, and it is understanding the changes in basic beliefs that helps unite understanding the changes in other areas of human life. A basic belief is a belief that is presupposed by another belief. The most basic beliefs are those beliefs that are presupposed by all other beliefs in a belief system or worldview. Humans are never totally conscious or completely consistent, so it might be tempting to say that humans do not have worldviews. However, as challenges arise to a person's or group's belief, this forces greater consciousness and consistency in expressing the meaning of beliefs and how they relate to each other. The alternative is to say that all beliefs are equally true or can be held with any other belief so that in the end, it doesn't really matter what you believe. This is a form of nihilism.

This process of challenges to basic beliefs will help us understand the changes in American thought. People rely on their basic beliefs to give meaning to their lives. When a basic belief is challenged as false or meaningless, this threatens the meaning of life. This threat cannot go unanswered because it is a threat to everything else a person understands. Of the various needs, the need for meaning is basic. Although people may say they find meaning in how they feel or in what they choose to do, behind feelings and actions are beliefs. Even the statement that I find meaning in my feelings is a belief. The role of beliefs in interpreting experiences for meaning is unavoidable. That beliefs are ordered from more to less basic is also unavoidable. Therefore, in order to understand how people find meaning and how meaning is actually to be found, we must look at basic beliefs and critically analyze them for coherence.

MEANING AND REASON

In order to make progress in our thinking about the self-evident, we will need to also take time to think about reason, meaning, and the relationship between beliefs from basic to less basic. Meaning can have different meanings. To say something is meaningful can be to say it has purpose. Or it can be rich in significance. However, both of these presuppose the kind of meaning that a belief has. A belief, expressed in a

sentence or judgment, combines concepts to affirm or deny something about them. It is meaningful insofar as it has not put these concepts together in a way that is contradictory. Meaning is had when the laws of thought are used. These have classically been called *reason* and refer to the laws of identity (*a is a*), excluded middle (either *a* or *non-a*), and noncontradiction (not both *a* and *non-a*). Concepts are formed when we distinguish *a* from *non-a*. Judgments are made when we relate concepts to each other. Arguments are made when judgments are used to support a conclusion. Reason cannot be questioned or doubted since it is by the laws of thought that questions and doubts are formed. It would be a category mistake to ask “how do we know the laws of thought are true?”

The point of taking the time to define *reason* and *meaning* is that both of these terms play a role in how basic beliefs are formed and used to interpret experience and what it means for something to be self-evident. It is also because both of these terms are a part of the unfolding challenges to the foundation expressed in the Declaration of Independence. We will see competing ideas about how *reason* is defined and conflicting accounts of what is *meaningful*. In each of these, the formative meaning of *reason* as the laws of thought used to form concepts, judgments, and arguments will be found throughout. Similarly, the critical use of reason as the application of the laws of thought to test a belief for meaning or an argument for validity is an important part of how we will progress in our study.

Defining *reason* also helps us in thinking about the dichotomy between reason and religion that persists in American thought. We will be examining this in more detail as we go, but here, it is important to notice at the start that *reason* and *religion* are often posed as in conflict when *reason* means something other than the laws of thought used formatively and critically. *Reason* can mean thinking confined to the material or physical world, it can mean common sense, or it can mean intuition. In each case, it is set in contrast to *religion*, which usually means either beliefs based on scripture or beliefs about the afterlife.

We will continue to think of reason as the laws of thought and its formative and critical uses while recognizing that it is also used to interpret experience and to construct a worldview. Limiting it to these last two uses is common and will be seen in many of the thinkers

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we consider. Similarly, we will first be thinking of religion as natural religion or what can be known from general revelation. General revelation is what all persons can know at all times. Scriptures, or special revelation, assume that some things can be known from general revelation. Some of the significant conflicts we will consider in American history involve attempting to give a definition to religion. As *religion* is increasingly defined in a way that includes the religions of the world, as opposed to those that have special revelation, it is understood to involve the use of our basic beliefs to interpret experience. This definition is not in conflict with reason; reason is used to form beliefs and, therefore, reason is fundamental to religion. Religious beliefs can be tested for meaning. Religious beliefs must be tested for meaning because the goal of basic beliefs is to give meaning to experience. One of the first challenges after the American Revolution was about whether special revelation is necessary or if natural religion is sufficient.

We will also notice patterns or repeating dichotomies in American thought. These stretch to early conflicts in New England between the Old Side and New Side in the First Great Awakening. Roughly these involve the conflict between tradition and form on the one hand and personal experience on the other. They continue in a similar pattern as Americans work through the influence of stoic thinking about virtue and epicurean thinking about happiness. And again, these are seen in the Second Great Awakening between the Old School and the New School. They come down to the present as tradition and personal experience continue to be dichotomies: ways of thinking about how to organize individual life, religious life, and political life. They are sometimes expressed as a conflict between common sense and intuition. In each case, reason is used interpretively and constructively but not critically to identify presuppositions behind interpretations and constructions.

THE DECLARATION OF INDEPENDENCE AND THE CONSTITUTION

The Declaration of Independence has been contrasted with the Constitution by some as a Christian or at least Deist document, whereas the Constitution is merely secular. This is because the

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Constitution does not contain an explicit reference to God. The Constitution begins with “we the people” as the source of authority without grounding this in the reality of God the Creator. However, others have seen this in reverse and argued that the Declaration is a typical secular Enlightenment document, whereas the Constitution with its checks and balances relies on Christian teachings about the fallen nature of humans and the need for taking this into account when framing a government.

The Declaration of Independence claims that it is self-evident that humans are created. It is that portion of the document that composes the heart of this book. Although it has played many roles in American history, it is the object of study here for three reasons. First, we will consider how it attempts to articulate a foundation for law and society. Second, we will study its specific claims about knowledge, God, and who God is and how these have been challenged and modified from the time of its writing. Third, we will look at the relationship among these truths, law, and authority in the United States. The conclusion from these is that law, even when considered secular, rests on claims about knowledge and about human nature in its relation to what is good and ultimate. Although God is no longer taken to be the metaphysical absolute in the way that the Declaration of Independence views God, there is of necessity another metaphysical absolute put in the place of God. If progress is to be made in overcoming long-standing disputes both in society and about the laws that govern society, then unity must be reached about knowledge, knowing God, and what is good.

Part of what makes the claims of the Declaration of Independence important is that they are said to be knowable by all. Foundational truths about God, humans, and what is good must be knowable if humans are responsible for knowing them and applying them in society and law. Challenges to what can be known are challenges that call into question not only the foundation but also what humans are responsible for knowing and doing. The Declaration of Independence implies that there are some things all humans should know about God and human by stating that these things are self-evident. To fail to know such things is called culpable ignorance.

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THE ETHICS OF BELIEF

What ought I believe? This can be answered by thinking about what I should not believe. Some beliefs are false, and I can and should know this. However, it can also be a question about what I ought to know. I cannot be responsible for knowing everything. And some truths cannot be known by all persons or cannot be known without significant study. So this question can also be understood to ask about what are the most basic things that every person ought to know. If it is self-evident that humans are created, then this is something all persons can and should know. Taken from the reverse perspective, if God or the good cannot be known, then humans cannot be held responsible for knowing these things. Therefore, our study about foundational truths for law and society, and indeed for the good life, involves asking what humans can be responsible for knowing.

In my earlier book, *The Ethics of Belief After the Enlightenment*, I proposed the principle of clarity. This states that if something is not clear or not knowable, then humans cannot be held responsible for knowing it. This can be further articulated by the work of Surrendra Gangadean on clarity and basic beliefs. In his book *Philosophical Foundation: A Critical Analysis of Basic Beliefs*, he begins by saying (1) some things are clear; (2) the basic things are clear; and (3) the basic things about God and man and good and evil are clear to reason.²

We can understand the truth of each of these by considering their opposite. If nothing is clear, then this includes the claim that nothing is clear. It includes anything I say or think. If the basic things are not clear, then nothing that presupposes the basic things can be clear. And the basic things involve beliefs about what is eternal (God) and what is not (creation, humans), what is good and what is not good. We make distinctions between eternal and noneternal, good and nongood, through the use of reason.

The alternative to affirming that the basic things about God and man and good and evil are clear is nihilism. This is a total nihilism, a denial of all meaning and any distinction, including that of being and nonbeing. This nihilism is both ontologically and existentially impossible. It cannot be the case that there is no distinction between

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being and nonbeing, nor can one live as if there is no distinction between good and evil (nongood).

Gangadean also gives examples of how presuppositions work and, therefore, how basic beliefs operate in our thinking. Truth presupposes meaning. What is meaningless cannot be true. We interpret our experiences in light of our basic beliefs. Our beliefs about what is finite and temporal presuppose beliefs about what is infinite and eternal. Our beliefs about what is good presuppose our beliefs about human nature.³ In order to know what is good we must first know human nature (what it is to be a human). This pattern of presuppositions will be present in our study of how American law has made decisions that presuppose beliefs about God, the good, and human nature.

We can see how the Declaration of Independence lays out the basic beliefs that are meant to be known by all and serve as the basis for the new nation. In the famous sentence about what is self-evident, we are given beliefs about God, human nature, and what is good.

There is a sense in which any society or government is grounded on such beliefs whether they are made explicit or not, whether and to what extent they can be articulated or made consistent. What makes the American Revolution stand out is that it made these explicit and that they included the claim that there is God the Creator. The United States and its history can and have been analyzed from many perspectives. But in this one, it is unique. It takes as a starting point a claim that God is knowable and that knowing God is part of knowing what is basic in human society.

The extent to which this foundation of basic beliefs was correctly articulated and understood and the ways in which it has been challenged since that time are the history that we will be considering. In order to do so, we will look at some of the influences on these claims and at some of the notable thinkers after this time that gave formative explanations of God and what is good. I do not claim that this is an exhaustive study of all thinkers that can or should be looked at. And the thinkers I do consider might be important because of their influence, or it might be that their thoughts were the expression of the currents of their day. But I have selected figures that I believe were formative and give us a sense of how belief in God the Creator and how God is known has been challenged and changed.