



The Bryan Center
for Critical Thought and Practice

Center for Origins Research
Center for Law and Government
Summit at Bryan College
Passing the Baton International

Illumine

In Your light, we see light. Psalm 36:9



Personhood and Humanness:

*May they be separated
in the Declaration
and the Constitution*

by H. Wayne House, Th.D., J.D.

Distinguished Professor of Biblical and Theological Studies,
Faith Seminary
Adjunct Professor of Law, Trinity Law School

 H. Wayne House is Distinguished Professor of Biblical and Theological Studies at Faith Seminary, Tacoma, Washington, and Salem, Oregon, and Adjunct Professor of Law at Trinity Law School, Trinity International University, Santa Ana, California. Dr. House was Associate Professor of Systematic Theology at Dallas Theological Seminary, and Professor of Law at Trinity Law School. He is the author, co-author, or editor of more than thirty books and one hundred articles. He speaks and writes in the areas of theology, biblical studies, law, ethics, and apologetics. He is former national president of the Evangelical Theological Society. 

THE DECLARATION OF INDEPENDENCE AND THE UNITED STATES CONSTITUTION ARE THE ORGANIC LAW OF THE UNITED STATES. IN THESE DOCUMENTS OUR FOUNDERS SET FORTH THEIR PERSPECTIVES ON THE RIGHTS AND RESPONSIBILITIES OF FREE MEN AND HOW THEY WOULD BE EXERCISED WITHIN A LIMITED FEDERAL GOVERNMENT. THE CONSTITUTION SPEAKS OF "WE THE PEOPLE," BUT THE DECLARATION DECLARES THAT INDIVIDUAL RIGHTS OF LIFE, LIBERTY AND PURSUIT OF HAPPINESS ARE GRANTED BY THE CREATOR, ARE SELF-EVIDENT, AND EXTEND TO ALL HUMANS. JEFFERSON'S WORDS, "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" EXPRESSED OUR "FOUNDING VISION." THIS VISION WAS NATURAL TO

The Declaration is...the preamble to the Constitution.



the theists and deists of the 18th century.

Moreover, the rights acknowledged as “self evident” were secured in the Constitution. What is interesting for our argument is that some recent federal court decisions indicate a belief that such rights do not have to exist for humans while they virtually always seem to exist for non-humans.

One of the supreme examples of humans being denied rights may be found in the court’s abortion rulings. Writing for the majority in *Roe v. Wade*, Justice Harry Blackmun unambiguously said that if the fetus is a human person, the decision in *Roe v. Wade* cannot stand.

It is the thesis of this essay that all that share the nature of humanity are indeed human, and that all humans are in fact



ALL THAT SHARE THE
NATURE OF HUMANITY ARE
INDEED HUMAN.

persons. Thus, Blackmun and concurring Justices have denied humans basic rights guaranteed under our founding documents.

The Declaration is, in effect and purpose, the preamble to the Constitution.

In addition, the Declaration is a theistic document and, arguably, a Christian document. When the Founders replaced the Articles of Confederation with the United States Constitution, the Declaration was left

as the national compact and basis of government. The Constitution, as its introduction says, is to form a more perfect union; it does not create the union, but adds to that union already established.

The first evidence is from the Declaration itself: “The Unanimous Declaration of the Thirteen United States of America.” The document portends to come from the “one people” of the United States of America. They wanted the world to know that they were a new and independent nation.

Second, the Declaration concludes with, “We, therefore, the representatives of the United States of America, in General Congress, assembled.” The Constitution written in 1787 was for the nation formed in 1776.

A third indication of the existence of the United States from the time of the Declaration is found at the end of the Constitution. It concludes, “DONE in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth.” The unanimous consent was from “states present” at the Declaration.

The Declaration of Independence and the Constitution worked together to provide the soul and the body of the law for the proper ordering of society, maintaining morality and civility for the majority of the nation’s governmental history. These documents should not be separated. The Decla-





ration sets forth the principles upon which the government was to be founded, whereas the Constitution establishes the civil powers to accomplish those principles.

In view of this, the Constitution cannot be viewed as absent the theological ideas that permeate the Declaration. This perspective gives meaning to the words of John Quincy Adams who said, "The highest glory of the American Revolution was this: it connected in one indissoluble bond the principles of civil government with the principles of Christianity." In admitting states to the union as late as 1958 and 1959 (Hawaii and Alaska), Congress said that they must have Constitutions that are not repugnant to the principles of the Declaration of Independence. Accordingly, each state in the union, with the exception of Oregon, specifically makes reference to either Almighty God, the Supreme Ruler of the Universe, Creator, or Supreme Being, consistent with the Declaration, upon whom the principles of the Declaration rely.

Though the Constitution does not define the nature of personhood, it seeks to secure the rights of all human beings, or persons, as guaranteed by the Declaration. Importantly,



The Constitution cannot be viewed as absent the theological ideas that permeate the Declaration.

the Constitution does not equate persons with citizens, for in fact many persons are not citizens but all citizens are persons.

John Marshall, the first Chief Justice of the United States, once said that he apologized to his readers for "much time . . . consumed in the attempt to demonstrate propositions which may [have] been thought axiomatic." The Framers of the Declaration said that the truths of which they spoke were self-evident. They saw them beyond debate and rooted in the very fabric of the created order. It is likely that such views were, at least partly, dependent on the apostle Paul's words in Romans 1 and 2 that God had revealed certain truths clearly in the world of nature and the world of conscience. This is the basis in the teachings of both Locke and Blackstone, who were highly influential in the intellectual development of the Founders.

The Declaration is a statement of first principles on which the Framers relied in their case against England and which informed their establishment of a new government.

After its opening statement of "self-evident" truths, the Declaration goes on to read that "governments are instituted among men to secure these rights." Because men are equal and no one rightfully rules over another by nature, government receives its power only by consent. The Constitution, then, has as its purpose to secure the rights of the Declaration. Such a view reflected the ideas of men like Locke





and the Framers in respect to their belief in the Laws of Nature and Nature's God.

They read the Constitution wrongly who believe that the Constitution creates any rights. The Declaration created the nation and brought into existence the Constitution, which document had as its purpose to limit the power of government from intruding on rights given by God. The historic view is that above the laws of any government are the laws of God (in nature and in Scripture).

What would the men who wrote the Declaration have meant by "men" when they said that "all men are created equal," and would the authors of the Fourteenth Amendment have understood this term to include "fetus" within the term "person"? The use of these terms appears to be interchangeable during the time of the writing of the Declaration, Constitution, and the Fourteenth Amendment. Using the basic logic of language, if a "fetus" is a "child" and a "child" is a "person," then a "fetus" is a "person." Such seems to be the case during this era of history.

At the time of the framing of the Constitution, a person is defined as "an individual, a man, a woman; one, any one, one's self," and at the time of the Fourteenth Amendment person is defined as "a man, woman, or child, a body." During the former period, a "child" was defined as "[an] infant, a very young person; a son or daughter; the descendant of a man however remote; one that is in some respect or other like an infant or young person." In the latter

period, "child" was "an infant, or person, in its tenderest years; the offspring of a person; the descendant of a man of any age." In the former period, a "foetus" was "a child in the womb perfectly formed" and in the latter "signifies the child in the womb, after it is perfectly formed." Clearly, this shows that a fetus is a child and a child is a person, thus a fetus is a person.

There is something often overlooked in the discussion of this portion of the Declaration that is profound for the abortion debate and consists of at least three components. First is the text that all men are "created," not "born," equal. A person does not need to be born to benefit from the rights inherent in human personhood. "Create" means to cause to exist or bring into being. The text does not argue when a person is created, but it is clear that the point at which all persons have in common as individual beings is the time of fertilization, for only then is a separate being brought into existence. Second, this self-evident truth comes from the Creator, indicating that the Founders did not believe that rights are created by the state and bestowed by the state on the people. Third, these self-evident truths include life, liberty and the pursuit of happiness. Consequently, every human, which includes the unborn, has a right to life within the meaning of the Declaration. One would conclude from this, that personhood is inherent in humanity, endowed by God, and that the government has no right to decide what is a person, or to define it





differently from what is given by God and recognized in the Declaration.

The Declaration of Independence is an aspirational document which, though not fully fulfilled, nonetheless serves as the ideal to which all should aspire. The fact is that slaves as persons did not enjoy these rights before their emancipation, and even their posterity did not enjoy these rights fully under the law until the Civil Rights Act of the 1960s.

President Abraham Lincoln, in his debates with Stephen Douglas, argued that the principles of the Declaration outline “those differences anchored in nature between human beings and animals.” Thus, “beings capable of giving and understanding

tion is to clarify kinds of rights sets forth by the Declaration and the desire to secure these rights under the document at hand. The clause mentioning the blessings of liberty is a reference to the liberty through the Declaration, not only for the people of the United States then alive, but also to all those yet to be born.

The use of the word “person” in the Constitution speaks of persons within certain constitutional contexts; no instance in the Constitution denies the human personhood of the unborn any more than adolescents or aliens are denied personhood.

“Person” within the meaning of the Bill of Rights and the Fourteenth Amendment,



The Declaration of Independence is an aspirational document which, though not fully fulfilled, nonetheless serves as the ideal to which all should aspire.



reasons over matters of right and wrong deserve to be ruled only with their consent.”

An often-missed reference to the unborn is found within the first words of the Constitution, namely, to “secure the Blessings of Liberty to ourselves and our Posterity.” Evidence exists that the intent of this afterthought preamble to the Constitu-

unlike that of the Constitution proper, refers to human personhood in inclusive language, encompassing all human beings who have been created, not only all persons born. This was the understanding at the time of the writing of the Fourteenth Amendment. Though there is no specific reference to the unborn, the amendment includes all who are persons and holds that only those born or



“Created equal” was viewed as a “first principle.”



naturalized are citizens. Courts have recognized that the provisions of the Declaration as secured by the Constitution adhere to all persons in regards to life—their very personhood.

That humans have been created equal was not viewed as a radical thought in the 18th Century. It was viewed as a first principle, an irrefutable fact. The Framers did not set forth this perspective as a “belief” or “opinion” in which there could be a difference of opinion among men.

As Hadley Arkes has said,
....the Founders would have regarded it as quite as queer if anyone had remarked that he ‘believed’ that ‘all men are created equal’ that human beings are radically different from animals. They would have found it, also, quaint or unintelligible if anyone had suggested that this proposition was distinctly ‘American’ or ‘English’ or that it should not hold true, as an axiom, anywhere else in the world.

With the claims of the Declaration, we find first principles and, consequently, we find the *Roe* decision weak and contradictory because it runs afoul of the first principles. Some contemporary moralists have argued that if there are universals that held in all places they would be universally recognized everywhere. Since people differ in these matters, they argue, there must be no such truths. This argument reflects what philosophers call self-refuting argument. Yet, this is

the type of argument given to us by Blackmun in *Roe*. He says there,

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.

This is a rejection of natural law, or self-evident truth, in favor of a philosophy of “contending moralities.” Apparently, if something does not have a consensus it is a mere opinion, not a truth, so the people may proceed with personal choice.

This, in fact, was part of the debate over slavery in the 19th century between Lincoln and Douglas. Lincoln said slavery violated the Declaration and natural law, while Douglas agreed with legal positivism—through court evolution and without reference to God-given rights.

The issue which I have sought to demonstrate is that all humans are persons both by nature and their inclusion within the Declaration of Independence and the Constitution. Consequently, all humans from their creation at fertilization through their death are persons in fact and should be accepted as persons under the law. To reject this argument is to wander in a moral fog and to encounter a legal, self-refuted legal quandary. 🌸

