

## Origins of Liberty

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## Intro – A Solid Foundation

America's founding documents, including the Constitution are:

- Not arbitrary.
- Built on a solid foundation
- an inheritance not a novel invention of its drafters
- Rooted in at least 5 English liberty charters and their history.

The interpretive principle of **ORIGINAL INTENT** (originalism) directs us to the contextual history and to the authors' intended meaning of the documents as expressed and as understood by the parties to the documents.

The influence of the Roman Empire and the ancient political philosophers set the stage for subsequent political structure and ideas. However, the legal history and heritage of America can be traced most directly to a handful of **BRITISH LIBERTY CHARTERS** and the historical struggles that gave rise to their creation.

Those primary charters are taught in *The Genealogy to the Constitution*:

1. 1100 Charter of Liberties
2. 1215 Magna Carta
3. The Petition of Right of 1628
4. The Grand Remonstrance of 1640
5. The English Bill of Rights (1688)

In the *Federalist Papers*, Alexander Hamilton refers to these charters collectively as the British Constitution.

## Rooted in Natural Law

Liberty is the intersection of freedom and morality.

- A Freedom of self-governance and a morality of “Do No Harm”
- You have the inherent right to do what you wish with what is yours, as far as you do not harm or infringe upon the liberty of another.
- This principle grew out of the influence on Western Civilization of the Bible and the Christian Gospel.

### Scripture, Political Philosophers and History

A key difference in the European versus the American Enlightenment was **mere reasoning versus moral reasoning**. As famously attested to by French Philosopher Alexis De Tocqueville the religious practices and beliefs played a central role in the order and prosperity of America.

America’s most influential founders had a **God-centered worldview**, yet they gave us a nation where one is free to believe or not to believe, precisely because of the “love your neighbor as yourself” philosophy of the Christian Scripture.

The founders of the American Republic drew upon their **own history and upon philosophers** like Sophocles, Aristotle, Cicero, St. Thomas Aquinas, Francisco de Vitoria, as well as portions of the Bible and the ethics of Jesus for their view of NATURAL LAW. These views were refined over the centuries as they gained greater understanding and experience in the struggles with government control of religion.

The founders’ understanding of natural law said liberty is

1. a GIFT from God and,
2. that natural law dictated that no one should HARM another’s liberty.

Our founding documents contain several references to God.

Notice the First paragraph of the Declaration of Independence refers to

- the “Laws of NATURE and of Nature’s GOD

Second paragraph:

- “...endowed by their CREATOR with certain INALIENABLE rights...”

Final paragraph:

- “...appealing to the SUPREME JUDGE of the world...” and “...with a firm
- reliance on the protection of DIVINE Providence...”

The Preamble

- The “Blessings” of liberty...

The Founders' views were rooted in an acknowledgment of a DIVINE CREATOR as the source of liberty:

## Alexander Hamilton

“(God) has constituted an eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever. This is what is called the law of nature.... Upon this law depends the natural rights of mankind. The sacred lights of mankind ... are written, as with a sunbeam, in the whole volume of human nature, by the hand of Divinity itself, and can never be erased or obscured by mortal power.... No tribunal, no codes, no systems, can repeal or impair this law of God, for by his eternal law, it is inherent in the nature of things.”

*-A Letter in Answer to A.W. Tanner, Alexander Hamilton, The Works of Alexander Hamilton, vol. 1, ed. Henry Cabot Lodge (New York: The Knickerbocker Press, 1904), 62-3.)*

## Thomas Jefferson

Jefferson also acknowledged God as the author of Liberty. He says in his Notes on the State of Virginia, “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?” – *Notes on the State of Virginia*

## Thomas Paine

Thomas Paine, often referred to as an atheist, penned this testimony:

“Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph. What we obtain too cheap, we esteem too lightly: it is dearness only that gives every thing its value. Heaven knows how to put a proper price upon its goods; and it would be strange indeed if so celestial an article as FREEDOM should not be highly rated.” -*The Crisis*

## Mercy Otis Warren

“...though we are daily threatened with the depredations of Britain...yet each city...stands ready to sacrifice their devoted lives to preserve inviolate, and to convey to their children the inherent rights of men, conferred on all by the God of nature, and the privileges of Englishmen claimed by Americans from the sacred sanction of compacts. May nothing ever check that glorious spirit of freedom which inspires the patriot in the cabinet, and the hero in the field, with courage to maintain their righteous cause, and to endeavor to transmit the claim to posterity, even if they must seal the rich conveyance to their children with their own blood.”

## ORIGINS OF LIBERTY

Despite their acknowledgement that liberty was a gift from God, at the time of the drafting of the Constitution it was determined that the central government would not be a THEOCRACY that either dictated religious beliefs nor outlawed them.

John Leland, defender of religious liberty and leader of the Virginia Baptist Convention explains this concept:

“The notion of a Christian commonwealth should be exploded forever. ... Government should protect every man in thinking and speaking freely and see that one does not abuse another. The liberty I contend for is more than toleration. The very idea of toleration is despicable; it supposes that some have a pre-eminence above the rest to grant indulgence, whereas all should be equally free, Jews, Turks, Pagans and Christians.”

And owing to the bloody and tumultuous lessons from their ancient and contemporary history, even the state-instituted religion that the colonies began with eventually untangled themselves from the state and were no longer persecuting citizens in the name of religion, but faith as was done to colonists like Obadiah Holmes and Roger Williams, and government lived in harmony not at odds:

Alexis de Tocqueville, in his classic work, *Democracy in America*, written in 1835:

“The religious atmosphere of the country was the first thing that struck me on arrival in the United States. The longer I stayed in the country, the more conscious I became of the important political consequences resulting from this novel situation. In France I had seen the spirits of religion and of freedom almost always marching in opposite directions. In America I found them intimately linked together in joint reign over the same land.”

Much of the struggle that birthed the liberty charters in England, which were progenitors of our founding documents, took place within the struggle between CHURCH and STATE. Our forefathers brought that struggle from England and our founders learned as this history continued the lessons of true religious liberty.

## Liberty for All/Do No Harm

America's founders believed that the principles of liberty under natural law should not be violated and that liberty should be exercised freely with only one restriction – do not harm another:

### Benjamin Franklin

As Benjamin Franklin said in the Silence Dogood letters, ... this liberty is every person's possession ***"...as far as by it, he does not hurt or control the Right of another: And this is the only Check it ought to suffer, and 'the only Bounds it ought to Know."***

Thomas Paine in his 2nd Treatise for Civil Govt said,

"The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours."

The Greek political philosopher Cicero in his dialogue De Legibus (On the Laws) describes this principle of Natural Law like this:

"There in fact a true law - namely, right reason - which is in accordance with nature, applies to all men, and is unchangeable and eternal...To invalidate this law by human legislation is never morally right, nor is it permissible ever to restrict its operation, and to annul it wholly is impossible...It will not lay down one rule at Rome and another at Athens, nor will it be one rule to-day and another tomorrow. But there will be one law, eternal and unchangeable, binding at all times upon all peoples; and there will be, as it were, one common master and ruler of men, namely God, who is the author of this law, its interpreter, and its sponsor."

He referred to this natural law as right reason. Right reason is moral reasoning rather than reason divorced from morality. Such base reasoning was evident in the French Revolution where European enlightenment thinkers rejected a morally centered reasoning. "Right reason" can't occur without right information and right motivation, (what the founders called knowledge and virtue), as

Ciceros says in the same treatise, "It is not so much the science of the law that produces litigation (or conflict), as the ignorance of it."

Sometimes men and women defy the bounds of "right reason" (moral reasoning):

".. the nature of mankind is one thing, and the reason of mankind another; and the first has the same relation to the last as the whole to a part. The passions and appetites are parts of human nature as well as [are] reason and the moral sense. In the institution of government, it must be remembered that, although reason ought always to govern individuals, it certainly never did since the Fall, and never will till the Millennium; and human nature must be taken as it is, as it has been, and will be..." – John Adams

## Knowledge and Virtue

Man tends to follow his own appetites. When those appetites are not tempered by sound knowledge and virtue then harm, violence and tyranny will be the natural product of his desires.

In political society, Ignorance of natural law and the rejection of the "do no harm" aspect of liberty will lead to either chaos on the one hand or domination by the powerful and tyrannical on the other hand.

As Samuel Adams said in his Treatise the Natural Rights of the Colonists:

“No people will tamely surrender their Liberties, nor can any be easily subdued, when knowledge is diffused and virtue is preserved. On the Contrary, when People are universally ignorant, and debauched in their Manners, they will sink under their own weight without the Aid of foreign Invaders.”

We were endowed by our creator with certain inalienable rights and we as the government's creators endowed it with certain responsibilities - namely to protect our rights from harm.

Not to keep us comfortable, not to provide us things that we should provide for ourselves, not to distribute the fruits of a person's labor among the masses, not even to keep us safe from our own stupidity but to keep our RIGHTS safe.

## Notes:

## Liberty is a Gift from God

**If one cannot properly define liberty, then one cannot properly defend liberty.**

- America is falling behind in their defense of liberty because we lack knowledge and virtue.
- The drafters of America's founding documents acknowledged their belief in God as the Giver of liberty.
- America's founders believed Liberty is not a gift of government to be dispensed and withheld at the whim of the rulers.

## **THE SOURCE OF LIBERTY**

- Liberty does not come from government
- Liberty does not come from documents
- The Constitution doesn't give rights; it declares rights that exist by the nature of our creation.
- Liberty is INHERENT in all mankind
- The drafters believed that liberty was a gift from a Divine Creator
- Liberty is not exclusively American, but it has been written into the very foundation and structure of American government.

Jefferson believed that since liberty was a gift from God, abuses of liberty would not be forever ignored by God.

### RIGHTS ARE:

Not Granted by government but are to be guarded by government.

Not given by documents but are Gifts of God.

Not privileges to be Dispensed, but possessions to be Defended.

## Liberty Must Be Guarded

**James Madison**

**“As a man is said to have a right to his property, he be equally said to have a property in his rights.”**

### **Guard Your Rights as You Would Your Home**

- Liberty and individual Rights are not simply ideas but possessions.
- A person should be as motivated to protect their rights, as they would their personal property.
- To rob a person of his speech, his ideas, his right to defend himself is as much theft as taking his private, physical property.

**NOTES:**

## Virtue and Knowledge

### **Freedom Restrained by Knowledge and Virtue**

In the Christian scripture, believers are enjoined to operate in love by not using one's liberty for an occasion to harm or defraud another.

Nor should the LAW or the STATE be used as an excuse to harm or defraud another

### **Bastiat, The Law**

- “No society can exist unless the laws are respected to a certain degree. The safest way to make the law respected is to keep the laws respectable.” *Fredrique Bastiat, The Law*
- A degradation of the LAW and its respectability will degrade the respect each individual has for either legal or moral restraint.
- Theft under the law should be as repugnant as theft by a private individual.

### **Eternal Vigilance**

“It's the common fate of the indolent to have their rights become prey to the active. The condition upon which God hath given liberty to man is eternal vigilance, which condition if he break, servitude is at once the consequence of his crime and the punishment of his guilt.” *-John Philpot Curran*

### **NOTES:**

## The Marks of Good Government

Government power comes from the consent of the people.

Government's singular purpose is to protect the people's individual liberty.

Our rights are interdependent.

Bastiat, *The Law*

“Each of us has a natural right – from God – to defend his person, his liberty, and his property. These are the three basic requirements of life and the preservation of any one of them is completely dependent upon the preservation of the other two.”

“The principle of (government), its reasoning for existing...its lawfulness is based on the individual right.”

The mark of a bad government is when that government or members of that government are doing things that it says are unlawful for the individual citizen to do against another.

“Since an individual cannot lawfully use force against the person, liberty or property of another individual, then the government – for the same reason – cannot lawfully be used to destroy the person, liberty or property of individuals or groups.” *Bastiat, The Law*

## ORIGINS OF LIBERTY

Just because you are a member of society does not mean you surrender your natural rights as an individual.

"It is the greatest absurdity to suppose it in the power of one, or any number of men, at the entering into society, to renounce their essential natural rights, or the means of preserving those rights; from the very nature of [government's] institution, is for the support, protection, and defence of those very rights; the principal of which, as is before observed, are Life, Liberty, and Property. If men, through fear, fraud, or mistake, should in terms renounce or give up any essential natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being the gift of God Almighty, it is not in the power of man to alienate this gift and voluntarily become a slave."

~SAMUEL ADAMS, THE RIGHTS OF THE COLONISTS 1772

"What happens when the law has gone further than this; it has acted in direct opposition to its own purpose?"  
The law has then "been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect."

Frédéric Bastiat

"Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.

"That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations.

### NOTES:

### James Madison

“Where an excess of power prevails, no sort of property is respected

“It is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations...”

“That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest.”

### NOTES:

## The Next Generation

If the united states mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property and the property in rights; they will rival the government that most sacredly guards the former, by repelling its example in violating the latter will make themselves a pattern to that and all other governments. -James Madison

(notice the united states are referred to in the plural throughout)

- The founders believed that a just government which protects and preserves liberty will be a pattern for all other governments.
- Liberty must be paid forward to the next generation
- This nation was constituted to preserve the blessings of liberty to ourselves and future generations.

**A true fight for liberty is ROOTED IN LOVE not in animosity and hate as is often the slanderous characterization. Love of family, love of neighbor, love of community and for many love of God.**

“If you should still be so mad as to bring destruction upon yourselves; if you should still neglect what you owe God and man you cannot plead ignorance in your excuse. Your consciences will reproach you for your folly; and your children’s children will curse you.” Alexander Hamilton

One must have a higher motivation than the simple comfort of today. If not, your energy and hope will fade and lead you to quit or to take extreme measures which may not be needed or appropriate at the time.

### NOTES:

## ORIGINS OF LIBERTY

Liberty must be supported at all hazards. We have a right to it derived from our maker...but if it had not, our fathers have earned and bought it for us at the expense of their ease, their estates, their pleasure and their blood” -John Adams

“If there be trouble let it be in my day so that my child may have peace.” -John Locke

“If you will not fight for right when you can easily win without bloodshed; if you will not fight when your victory is sure and not too costly; you may come to the moment when you will have to fight with all the odds against you and only a precarious chance of survival. There may even be a worse case. You may have to fight when there is no hope of victory, because it is better to perish than to live as slaves.” – Winston Churchill

### NOTES: