

Rights and Citizenship

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I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks--no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men. So that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.

- James Madison

I will be offering two simple points.

The first is that at its inception, the distinctly American conception of rights reflected a belief in human dignity and hence in citizenship. It was an outgrowth of a sustained attack on the monarchical legacy and the notion that some people rank above other people by birth -- and a firm commitment to republican self-government. That attack, and that commitment, are the real sources of American exceptionalism. They informed the right to private property and the right to keep and bear arms no less than the right to free speech and the prohibition on the establishment of an official religion.

The second is that freedom from desperate conditions had widespread support in the founding period. The recognition of that form of freedom, in Franklin Delano Roosevelt's Second Bill of Rights, can claim a degree of continuity with the founding era. It too is rooted in a belief in human dignity.

1.

We often think of the American Revolution as relatively conservative, certainly as revolutions go. The French Revolution shook the world, and so did the Russian Revolution. The American Revolution seems more cautious and incremental, and much milder. After all, much of American law and culture reflect our British heritage, and in many respects, the U.S. Constitution draws directly on that heritage. Americans refer proudly to Anglo-American traditions. Long before the Constitution, there was the Magna Carta. Was there such a big break?

Actually there was. If you study the decades that preceded the revolution, you can see the rise of republicanism everywhere, and it was a radical creed. As the American colonists saw it,

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republicanism entailed self-government; their objection to British rule was founded on that principle. In the colonies, republican thinking, focused on the authority of what later became known as We the People, led to fresh ideas about what governments can legitimately do. More broadly, it spurred new understandings of how human beings should relate to one another, and in the process undid established hierarchies of multiple kinds.

The best and most vivid account comes from the Gordon Wood, who shows that the American Revolution was social as well as political, and that it involved an explosive principle: the equal dignity of human beings.¹ In the early decades of the eighteenth century, Americans lived in a traditional society, defined by established hierarchies, which affected people's daily lives, even their beliefs and their self-understandings. Wood writes that "common people" were "made to recognize and feel their subordination to gentlemen," so that those "in lowly stations . . . developed what was called a 'down look,'" and "knew their place and willingly walked while gentlefolk rode; and as yet they seldom expressed any burning desire to change places with their betters."²

In Wood's account, it is impossible to "comprehend the distinctiveness of that premodern world until we appreciate the extent to which many ordinary people *still accepted their own lowliness*."³ That acceptance had a political incarnation. In England, of course, sovereignty was found in the king, and the American subjects of the king humbly accepted that understanding.

As late as 1760, the colonies consisted of fewer than two million people, subjects of the monarchy, living in economically underdeveloped communities, isolated from the rest of the world. They "still took for granted that society was and ought to be a hierarchy of ranks and degrees of dependency."⁴ Over the next twenty years, their whole world was turned upside down, as the monarchical view of the world crumbled. This was a revolution of everyday values as well as politics. In Wood's words, the American Revolution was "as radical and social as any revolution in history," producing "a new society, unlike any that had ever existed anywhere in the world."⁵

It was republicanism, with its proud commitment to liberty and equality, that obliterated the premodern world. To be sure, the transformative power of republicanism could be felt everywhere, including in England itself. As David Hume put it, "to talk of a *king* as God's vice-regent on earth or to give him any of these magnificent titles which formerly dazzled mankind, would but excite laughter in everyone."⁶ But in the American colonies, the authority of republican thinking was especially pronounced.

As the Revolution gathered steam, people were not laughing. Rule by the king wasn't funny. In 1776, Thomas Paine described the king as a "royal brute" and a "wretch," who had

¹ See Gordon Wood, *The Radicalism of the American Revolution* (New York, NY: Vintage Books, 1991).

² *Ibid.*, 29.

³ *Ibid.*, 29-30.

⁴ *Ibid.*, Page.

⁵ *Ibid.*, Page.

⁶ David Hume, "Whether the British Government Inclines More to Absolute Monarchy, or to a Republic," in *Complete Works of David Hume*, (Hastings, United Kingdom: Delphi Classics, 2016).

“the pretended title of Father of His People.”⁷ With amazement, John Adams wrote that “Idolatry to Monarchs, and servility to Aristocratical Pride, was never so totally eradicated from so many Minds in so short a Time.”⁸

David Ramsay, one of the nation’s first historians (himself captured by the British during the Revolution), marveled that Americans were transformed “from subjects to citizens,” and that was an “immense” difference, because citizens “possess sovereignty. Subjects look up to a master, but citizens are so far equal, that none have hereditary rights superior to others.”⁹ The thinking behind the Revolution led to an attack on royalty and aristocracy, to be sure. If republicanism was about anything, it was about that. But the same thinking placed a new focus on the aspirations, the needs, and the authority of ordinary people. Hierarchies of all kinds were bound to disintegrate – not through anything like envy, but through the simple assertion, immortalized in the Declaration of Independence, that all men are created equal.

As Wood puts it, “To focus, as we are today apt to do, on what the Revolution did not accomplish – highlighting and lamenting its failure to abolish slavery and change fundamentally the lot of women – is to miss the great significance of what it did accomplish: indeed, the Revolution made possible the anti-slavery and women’s rights movements of the nineteenth century and in fact all our current egalitarian thinking.”¹⁰

2.

What is the Bill of Rights about? Does it have a unifying theme? If we examine it afresh, we will see that the framers were concerned above all to guarantee the preconditions for genuine self-government – that they were attempting to ensure popular sovereignty. We will fail to understand the Bill of Rights if we see it as based solely on opposition to government or a kind of laissez-faire individualism. We do better to see it as an effort to protect *citizenship*. If we are looking for a unifying theme, this is it.

Most obviously, the first amendment guarantees several rights that are indispensable to self-governance: freedom of speech and of the press; the right of peaceful assembly; the right to petition the government for the redress of grievances. These are the quintessential political rights, ensuring that the citizens will control the government rather than the other way around. The right of the people, as a collectivity, is expressly recognized in the assembly and petition clauses.

The first amendment also bans Congress from enacting any “law respecting an establishment of religion, or prohibiting the free exercise thereof.” Thus the first amendment creates the two components of the American right to freedom of religion: protection against an official church (the establishment clause) and protection against government interferences with religious practices (the free exercise clause). These are individual rights, to be sure, but they are also an effort to protect self-government itself. If a democracy becomes entangled with religion

⁷ Gordon Wood, *The Radicalism of the American Revolution* (New York, NY: Vintage Books, 1991), 168.

⁸ *Ibid.*, 169.

⁹ *Ibid.*, 169.

¹⁰ *Ibid.*, 7.

and with religious disputes, it will be less likely to be able to maintain itself – a point to which the framers and ratifiers were closely attuned. In a diverse society, the Establishment Clause protects government and religion at once. (Not by the way, it also reflects a commitment to human dignity.)

The right to a jury trial, protected by the sixth and seventh Amendments, is another example. It is usual to think of this right as an effort to safeguard those accused of crime against the government, and indeed it does provide a large measure of individual protection. But its goal is also to ensure citizenship. One of the functions of the jury trial right is to ensure an active role for citizens in the administration of both civil and criminal justice. Jury trials give a continuing place to ordinary people in designing the content of law – especially when the stakes are very high. Thus a system with juries allows people to serve, in a modest but important sense, as lawmakers.

Many early enthusiasts for the jury system spoke in these terms, treating the jury as a kind of democratic branch of the judicial power. If government has enacted an unfair or oppressive law, jurors might well refuse to punish people for violating it. At least they can moderate its harsh edges, by finding people innocent in close cases. Crucially, service as a juror also serves an important educative function. It gives people a sense of what their government is all about. This form of education might well have continuing effects in a democratic culture.

If we understand the original Bill of Rights in terms of citizenship, we will have a new perspective on what seems to be the quintessential protection of individual rights: the constitutional protection of private property. Under the fifth amendment, private property cannot “be taken for public use, without just compensation.” By protecting people’s holdings against government, the fifth amendment does indeed create a sphere of individual control. But we can also see the fifth amendment as way to protect the independence that citizens require.

The republican tradition posits a close connection between citizenship and the right to property. If government cannot take your property without paying you its fair value, you are to some extent free from its control, and you can do and say as you wish with less fear of reprisal. Because of this effect, property rights can be seen as a necessary precondition for the status of citizenship. Personal security and personal independence from the government are guaranteed in a system in which rights of ownership are protected through public institutions.

When private property does not exist, citizens are dependent on the good will of government officials, on an almost daily basis. Whatever citizens have is a privilege and not a right. They come to the state as supplicants or beggars rather than as right-holders. Any challenge to the state may be stifled or driven underground by virtue of the fact that serious challenges could result in the withdrawal of the goods that give people basic security. A right to private property, free from government interference, is in this sense a necessary or at least helpful foundation for a democracy.

The second amendment, safeguarding the right to keep and bear arms, can be understood in similar terms. At least in part, that too is a political right, understood as pivotal to republican government. Consider the opening words of Amendment: “A well-regulated Militia, being necessary to the security of a free State” At a minimum, the second amendment prevents

the federal government from outlawing state militias, and it is clear that the framers understood state militias as performing an important democratic function. Militias provided a kind of training ground for the cultivation of republican virtue; they also provided a constraint on a potentially tyrannical federal government. Thus there has long been a connection between the right to bear arms and popular sovereignty, a connection that the American revolution served to underline. A central goal of the second amendment was to create a kind of political right, one that ensured that people would be citizens rather than subjects.

Many provisions of the bill of rights are designed to protect citizens from abuse of the system of criminal justice. It is entirely right to see these provisions as an effort to guard against an overreaching government. People are entitled to be secure in their “persons, houses, papers, and effects,” through protection against unreasonable searches and seizures. Government is not permitted to issue general warrants for the invasion of homes; if it wants a warrant, it is required to give specifics. People cannot be compelled to testify against themselves. They have a right to the assistance of counsel. They must be given a trial that is both speedy and public. The government is forbidden to impose excessive bail, excessive fines, and cruel and unusual punishments. These provisions do indeed protect individual rights. But like the right to private property, they also safeguard the preconditions of citizenship. People cannot exercise the independence that citizenship requires if they are entirely vulnerable to the power of the state, and these safeguards are indispensable to that independence.

The general point is straightforward. We are used to thinking of the original Bill of Rights solely as a way of protecting the individual against the government – as a way of creating a sphere of private liberty, immune from collective control. That is true and important. But the original Bill is also an effort to create the conditions for citizenship. To be sure, citizenship is inextricably intertwined with the control of government. But that control was to be guaranteed through mechanisms for participation and independence, not through simple barriers against public officials.

3. Social and Economic Rights

The Constitution’s framers gave no serious thought to including social and economic guarantees in the Bill of Rights. But we should note that the founding generation was hardly indifferent to poverty and acute deprivation. On the contrary, some of their writing suggested a strong commitment to social and economic guarantees, though not at the constitutional level.

Consider the words of Madison himself, probably the most influential voice in the founding period. Madison offered the following means of combating “the evil of parties”¹¹:

1. By establishing a political equality among all.
2. By withholding unnecessary opportunities from a few, to increase the inequality of property, by an immoderate, and especially an unmerited, accumulation of riches.
3. By the silent operation of laws, which, without violating the rights of property, reduce extreme

¹¹ James Madison, 14 *The Papers of James Madison 1797-98* (R. Rutland and W. Rachal eds.) (Charlottesville: University of Virginia Press, 1975).

wealth to a state of mediocrity, and raise extreme indigence toward a state of comfort (emphasis added).

What is most striking about this passage is Madison's emphasis on the importance of "a state of comfort" for the poor, in particular his suggestion that "comfort" would provide protection against "the evil of parties," or self-interested factions, in government. He seems to be suggesting that gross inequality will likely lead to a kind of interest-group competition within the process of governance. Here is a clear link between the elimination of poverty and the preconditions for democracy. For Madison, a well-functioning political process is endangered by both "extreme wealth" and "extreme indigence." Also noteworthy is Madison's evident belief in the possibility of reducing extreme wealth and raising extreme indigence "without violating the rights of property." He does not spell out what this would entail, but he clearly thought it possible.

Thomas Jefferson was not a framer of the Constitution – he was in France at the time -- but he exerted a strong influence during the founding period. Jefferson wrote in terms that were strikingly similar to Madison's¹²:

I am conscious that an equal division of property is impracticable. But the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislatures cannot invest too many devices for subdividing property, only taking care to let their subdivisions go hand in hand with the natural affections of the human mind. Another means of silently lessening the inequality of property is to exempt all from taxation below a certain point, and to tax the higher portions of property in geometrical progression as they rise. Whenever there is in any country, uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labor and live on.

The idea of exempting those below a certain point, and of imposing higher taxes on those who earn more, is sometimes thought to be a product of the twentieth century. But it has a clear antecedent in Jefferson's thought.

Many of the classical liberal thinkers, far from rejecting social and economic rights, explicitly embraced them. The French social theorist Montesquieu, a great influence on the American framers, claimed: "The alms given to a naked man in the street do not fulfill the obligations of the state, which owes to every citizen a certain subsistence, a proper nourishment, convenient clothing, and a kind of life not incompatible with health."¹³ John Locke, of course a large influence on American political thought, wrote in similar terms: "As Justice gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him, so Charity gives every man a Title to so much of another's plenty, as will keep him from extream want, where he has no means to subsist otherwise."¹⁴

¹² Thomas Jefferson, 8 *The Papers of Thomas Jefferson* 681-83 (1953).

¹³ Montesquieu, *The Spirit of the Laws*, Book 23.

¹⁴ John Locke, *Two Treatises on Government*, book 1, chapter 4.

Of all those in early America, Thomas Paine was the most explicit advocate of social and economic guarantees. Paine emigrated to the United States in 1774. In 1776 he published his extraordinarily influential book, *Common Sense*. Fifteen years later, he published his first volume of *The Rights of Man*, a response to Edmund Burke, who had written with great skepticism about the French Revolution and the use of the idea of “rights” to justify popular rebellion. Paine strongly endorsed both civil and political rights, including freedom of speech and freedom from arbitrary deprivations of liberty. But in his second volume, published in 1777, Paine went much further. In fact he urged something like a welfare state, including many of the ingredients of twentieth century reforms.

Thus Paine argued for public employment to assist those needing work; for social security for employees, allowing them to retire at the age of sixty; for state-supported money for poor families sufficient to permit them to educate and raise their children; and for benefits for recently married couples and for mothers. Part II of Paine’s *The Rights of Man* was widely read; 200,000 copies of the book were sold in Scotland, Wales, and England.¹⁵ Nor did Paine believe that the idea of rights was unsuitable for proposals of this kind. He urged that his suggestions about pensions were envisioned “not of the nature of a charity, but of a right,” and he emphasized two years later that he was urging “not charity but a right, not bounty but justice.”¹⁶

In the framing period, there was widespread support for legislation that would provide poor people with the basic necessities of life. Greatly influenced by English practice, the American colonies offered a number of strategies to ensure help for the destitute. The details should not detain us here.¹⁷ But public funds were widely used for this purpose, and it was generally agreed that assistance for the poor was a public responsibility. In the colonial period, welfare was called “relief” and was provided in many different forms. “Outdoor relief,” the direct ancestor of modern welfare, took the form of jobs, apprenticeships, and much more.

While England tried to forbid outdoor relief to able-bodied poor people, America was far more permissive; nearly all of the states allowed that form of assistance. An elected local official, the Overseer of the Poor, accepted applications from those who needed help and used tax money to provide clothing, fuel, food, and even assistance for medical treatment. Many cities in the young colonies also provided “indoor relief,” providing assistance through poorhouses, which could be found in Boston, Salem, Philadelphia, New York City, Charleston, Providence, and Baltimore. The extent of the relief was highly variable. Many critics at the time feared that poor relief would encourage “idleness” and “improvidence”; they stressed the danger that poor people were “not left to feel the just consequences of their idleness.”¹⁸ The themes of contemporary debates about welfare programs can be found in the earliest days of American history. But assistance for those in need was widely accepted.

4. The Second Bill of Rights

¹⁵ See Paul Hunt, *Reclaiming Social Rights* 6 (Dartmouth 1996).

¹⁶ See *id.* at 7.

¹⁷ For an overview, see Michael B. Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (New York: Basic Books 2d ed. 1996).

¹⁸ *Id.* at 17.

On January 11, 1944, the United States was involved in its longest conflict since the Civil War. The war effort was going well. In a remarkably short period, the tide had turned sharply in favor of the Allies. Ultimate victory was no longer in serious doubt. The real question was the nature of the peace.

At noon, America's optimistic, aging, self-assured, wheelchair-bound president, Franklin Delano Roosevelt, delivered the text of his State of the Union address to Congress. Because he was ill with a cold, Roosevelt did not make the customary trip to Capitol Hill to appear in person. Instead he spoke to the nation via radio – the first and only time a State of the Union address was also a Fireside Chat. Millions of Americans assembled by their radios that night to hear what Roosevelt had to say.

Roosevelt began by emphasizing that that war was a shared endeavor in which the United States was simply one participant: “This Nation in the past two years has become an active partner in the world's greatest war against human slavery.” The war was in the process of being won. “But I do not think that any of us Americans can be content with mere survival.” After victory, the initial task was to prevent “another interim that leads to new disaster – that we shall not repeat the tragic errors of ostrich isolationism – that we shall not repeat the excesses of the wild twenties when the Nation went for a joy ride on a roller coaster which ended in a tragic crash.” This sentence immediately connected the war against tyranny with the Great Depression and the effort to combat economic distress and uncertainty. Hence “the one supreme objective for the future” -- the objective for all nations -- was captured “in one word: Security.”

Roosevelt argued that the term “means not only physical security which provides safety from attacks by aggressors,” but includes as well “economic security, social security, moral security.” All of the allies were concerned not merely with defeating Fascism but also with improved education, better opportunities, and improved living standards. Roosevelt insisted that “essential to peace is a decent standard of living for all individual men and women and children in all nations. Freedom from fear is eternally linked with freedom from want.”

In connecting the two freedoms, he urged, first and foremost, that the United States could be free from fear only if the citizens of “all nations” were themselves free from want. External threats are often a product of the extreme deprivation faced by many people who make those threats. But Roosevelt also meant to remind the nation that citizens cannot be free from fear unless they have some protection against the most severe forms of want – that minimal security, coming from adequate education and decent opportunity, is itself a safeguard against fear. The threat from Germany and Japan was an occasion for a renewed emphasis on providing protection against the most serious forms of human vulnerability at home.

At this stage, Roosevelt turned to purely domestic affairs. He began by pointing toward the post-war era: “It is our duty now to begin to lay the plans and determine the strategy for the winning of a lasting peace and the establishment of an American standard of living higher than ever before known.” He added that the nation “cannot be content, no matter how high that general standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth—is ill-fed, ill-clothed, ill-housed, and insecure.” Suddenly the speech became far more ambitious. Roosevelt looked back to the framing of the Constitution. At its

inception, the nation had grown “under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures.”

But over time, these rights had proved inadequate. “We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence.” As Roosevelt saw it, “necessitous men are not free men,” not least because those who are hungry and jobless “are the stuff out of which dictatorships are made.” He echoed the words of Jefferson’s Declaration of Independence, urging a kind of Declaration of Interdependence: “In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race, or creed.” A decade before the constitutional assault on racial segregation and two decades before the enactment of a general civil rights law, Roosevelt insisted on an antidiscrimination principle.

Then he listed the relevant rights:

The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

The right of every family to a decent home;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;

The right to a good education.

Having catalogued these eight rights, Roosevelt immediately recalled the “one word” that captured the world’s objective for the future. He argued that these “rights spell security” -- and hence that the recognition of the Second Bill was continuous with the war effort. “After this war is won,” he said, “we must be prepared to move forward, in the implementation of these rights.” And there was a close connection between this implementation and the coming international order. “America’s own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens. For unless there is security here at home there cannot be lasting peace in the world.”

Roosevelt asked “the Congress to explore the means for implementing this economic bill of rights—for it is definitely the responsibility of the Congress to do so.” He observed that many of the relevant problems were then before congressional committees and added that if “no adequate program of progress is evolved, I am certain that the Nation will be conscious of this fact.” And he made a special plea on behalf of the nation’s “fighting men abroad -- and their families at home,” many of them far from privileged, who “expect such a program and have the right to insist on it.”

He closed by unifying the two disparate topics of his speech, indeed the two disparate topics of his presidency -- freedom from fear and freedom from want. “There are no two fronts for America in this war. There is only one front. There is one line of unity which extends from the hearts of the people at home to the men of the attacking forces in our farthest outposts.” In so saying, Roosevelt attempted at once to unify the nation – those at home and those abroad – and to thus to quell the “selfish agitation” with which he began. He also meant to suggest that security, his organizing theme, could be provided only if the movement for the Second Bill could be linked with the movement for defeating the Axis powers. Roosevelt’s speech marked the collapse of the idea, prominent in the period before the New Deal, that freedom comes from an absence of government.

Also striking an enduring chord, Roosevelt urged that the Second Bill should be seen as integral to national security, part of the broader fight against foreign enemies. The basic themes of Roosevelt’s speech have echoed throughout American political life to the present day. In some ways, he was correct to say that the nation has “accepted” such a bill. By 1944, many Americans were undoubtedly prepared to endorse it.

Although Roosevelt’s Second Bill is not widely known within the United States or abroad, it has had extraordinary influence internationally, helping to form the content of numerous documents involving basic rights. The Second Bill of Rights played a major role in the Universal Declaration of Human Rights, finalized in 1948 under the leadership of Eleanor Roosevelt and publicly endorsed by American officials at the time. The Universal Declaration includes social and economic guarantees that show the unmistakable influence of the Second Bill. The International Covenant on Economic, Social and Cultural Rights essentially follows the Universal Declaration, but goes beyond a mere declaration by attempting to turn the recognition of social and economic rights into binding commitments. Principally through its effect on the Universal Declaration, the Second Bill has influenced dozens of constitutions throughout the world.

V. Old and New

Edmund Burke famously argued that the “science of constructing a commonwealth, or reforming it, is, like every other experimental science, not to be taught a priori.”¹⁹ To make this

¹⁹ Edmund Burke, *Reflections on the Revolution in France*, in *The Portable Edmund Burke* (Isaac Kramnick ed.) (New York: Penguin, 1999), at 442.

argument, Burke opposes theories and abstractions, developed by individual minds, to traditions, built up by many minds over long periods. In his most vivid passage, Burke writes²⁰:

We wished at the period of the Revolution, and do now wish, to derive all we possess as *an inheritance from our forefathers*. . . . The science of government being therefore so practical in itself, and intended for such practical purposes, a matter which requires experience, and even more experience than any person can gain in his whole life, however sagacious and observing he may be, it is with infinite caution than any man ought to venture upon pulling down an edifice which has answered in any tolerable degree, for ages the common purposes of society, or on building it up again, without having models and patterns of approved utility before his eyes.

Thus Burke stresses the need to rely on experience and in particular the experience of generations. He objects to “pulling down an edifice,” a metaphor capturing the understanding of social practices as reflecting the judgments of numerous people extending over time.

It is not exactly conventional to see American understandings of rights in Burkean terms. Indeed, that understanding would be much too simple – in some ways, a betrayal of American exceptionalism. Our current understandings are a product not only of longstanding inheritances, but also of bold thinkers, fresh ideas, and occasionally rebellious minds.

But that boldness and freshness, and that very rebelliousness, has a powerful Burkean dimension. They can be traced directly to those difficult, inspired days in the middle and late 1770s, when republicanism was literally on the march. Whenever Americans work on behalf of citizenship and human dignity, we are honoring our nation’s highest ideals, and those who were willing to live and die for them.

²⁰ Id. at 451.