

of a right entirely. What cannot be taken away by another cannot be divested by one's self.

It would, therefore, appear to be the case that the death penalty is unjust as a violation of a natural human right. Nevertheless, capital punishment has been pragmatically justified as serving the welfare of society by functioning as a deterrent to the gravest of felonies. But its deterrent effect has been seriously questioned in the light of all the evidence available. Whatever deterrent effect the death penalty exerts might be equally possessed by another punitive treatment meted out for capital offenses—for example, life imprisonment with no possibility of parole, though with some alleviation of the harshness of prison life as a reward for good behavior.

For the time being, we are left with an unresolved issue between proponents and opponents of capital punishment. The substitution of life imprisonment for the death penalty might solve the problem.

We have so far considered briefly the rights to life and liberty and their inalienability. Much more remains to be said about them and about their sources in human nature itself, but they are not the only natural human rights. We must also look to the civil or legal rights, the enactment of which is requisite for securing and safeguarding whatever basic rights are recognized as inherent in human nature. Further still, we must ask whether what the Declaration calls a right—the right to overthrow a government that evinces a tendency toward despotism and tyranny—is a natural right or a civil right. If neither, why is it called a right?

Such matters and questions are reserved for treatment in the next three chapters.

## The Pursuit of Happiness

HAVING ASSERTED THE EXISTENCE of natural, human, and, therefore, inalienable rights, the Declaration goes on to say that among these rights are life, liberty, and the pursuit of happiness.

The phrase “among these” makes us immediately aware of the fact that the rights named do not exhaust those that are inherent in human nature. This leaves us with many questions to be answered.

What are these other rights? How do the rights mentioned and the others still to be named have their foundation or source in human nature? How, by examining our human nature, do we discover the inalienable rights we possess? What is the relation between our right to life, liberty, and other things, and our right to the pursuit of happiness?

That these questions remain to be answered plainly indicates that the Declaration's assertion about our natural rights is not a self-evident truth. It requires us to engage in reflective thought—in analysis and reasoning—which is never the case when we are presented with a truth that is self-evident.

The most important question to answer first is the one about the relation of all other human rights to the pursuit of happiness. Answering it will not only help us discover rights beyond the first two mentioned—life and liberty—but it will also enable us to discover the source in human nature of all such rights.

It was pointed out earlier (in Chapter 6) how Jefferson's brief and

elliptical statement about life, liberty, and the pursuit of happiness can be made more explicit by expressing it as follows. Our right to pursue happiness differs from all the rest by being concerned with an end or objective for the attainment of which the others serve as means. In other words, all the others are rights to things that every human being needs in order to succeed in the effort to lead a decent human life.

That everyone desires happiness for himself or herself is an uncontested fact. In everyone's vocabulary, the word "happiness" stands for something always sought for its own sake and never as a means to anything beyond itself. No one can complete the sentence "I want happiness because I want . . ." as one can complete the sentence "I want wealth, or health, or freedom, or knowledge because I want to achieve happiness in this life." Any other object of desire of which we can think can always be thought of as a means to happiness, even when it is something that can also be thought of as something to be attained for its own sake.

There is one other connotation of the word "happiness" that makes it unique among all the words we use to name objects of desire. Happiness is not only an ultimate good to be sought for its own sake, and never as a means to anything beyond itself. It is also the one complete good; it is never a partial good, never one good among others—as wealth, or health, or freedom, or knowledge are partial goods—because possessing any one of them leaves many others to be possessed. When happiness is achieved, it leaves nothing more to be desired, for it involves the possession of all other goods.

This understanding of the special connotations of the word "happiness" as we generally use it is common to two quite distinct conceptions of happiness that have come down to us in the tradition of Western thought. One is the modern psychological conception of happiness as a feeling of contentment produced by the satisfaction we experience when we are able to fulfill whatever desires we happen to have at any moment in time. The other is the ancient ethical conception of happiness as a whole life well-lived because it is enriched by the cumulative possession of all the goods that a morally virtuous human being ought to desire.

The ethical conception of happiness includes the psychological conception. At any moment, a morally virtuous individual may feel contentment because he has the satisfaction of possessing goods that he ought to desire and that, in fact, he does desire at that moment. The reverse is not true.

The psychological conception of happiness is usually claimed by those who hold it to be the only conception, in which case happiness (or contentment) can be enjoyed by individuals regardless of whether the things they do in fact desire are goods they ought to desire. The morally vicious individual, no less than the morally virtuous individual, can enjoy the contentment (or happiness) of having his or her desires satisfied, whether the objects desired are rightly or wrongly desired.

This being the state of Western thought about happiness at the time the Declaration of Independence was drafted, we are compelled to ask which conception of happiness Thomas Jefferson had in mind when he spoke of our human right to pursue happiness. Two clues enable us to find the answer to this question.

One is the fact that Jefferson was acquainted with the thinking of his fellow-statesman, George Mason, who drafted the Virginia Declaration of Rights a month before the Declaration of Independence was written. It opened with the words:

That all men are by nature equally free and independent and have certain inherent rights . . . namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Almost a century earlier the English philosopher John Locke, in his *Second Treatise on Civil Government*, had asserted three natural rights: in one phrasing, "life, liberty, and property"; in another, "life, liberty, and estates." Mason retained property among the rights he enumerated, but his striking innovation was his addition of the right to pursue and obtain happiness.

With this before us, we must ask why Jefferson, in adopting Mason's innovation, retained the verb "pursue," and dropped the verb "obtain."

If, in using the word “happiness,” Jefferson had the psychological rather than the ethical conception in mind, he would have had little or no reason for dropping the word “obtain,” for it is quite possible for individuals to attain and enjoy happiness when it is conceived psychologically as a feeling of contentment produced by the satisfaction of the desires of the moment. But when happiness is conceived ethically as a whole life well-lived, then it cannot be enjoyed or attained at any moment during the course of one’s life.

There is a further reason why Jefferson dropped the word “obtain,” and this gives us our second clue to Jefferson’s conception of happiness. On the ethical conception of happiness, one indispensable means to success in our pursuit of it is our possession of moral virtue—the settled habit or disposition of will to desire what we ought to desire. All the things we have a right to, such as the preservation of our lives and our freedom of action, are things not entirely within our own power. They depend on beneficent external circumstances. That being the case, a just government can secure our rights to them and safeguard our exercise of them. But whether or not we are morally virtuous lies almost wholly within our own power and totally beyond the power of any government, no matter how just it may be.

A just government can aid and abet our *pursuit* of happiness—our effort to make morally good lives for ourselves—but it cannot help us to obtain happiness, since that depends in part on our possession of moral virtue. Hence Jefferson’s retention of “pursuit” and his elimination of “obtain” indicate his espousal of the ethical, not the psychological, conception of happiness.

That this is the case is confirmed by looking a little deeper into the desires that are operative in the pursuit of happiness, conceived psychologically as momentary contentment and conceived ethically as a morally good life, a whole life lived well.

One set of desires consists of wants human beings acquire in the course of their individual lives, conditioned by their temperaments, their nurture or upbringing, and their social environments. Such desires differ from person to person according to their individual differences and the differences in the circumstances of their lives.

Another set of desires consist of the needs that all human beings share in common because they are desires or appetites inherent in human nature itself. We normally speak of such desires as our natural needs. On the biological level, all of us need food, drink, sleep, and shelter of some sort. On the specifically human level, we need freedom and knowledge.

These generally acknowledged human needs, not exhaustively enumerated here, help us to understand the difference between our natural needs, desires inherent in our nature, and our individually acquired desires for the things we want, whether we need them or not.

We can want things that may appear good to us at the time we want them, but which at a later time turn out to be really bad for us and make us regret our wanting and getting them. But we never need anything that is really bad for us. We can want too much of something that is really good for us (such as too much food, too much sleep), but we never need too much of anything that is really good for us (such as too much freedom, too much knowledge).

What all this comes down to is that our needs are always right desires, desires for the real goods that we ought to desire, whereas our wants may be either right or wrong desires. They are wrong desires when we want things that are really bad for us or want in excess things that are really good for us.

Wants become right desires only when we want the things that we ought to desire, the things that are really good for us because we have a natural need for them. Some of the things that appear good to us when we want them are innocuous because getting them does not impair or frustrate our getting the real goods we need. But others are harmful because getting them interferes with our getting the goods we really need.

According to the psychological conception of happiness as contentment, individuals achieve happiness when they get what they want, regardless of whether what they want is something they also need and whether what they want is innocuous or harmful. Consider individuals who want power or domination over others and are willing to infringe on the freedom of others in order to satisfy their

desires. How can a just government aid and abet their particular pursuit of happiness, to which they claim a natural right, by helping them get what they want without at the same time failing to secure and safeguard the right to freedom on the part of others?

If Jefferson had held the psychological conception of happiness, he could not have thought it possible for a government to aid and abet its pursuit by individuals whose wants bring them into conflict with the rights of others. This confirms the reasoning that led us to the conclusion that Jefferson held the ethical rather than the psychological conception of happiness when he asserted our natural right to pursue it and our natural right to obtain whatever real goods we need in order to make good lives for ourselves.

When happiness is conceived as the feeling of contentment produced by the satisfaction of our individual wants—our wrong as well as our right desires—then the pursuit of happiness is competitive. Its attainment by one individual may depend on the deprivation of it for another. Hence no government can attempt to aid and abet competing individuals in their pursuit of happiness. When happiness is so conceived, the right to pursue it cannot be secured for *all*.

However, when happiness is conceived as a whole life enriched by the cumulative possession of all the goods that human beings rightly desire because they are naturally needed, then the pursuit of happiness becomes cooperative rather than competitive. One individual's successful pursuit of it does not necessitate the frustration or failure of another's effort to achieve a morally good life. When happiness is so conceived, the right to pursue it can be secured for *all*.

The understanding we have now reached concerning the pursuit of happiness throws light on the source in human nature of all our natural rights. With one exception to be noted presently, all natural rights are founded on natural needs. We may be privileged to seek whatever we want and to get it, on condition, of course, that getting it involves no injury to others or to the general welfare. A privilege is one thing; a right is quite another. We do not have a right to things we may individually want, but only to the thing that we,

along with everyone else, need in order to make good lives for ourselves in our pursuit of happiness.

The one exception mentioned above is our right to engage in the pursuit of happiness. Happiness, being an ultimate end and never a means, is not something needed. The means we must employ to pursue happiness are things we need. Our right to pursue happiness rests not on our needs, but on our moral obligation to make morally good lives for ourselves. If we were not under that obligation in the first place, we would not have a right to whatever is needed as means for the achievement of that end.

The moral obligation just stated is expressed by a prescription that is self-evidently true and, therefore, cannot be denied. When we understand the meaning of the words "ought" and "really good," we immediately recognize the truth of the prescriptive injunction that we *ought* to seek everything that is *really* good for us and that there is nothing else we *ought* to seek. We cannot think that we ought to seek what is really bad for us or that we ought not to seek what is really good for us.

Since happiness, ethically conceived, is the complete good of a whole life enriched by the cumulative possession of everything really good for us, the self-evident prescription just stated is equivalent to saying that we ought to seek happiness, that we are morally obliged to pursue it.

With the one exception of the right to pursue happiness, which rests on a prescriptive ought or moral obligation that we find inescapable, all other natural rights are concerned with the real goods we need in order to succeed in our pursuit of happiness. Apart from an inescapable moral obligation, on the one hand, and apart from our natural needs, on the other hand, I can think of no foundation for the rights we call natural, human, and inalienable.

A single qualification must be added. One thing we need as a means for the pursuit of happiness is moral virtue. But although we need it as an indispensable condition for success in leading a morally good life, it is an interior perfection that is almost wholly within our power to attain in some measure or degree.

No organized society or instituted government can confer moral virtue upon a human being or make him or her a person of good moral character. Therefore, although we need moral virtue as an indispensable means for achieving happiness, we do not have a right to it because a right that cannot be secured by devisable institutional enactments is devoid of political significance. Whatever rights we possess have the effect of imposing duties on others: on other individuals to respect them and on organized society and its government to help secure and safeguard them.

It is within the power of organized society and its government to provide human beings with the external conditions indispensable to the pursuit of happiness, facilitating but not ensuring its attainment. Among the real goods we need for a morally good life, the interior perfection of our character that is moral virtue is the only one within our power and subject to free choice on our part.

Our possession of all other goods—security of life and limb, freedom of action, political liberty, health, wealth, knowledge, to mention only some—depends to some degree on external circumstances beyond our control. These we have a right to, not only because we need them but also because it is within the power of organized society and its government either to facilitate or to ensure our possession of them.

What has just been said throws light on our right to liberty or freedom. That right applies to the two freedoms mentioned earlier: freedom of action, which consists in our being able to do as we wish within the limits set by just laws that prohibit us from injuring others; and political liberty, which consists in our being governed with our consent and with a voice in that government. There are other freedoms to which we do not have a right because they are in no way dependent on external circumstances within the control of organized society and its government.

One is the freedom of a free will—freedom of choice. Either we have that freedom as a natural endowment, or it is nonexistent. The same can be said of moral freedom—the freedom of being able to will as we ought, despite the pressure of our passions or emotions to act in a contrary fashion. Either we have such freedom through

our acquisition of moral virtue and practical wisdom or it, too, is nonexistent.

Let me sum up what we have learned so far in our attempt to understand the Declaration's assertion that "among these [inalienable] rights are life, liberty, and the pursuit of happiness."

1. The primary right is the pursuit of happiness, having its foundation in our moral obligation to make good lives for ourselves.

2. The rights to life and liberty are subordinate rights because they are rights to means indispensable for the pursuit of happiness and also because security of life and limb, freedom of action, and political liberty are dependent on external circumstances that are within the power of an organized society and its government to control.

3. All other rights, those so far not mentioned or, if mentioned, not discussed, are also subordinate to the right to pursue happiness, either as supplementing the rights to life and liberty or as implementing these rights.

This last point calls for further comment. If the additional rights are supplementary, they have the same status as the rights they supplement. They, too, are natural rights, having their foundation in natural needs. But if the additional rights are not supplementary, but are implementations, they are then constitutional or civil rights, not natural rights.

Rights that implement natural rights are instrumental to the fulfillment of those rights. A few examples should clarify this point.

All human beings by nature desire to know. We have a natural need for knowledge. Under certain circumstances this need can be fulfilled without schooling or tutelage of any sort. However, schooling of one sort or another is certainly instrumental to the fulfillment of our need for knowledge. To whatever extent that is the case, we may have a right to schooling. While that is not a natural right, it may become a civil right when an organized society acknowledges it to be instrumental in the fulfillment of our natural right to knowledge.

Our natural right to life calls for the protection of our health as well as security of life and limb. Under certain circumstances, this

may not involve the protection of the environment from spoliation by factors injurious to health. Under certain circumstances, it may not call for preventive medicine and medical care. Under different circumstances, such as those that exist today, the right to a healthy environment and to medical care may come to be regarded as necessary to implement our right to life. When that is acknowledged by an organized society, the instrumental civil rights may be legislatively enacted.

A further and fuller discussion of such instrumental civil rights will be found in the next chapter. Natural rights other than those mentioned in the Declaration will be treated in certain chapters of Parts Three and Four. What remains to be considered here is a question that may arise in the minds of readers with regard to the foundation of natural rights in natural needs. Animals other than man have natural needs. Why, then, do they not also have natural rights?

Those who tend to think that animals other than man have natural rights also think that all the differences between man and other animals are only differences in degree, not differences in kind.

A difference in degree is one in which the things being compared have the same properties, one having more, the other less, of whatever attributes they have in common. In sharp contrast, a difference in kind is one in which, of the things being compared, one has properties or attributes that are totally absent in the other. For example, a longer and shorter line differ only in the degree of their length; whereas a square and a circle differ in kind: one has angles, the other does not.

Those who hold that human beings and other animals differ in kind attribute to man attributes not possessed at all by brute animals. Only man has intellect capable of conceptual, as opposed to perceptual, thought. Because of this, only man has free will and the power of free choice. Because of these two natural endowments, human beings are persons. Brute animals lacking these endowments have natures different in kind, and are not persons.

Laws that permit the killing of animals and the use of them as beasts of burden as contrasted with laws that prohibit the murder

and enslavement of human beings, or laws that permit the caging of animals in zoos as contrasted with laws that prohibit the unjust imprisonment of human beings, acknowledge the difference in kind between human beings who are persons and brute animals that are not persons.

Consequently, the presence of natural needs in brute animals does not give rise to their possession of natural rights. Only persons, having the moral obligation to make good lives for themselves by the use of their reason and by their exercise of free choice, have the right to life as a means to living well and a right to liberty of action as a means of carrying out the free choices they make in the pursuit of happiness.

The fact that we are morally obliged to treat brute animals as humanely as possible—to avoid the wanton and useless killing of them, to avoid submitting them to needless pain, to avoid the sadistic exploitation of them for our pleasure—should not be interpreted as an acknowledgment of their having natural rights to either life or liberty. We ought to treat them humanely even if we do not treat them as persons ought to be treated. Our moral obligation here is a matter of charity, not of justice, because it does not stem from the rights of brute animals.

Our need for freedom of action and our consequent right to it has its natural foundation in our natural endowment of free choice. Our need for political liberty and our consequent right to it has its natural foundation in our nature as political animals. There are other species of animals that, like us, are social or gregarious animals, with a natural need to live in groups or societies. But only man is a political animal; only man has a natural need to participate in government and, therefore, a right to do so as a citizen with suffrage.