

# **“The finest rule of life we have”: on ambiguity as democratic practice**

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## Abstract for presentation:

Danielle Allen’s *Our Declaration* (2015) revitalized interest in the U.S. Declaration of Independence among those committed to equality as a foundational American ideal—especially feminists, anti-racists, and anti-colonialists. But the meaning of the document has a checkered history in the United States and abroad. While some—like David Walker, Justice Taney, and Malcolm X—point to the civil and political subordination of women, slaves, freed persons, the poor, American-Indians, and the indigenous people in other parts of the world at the founding (and in various forms to this day) as reason to think that the document is merely political cover for domination, others—like Abraham Lincoln, Anita Whitney, Martin Luther King, Jr., and Ho Chi Minh—have found in it a promise of equality for future generations, regardless of nationality. What are the principles of interpretation that lie behind such a diverse set of readings, especially of the document’s distinctive phrases like “all men are created equal”? Are all of them equally defensible upon reflection? I aim to weaken both the starry-eyed disposition to find too much in the Declaration and the hard-nosed determination to find too little. In the end, I vindicate its meaning for democrats who are committed to a principle of equal inclusion in an on-going political community characterized by a variety of differences among its members.

## Note about this document:

The paper that follows is the background motivation and framing for my larger project. For the sake of time, my presentation will not linger on and may not mention at all the issues introduced in this paper. But I welcome questions and feedback on this paper in the discussion that ensues after my talk. My presentation will focus on clarifying and evaluating a series of candidate principles of interpretation over key phrases in the U.S. Declaration of Independence.

“Perhaps the wisest attitude for democrats is not to deplore the ambiguous element of democratic writings, but to seek to understand them.” —Ralph Ellison<sup>1</sup>

The American political tradition does not uniformly endorse inclusion as a defining feature of democracy. In light of this, feminist, anti-racist, and anti-colonialist claims face a distinct set of practical and theoretical challenges to the demand for realizing (or at least not rolling back) inclusiveness in the American polity, and with the world beyond its borders. Perhaps appropriately, these challenges begin with how to interpret the U.S. Declaration of Independence, especially its preamble’s second sentence that states, “all men are created equal”. Some have read this phrase as applying universally to all of humanity. Others have argued that it pertains to a narrow, often much narrower, set of the human community. At stake in this conversation is the nature and extent to which a principle of equal inclusion informs American democracy, and democracy more generally. Convinced of a narrow meaning, those nevertheless committed to inclusion are apt to denounce the Declaration and turn elsewhere for enlightenment, hope, and support. In effect, if not intent, they cede a resource to the position they oppose. What both positions in this debate miss, or so I will argue, is that the phrase—and the document it is embedded in—means neither of those things *solely*, and instead means *both at once*. As a consequence, I argue that democrats committed to inclusion should embrace the phrase’s ambiguity and thereby deny a resource to the other side that it does not otherwise have available for its exclusive use.

These reflections on the Declaration point toward a more general issue pertinent to democratic theory and practice: the value of ambiguity. When a group of people come

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<sup>1</sup> From Ellison’s review of Gunnar Myrdal’s *American Dilemma*.

together for common action and find that they are divided on some issue(s), it may be helpful for them to embed that disagreement in ambiguous language in order to discover and articulate common grounds for action on other issues. By embedding their disagreement in ambiguous language, they award neither position with supremacy and instead preserve resolving that disagreement for another day. While I argue for the value of ambiguity, I do not endorse its application in every case of disagreement. I take no stand on whether it was well used in the case of the U.S. Declaration of Independence; this would require attention to historical detail that is beyond the scope of the present analysis.

In my broader project, two further cases provide occasions for reflection on when and how ambiguity might be used appropriately. In the first, I argue that the rejection of the Japanese “racial equality” proposal in the drafting of the League of Nations Convention represents a clear missed opportunity to embrace ambiguity. In the second, I argue that its employment in the Good Friday Agreement was subsequently misused when both sides denied any ambiguity after its adoption. These cases point toward the necessity of cultivating an appreciation for ambiguity—and the possibilities of complex language more generally—among not only agents of the state but also the citizenry. The strategic deployment of ambiguity need not be disingenuous, especially if the people are prepared and willing to see it for what it is—an effort to keep the peace and build a more just future.

## §1

On November 28, 1919, Anita Whitney delivered an invited address to the California Civic League, the largest women’s club in Oakland, California, entitled “The Negro Problem in the United States”. In her address, Whitney condemned the history of racism in the

United States, and in particular a recent spate of lynching, some of whose victims were black veterans of the First World War:

It is not alone for the Negro man and woman that I plead, but for the fair name of America that this terrible blot on our national escutcheon may be wiped away. Not our country right or wrong, but our country, may she be right, because we, her children will her so.<sup>2</sup>

She then advocated for adoption of anti-lynching laws, among other measures. Upon concluding the speech, this self-professed “woman of wealth and influence”<sup>3</sup> was arrested under a recently enacted California law that forbade encouraging or organizing strikes among workers. *The New York Times* reported, “The hundreds who heard [her speech] unanimously agreed that it was an extremely able, fair, humane and patriotic discussion of the difficult problem.”<sup>4</sup> Though the speech was a precipitating event, it was not the full reason for the charge against her. A well-known and undisputed fact was Whitney’s active membership in the local Socialist Party, which had recently endorsed the national Communist Labor Party’s platform.<sup>5</sup> She was eventually convicted despite the fact that, according to *Time* magazine, it was never “claimed that she had ever advocated the overthrow of the U.S. Government, or had incited anyone to violence.”<sup>6</sup>

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<sup>2</sup> Quoted in Al Richmond, *Native Daughter: The Story of Anita Whitney* (San Francisco: Anita Whitney 75<sup>th</sup> Anniversary Committee, 1942), 69.

<sup>3</sup> Quoted in Philippa Strum, *Speaking Freely: Whitney v. California and American speech law* (Lawrence, KS: University Press of Kansas, 2015), 82.

<sup>4</sup> Alma Reed, “Woman Tests Free Speech: Case Against Anita Whitney for ‘Syndicalism’ Up to Supreme Court” in *The New York Times*, September 17, 1922, 93. Accessed through Proquest Historical Newspapers.

<sup>5</sup> Lisa Rubens, “The Patrician Radical: Charlotte Anita Whitney” in *California History* 65:3 (1986), 158-171, 166.

<sup>6</sup> “The Case of Miss Whitney,” in *Time* 6:18 (November 2, 1925): 9. Whitney closed her autobiographical account of her conviction with the claim: “I am not nor have I ever been an advocate of force” (“My story” in *San Francisco Daily News* on January 25, 1926, page 4). Her biographer later characterized her as a “militant pacifist” (see, Richmond, *Native Daughter*, 69). This is an unfortunate characterization as she reported being

At the time, U.S. constitutional jurisprudence did not recognize state-level (or below) curtailment of speech as an infringement of First Amendment liberties. The First Amendment was thought to apply only to federal legislation, and this was affirmed in a variety of previous cases.<sup>7</sup> Her case was heard on appeal to the U.S. Supreme Court on Fourteenth Amendment grounds, where the justices were asked to determine whether the California law violated its “privileges and immunities”<sup>8</sup>, “due process”<sup>9</sup>, and “equal protection”<sup>10</sup> clauses. In *Whitney v. California* (1927) the court unanimously held that no Fourteenth Amendment violation obtained and her conviction was upheld, although in a concurring opinion Justice Louis D. Brandeis recognized the relevance of the First Amendment’s protection of free speech to her case.<sup>11</sup>

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a member of the California Peace Society “for years” and serving on the local organizing committee of the Union against Militarism and the People’s Council, which opposed U.S. entrance into the first world war by putting the “facts before the public—not distorted statements meant to mislead—that the people might know something of the real nature of war—that it did maim, that it did kill, that it did brutalize...” (“My story” in *San Francisco Daily News* on January 21, 1926, page 3).

<sup>7</sup> This doctrine was first stated in *Barron v. Baltimore* (1833). Most recently it had reappeared in *Debs v. United States* (1919), which affirmed the conviction of labor organizer Eugene Debs for delivering an anti-war speech in Canton, Ohio in which he said, among other things, “you need to know that you are fit for something better than slavery and cannon fodder” (quoted in Strum, 39). The court found sufficient proof that Debs meant to obstruct the draft, which was made illegal under the federal Espionage Act of 1917. Thus, in times of war, even the federal government was extended the power to restrict speech. The jurisprudence to extend the First Amendment to states began with Justice John Marshall Harlan’s lone dissent in *Patterson v. Colorado* (1907), where he argued that “the privileges of free speech and of a free press, belonging to every citizen of the United States, constitute essential parts of every man’s liberty...It is, I think, impossible to conceive of liberty, as secured by the Constitution against hostile action, whether by the nation or by the states, which does not embrace the right to enjoy free speech and the right to have a free press” (quoted in Strum, 37, emphasis added). The full Court finally recognized that states, too, could violate the First Amendment in *Brandenburg v. Ohio* (1969), and thereby overruled its decision in *Whitney*.

<sup>8</sup> “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States”.

<sup>9</sup> “No state shall...deprive any person of life, liberty, or property, without due process of law”.

<sup>10</sup> “No state shall...deny to any person within its jurisdiction the equal protection of the laws”.

<sup>11</sup> In his concurring opinion, Justice Brandeis wrote: “Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that, in its government, the

In light of her conviction and the prospect of serving up to 14 years in San Quentin jail, Whitney reflected that she remained committed to “the platform of my life”, which was inspired—at least in part<sup>12</sup>—by the U.S. Declaration of Independence. Reflecting on what led to her actions, she wrote:

I was an American clear through to my very marrow. I believed in my country, in its principles. I was glad of my colonial ancestry and proud that the roots of my family were planted deep in American soil. But the American principles that I knew and believed in were not those put forth now by the Better America Federation and the Klu Klux Klan, but were those I had received from my reading of Emerson and Thoreau and Lowell, from listening to the perusal of the Declaration of Independence—always read at every Fourth of July celebration during my childhood—and which always in my mind linked together America and Ireland<sup>13</sup>... I shared the family respect for the law...Law and order had its magic spell for me, too, in those days.<sup>14</sup>

She referred to the Declaration as “the finest rule of life we have.”<sup>15</sup> Whitney clarified this rule of life thus:

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deliberative forces should prevail over the arbitrary... They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that, without free speech and assembly, discussion would be futile... Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form.” Add citation to case here. Many scholars cite this as the most eloquent defense of free speech in US case law history.

<sup>12</sup> In an autobiographical news story, Whitney also reported that, while in college at Wellesley, she read Emerson, Lowell, Thoreau, George Eliot, and Tolstoy, and in particular that: “the reading of *Anna Karenina* was the greatest moral lesson I ever got” (“My Story” in *San Francisco Daily News* on January 16, 1926, page 10). Furthermore, she told a reporter covering her court case: “My father always taught me to stand up to things—to judge for myself the difference between right and wrong. And after all, the greatest satisfaction in life comes from obeying your own conscience and helping in your own small way to make the world a little better for someone else because you have lived” (quoted in Richmond, *Native Daughter*, 116; see also Strum, *Speaking Freely*, 76).

<sup>13</sup> Whitney reported of learning of the famine in Ireland at age seven and being shocked that it exported food at the same time that its women and children clamored for food. She became bothered by the idea that some people in the world were starving while others ate very well.

<sup>14</sup> “My story” in *San Francisco Daily News* on January 17, 2016, page 3. Later installments of her autobiography noted the various ways in which the legal system was in the pocket of big business, especially when defendants faced bail charges that were ten times the amount of previous years and in other districts.

<sup>15</sup> Quoted in Richmond, *Native Daughter*, 127; see also Strum, *Speaking Freely*, 80. In a 1922 interview, Whitney also named the Declaration, along with the US Constitution and especially its Bill of Rights, as a spring of her action and beliefs. She qualified her statement thus, “But, it’s from the Declaration of

If believing in equality is a crime against my country, then I am guilty...And if it is an offense to believe that men should struggle for decent hours and a decent wage, that children should be born with health and a chance for happiness, and that women should be granted the privilege of decent working hours and plenty of rest and decent pay, then I deserve San Quentin.<sup>16</sup>

Whitney saw in the Declaration of Independence what many people have seen in it: a passionate commitment to equal human dignity. It is not an uncontroversial interpretation of the Declaration, although it has deep roots. I will say more about these thorny issues in a moment; for the time being I want to focus on how she named the Declaration a rule of life.

First, she treated the Declaration as a rule for *her* life, not merely a relic of the past or an expression of the government. It is common to treat the Declaration as the foundation of a new polity with a station equal to the other polities of the world. As such, it heralds a people undertaking the arduous and hazardous task of governing itself in community with others. It is also common to treat the Declaration as an expression of “the Founders”—an act of distancing due to the undeniable fact that we are no longer founders, but inheritors. Whitney’s claim does not deny those ways of viewing the Declaration. She *also* saw it as the spring of her own actions. She called attention to the possibility of treating it as a rule that not only describes past action, but also prescribes future action. Moreover, her invocation uses it not merely as a rule of government, but of one’s own life. In this way, she demonstrated the connection between the personal and the political.

Second, she called the Declaration a *rule*. A rule is a *standard*, which is used to measure or assess the qualities of something. Though she may be the first to call it a rule,

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Independence, and not from the Constitution, that we date our birth as a nation. Its fundamental principle is the inalienable right of everyone to life, liberty and the pursuit of happiness” (Reed, “Woman Tests Free Speech”, second page).

<sup>16</sup> Quoted in Richmond, *Native Daughter*, 128; see also Strum, *Speaking Freely*, 80.

she is not the first to use it as such. As a standard, the Declaration has been used to assess the quality of subsequent state actions. Some have found in it grounds to praise the U.S. as a beacon of freedom for the world. Others have found in it grounds for criticism of the U.S. as hypocritical and self-serving. In calling this source *her* rule, she invoked it as a relevant standard by which not only governmental but also personal actions might be judged. In so doing, she may bring credibility to her actions that some might not otherwise extend it. Others might incredulously see it as political cover, a thin veneer masking latent anti-Americanism. And for still others, it degrades the quality of her actions by lending credit to the Declaration where none is due. A rule is also a *frame*, something that guides the formation or development of something. Whether and how the Declaration frames the U.S. Constitution is a matter of some dispute; although even as such, the dispute is part of a distinctly *American* political tradition.<sup>17</sup> It is beyond dispute that the Declaration framed subsequent declarations by governments and civil society.<sup>18</sup> Calling the Declaration *her rule* offers an order or underlying pattern for her actions to an audience who might otherwise deny or not perceive it.

Third, she offered the rule of the Declaration as a spring not only of her own actions, but also *for others*. According to Whitney, “we have” this fine rule of life available as well. She did not assert a radical individualism or atomism of the sort that claims all rules of life are particular and as such non-transferable, good for exactly one person’s life. Just as she

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<sup>17</sup> For instance, according to Merrill D. Peterson, Wilmore Kendall argued that Abraham Lincoln “derailed” the American political tradition by according “constitutional status” to the principles of the Declaration of Independence in his late 1850s debates with Stephen Douglas and especially in his Gettysburg Address of 1863. See Peterson’s *Lincoln in American Memory* (New York: Oxford University Press), 358.

<sup>18</sup> See, for instance, David Armitage, *The Declaration of Independence: a Global History* (Cambridge: Harvard University Press, 2007) and Philip S. Foner, *We, the Other People: Alternative Declarations of Independence by Labor Groups, Farmers, Women’s Rights Advocates, Socialists, and Blacks, 1829-1975* (Urbana: University of Illinois Press, 1976).



encouraged others to judge her actions by a standard and in the context of a distinct frame, she formed or participated in the development of a community—a group of people devoted to a common rule, bound together by a rule held in common. Others accept or assume membership in such a community when they take this rule as a frame for their own actions and/or as a standard by which they judge the actions of governments and persons. In this way, the U.S. Declaration frames not only her identity but also the development of American civic identity.

Finally, by appealing to the Declaration as a rule of life, Whitney called attention to the affective basis of her actions, and to the importance of affect in politics more generally. One might think that speaking in terms of rules expresses a disdain for the passions. The preference for the mind over the heart has been called rationalism or intellectualism, and has been used in defense of exclusionary forms of politics. Rationalism is exclusionary when it is used to discount or disregard to so-called irrational or those deemed incapable of full rationality. However, Whitney’s invocation of the Declaration is not a kind of unthinking and unfeeling rule-worship, but rather a naming of the passionate basis for her political action. She treats the Declaration as a source for hope and resolve in times of struggle, as a source of solace and courage in dark times, and a source of love and respect for a political community despite its persistent and deep flaws.

Let me clarify my point in this section by way of an objection. One might think that I’ve problematically sidestepped what Whitney directly said, and brought an unusual and unwarranted emphasis to her invocation of the Declaration. In other words, one should interrogate whether equal human dignity was indeed expressed in the Declaration, or whether she identified appropriate features of this dignity in aligning it with worker’s

rights, children's rights, women's rights, and the rights of people of color. I do not deny the interpretation of what she was *saying* that this objection is invested in; I am interested in describing and evaluating what she was *doing*. And should it survive such scrutiny, my analysis will point toward the value of extending what she was doing.

Taken together, these four aspects of what Whitney was doing with the Declaration reflect a particular view about what democracy is. First, democracy is a kind of rule. It is a standard by which the legitimacy and authority of governments are judged. Second, democracy is identifiable by the set of rules that it holds in common. In plainer language, this shared set of rules is often called a constitution. However, this is an overly narrow view of what comprises the set. As Whitney's reference to a rule of life suggests—in particular, how the personal is connected to the political in the forming of a life—democracy is also what the Greeks called an *ethos*, a way of life. Her insistence that a common standard be used for framing government and guiding her life suggests a way of forming the life of the community and, at the same time, the individuals within it. This way of articulating the second point already foreshadows the third: democracy is a kind of community. Democracy is a group of people committed to undertaking and assessing actions by a common set of standards. One rule for the nobility and another for the commoners is not a democratic practice. Politics has been called “an art of unification; from many, it makes one.”<sup>19</sup> *Democratic* politics is a particular kind of unification, one that seeks unity from a shared way of life, or what is sometimes called a civic identity. Fourth, democracy is a particular set of sensibilities. The cultivation and employment of democratic sentiments towards one's self and others, and not merely outwardly

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<sup>19</sup> Michael Walzer, “On the Role of Symbolism in Political Thought,” in *Political Science Quarterly* 82:2 (1967), 191-204, 194.

conforming action, is part of what is held in common. The democratic community exhibits a shared way of life both inside and outside; in other words, it shares a psychic life as well as a social life. These sentiments form and maintain a bond not only with present and future generations, but with the past as well. It is tempting to see democracy as a decision-procedure (like majority rules or consensus) or a set of values (like freedom, equality, and independence), or as some combination thereof. What is missed in doing so is that democracy is also a lived experience, forged in the efforts of individual human beings, often working in groups, to (re-)organize their world and form connections across an inevitable and rich set of differences. Democracy is not merely abstract or context-free, but a set of social practices, not all of which early developers and later practitioners fully grasp even as they employ them. Political philosophy is tasked with identifying these practices with some precision, and then defending and promulgating them when appropriate.

In subsequent sections, I follow Whitney's suggestion of looking to the Declaration as a rule of life. In this section, I have tried to specify what this suggestion amounts to and argued that it be recognized as a distinctively democratic practice. One reason to at least initially focus on what she was *doing* with, rather than what she was *saying* about, the Declaration is because what the Declaration *says*, in at least one crucial passage, is strongly ambiguous—or so I aim to show in subsequent sections. I will argue that this sort of ambiguity is worth bearing in mind as a resource for democratic politics more generally. Since what the document is *saying* is open to reasonable disagreement, we ought to note what it is *doing* in order to see a further way in which community is created and maintained. This leads me to think that there is yet another way in which the Declaration is “the finest rule of life we have”.

## §2

What does the phrase “all men are created equal” mean? This phrase lies at the heart of the second sentence of the Declaration’s preamble, and understanding its meaning presents a thorny set of issues. Feminists (i.e. anyone committed to alleviating or ending the oppression of women) have argued on either side of the debate about whether “all men” includes women. Similarly, anti-racists<sup>20</sup> (i.e. those committed to naming and ending white supremacy) and anti-colonialists (i.e. those committed to the critique of the imposition of European power over others) have argued on either side of the debate over whether “all men” implicitly means white men or men of European descent. An anti-colonialist might draw attention to a further question: whether the document is an instance of (a kind of) American exceptionalism, a statement of principles that apply to the people of the United States but no further.<sup>21</sup>

The debate might be simplified into a difference between exclusivist and inclusivist interpretations. Exclusivists might argue that the civil and political subordination of women, slaves, freed persons, the poor, American-Indians, and the indigenous people in other parts of the world at the founding—which persists in various forms to this day—strongly suggests that the phrase’s meaning is quite narrow. This position must resist the urge to attribute the extraordinary power of effecting massive social and political change immediately to written language, or to require an extraordinary capacity to align personal conduct with one’s principles in a thoroughgoing fashion. Inclusivists might begin from the

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<sup>20</sup> I distinguish bigotry from racism. Bigotry is a property of an individual’s beliefs. Racism is a property of a socio-economic system. Racism can exist even without bigotry, though historically they arose in lock step.

<sup>21</sup> At the end of this section, I argue that even the version of American exceptionalism as the “Redeemer Nation” suffers from devastating criticism.

presumption that ‘man’ is a universal pronoun that stands in for ‘human’. Inclusivists must account for whether the claim for equality applies *without revision* to subordinated peoples or whether *in fact* the claim requires that subordinated peoples turn themselves into white, European men in America in order to enjoy the status and benefits of equal liberty.

Before I turn to how an outcome to these debates might be pursued, the nature of the question at hand and what is at stake in asking it are worth clarifying. When I ask what the phrase “all men are created equal” means, I seek an answer for political philosophy, and in particular for democratic theory. I define the democratic project—not uncontroversially—as the **effort to extend or at least prevent the degradation of the inclusiveness of an on-going political community**. It is possible that the democrat’s commitment to inclusion might come into conflict with the democrat’s commitment to the persistence of a political community. For instance, these democratic commitments might become incompatible when advancing the claims of women at a particular moment in time, thus leading women into a separatist movement. In other words, claims for inclusion would be met in practice not by an *on-going* political community, but by a *new* one. Similarly, Black Nationalism in its statist form can be understood as an anti-racist movement that does not seek inclusion into a *white* polity, but rather seeks the foundation of a *new* polity (e.g. in Liberia). In identifying exactly when these commitments might conflict, it is important to bear in mind the difference between a political community and a state, and the conditions of persistence for each of them across time. The inclusion of a previously excluded group necessarily changes the nature of the *state* in question, but it does not necessarily create a new political community. I identify the political community with its particular *ethos*, by which I mean: a way of life, not reducible to a set of laws or a

particular point in time, but rather *a conversation preserved and conducted across time about how to manage the benefits and burdens of living together under a common coercive authority*. Therefore, a democrat's commitments do not conflict when the anti-racist's efforts to end white supremacy succeed. While the white supremacist *state* no longer exists when racism no longer obtains, whether the political community persists in light of these changes is a function of how the past is incorporated into its conversation. If the unjust past is not merely swept under the rug or considered a part of an other's history but rather becomes part of how the political community talks about its management of the benefits and burdens of living together, then the political community persists across this major transformation.<sup>22</sup>

An answer to the question of the phrase's meaning for this democratic project is not restricted to principles of constitutional interpretation or judicial philosophy more generally. Various schools of thought have come to govern the interpretation of the U.S. Constitution: originalism and living constitutionalism are leading contenders.<sup>23</sup> One

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<sup>22</sup> One might still wonder why I want to define the democrat with these two commitments (inclusion and persistence), and instead recommend that the democrat be committed to only inclusion. Under such an altered definition, the decision about whether to remain in a pre-existing political community or found a new one is merely a question of prudential considerations for how best to achieve inclusion. This would give the democrat greater focus and remove the specter of conflicting commitments. I think this recommendation suffers from three errors. First, it over-corrects for conflict that is much less concerning in light of the distinction between state and political community. Second, it encourages the consideration of an option that no longer exists: founding a new political community in a post-Westphalian world. In light of this, third, it misunderstands the nature of political conversation.

<sup>23</sup> Originalism, roughly speaking, is the view that we ought to interpret the text of the U.S. Constitution in light of its framers' intentions (either of the Founders or of the authors of the amendments, depending upon the part in question). Therefore, according to originalism, the meaning of any particular phrase should not be extended beyond what can be known about those intentions. Living constitutionalism (or loose constructionism), roughly speaking, is the view that we ought to interpret the text of the U.S. Constitution in light of what it has come to mean, where this might be different from that of its framers because we have come to see a truth that was otherwise unavailable to them. Living constitutionalism views the Constitution as a dynamic document because some phrases imbedded in it are particularly abstract, and therefore the content of those phrases expands and contracts over time.

reason why I do not seek an answer for judicial philosophy is because I take no stand on the relationship between the U.S. Declaration of Independence and the U.S. Constitution.<sup>24</sup> Although some of the sources I mention later do take a stand in that debate, my argument does not hinge upon any particular position.<sup>25</sup> Rather, I seek to offer an answer that, or so I will argue, democratic citizens—especially U.S. citizens—should accept as the meaning.

As a contribution to political philosophy, my argument is principally normative, not historical. I do not seek to offer an exhaustive account of the reception of the U.S. Declaration—that is, how various audiences over time have interpreted (and misinterpreted) the document.<sup>26</sup> Although, that history is not entirely irrelevant to the normative focus, the burden on the political philosopher is to provide an argument for the relevance of the historical facts before engaging with them. Without an argument for their relevance, those facts are apt to be a sideshow to the main philosophical point.

One feature of the normative perspective adopted in my project makes the ways in which people have variously interpreted the Declaration philosophically relevant. The democratic project that is my target is advanced by the causes of feminism, anti-racism,

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<sup>24</sup> One possible relationship is that the authority and legitimacy of the U.S. Constitution is based upon the authority and legitimacy of the U.S. Declaration; another position might claim that the Constitution stands on its own terms and accords no special status to the Declaration. These are rough presentations of views that can be presented with a great deal more plausibility and clarity, but they will suffice for the moment.

<sup>25</sup> I would not be surprised if proponents of only some of those views recognized the compatibility and desirability of my view with their own. I imagine any rejection would be on political grounds, not ones pertaining to judicial philosophy alone.

<sup>26</sup> For such a reception history, see David Armitage, *The Declaration of Independence: A Global History* (Cambridge: Harvard University Press, 2007); *The Declaration of Independence: Origins and Impact* edited by Scott Douglas Gerber (Washington, DC: CQ Press, 2002); Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Random House, 1997); Barry Bell, “Reading, and ‘Misreading,’ the Declaration of Independence,” in *Early American Literature* 18:1 (1983), 71-83; and Philip S. Foner, *We, the Other People: Alternative Declarations of Independence by Labor Groups, Farmers, Women’s Rights Advocates, Socialists, and Blacks, 1829-1975* (Urbana: University of Illinois Press, 1976).

and anti-colonialism.<sup>27</sup> As already mentioned, these positions aim to resuscitate, establish, and/or preserve the equality of subordinated groups—and by that I mean, the equal claim of subordinated groups for inclusion on terms that are not merely set by heretofore dominant groups. This includes a commitment not only to the future(s) of these groups, but also to their past(s). Feminism, anti-racism, and anti-colonialism *qua* philosophical positions are invested in preserving the words and the spirit of subordinated peoples in the philosophical truth or whatever turns out to be the normatively desirable account. In other words, at stake in answering the question of the meaning of “all men are created equal” for a democratic project committed to feminism, anti-racism, and anti-colonialism is—at least in part—an account of what subordinated peoples have identified as its meaning. In plainer language, people today should know what those striving for the rights of women, slaves, freed persons, the poor, workers, American-Indians, and the indigenous people in other parts of the world have said about the U.S. Declaration when they reflect upon its meaning.<sup>28</sup>

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<sup>27</sup> In making this claim, I am not denying that these are necessarily consistent positions. For instance, one *can* argue against white supremacy without also critiquing the oppression of women, against male dominance without dismantling the structure that places non-white women at greater risk of harm than white women, or against the imposition of European power but not against domestic sources of oppressive power. I don't find any of these arguments convincing.

<sup>28</sup> One might object that an important group is left off of this list: the dominant group. Thus, the objection might continue, the meaning of the phrase and document should also include what dominant groups have identified as its meaning. I have two responses to this objection. First, the dominant group's meaning does not need attention called to it as it already pervades public culture. In this sense, its meaning is pre-reflective. I am interested in identifying a reflexively endorsable meaning. Second, the dominant group's meaning is inevitably implicated in the meaning attributed by subordinate groups since they are resisting the dominant's meaning. For a defense of this second claim, see Nancy Hartsock, “The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism,” in *Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology and Philosophy of Science*, edited by Sandra Harding and Merrill B. Hintikka (Dordrecht: D. Reidel, 1983), 283-310.



However, there is good reason to be suspicious or hesitant about extended reflection on the U.S. Declaration of Independence. In 1944, Gunnar Myrdal identified its second sentence as a principal source for what he called “the American creed”.<sup>29</sup> He was not the first to assign it a religious or quasi-religious status; as early as the fall of 1776, Peter Whitney identified it as an Evangelical text that announced “a unique opportunity for spiritual liberation” from “ecclesiastical slavery”.<sup>30</sup> Myrdal’s contribution was to show how assigning religious value to the Declaration coincided with, if not actively promoted, the growth of a mythology about American society—as one characterized by, for instance, equality of opportunity—that masked the subordination of African-Americans. This quasi-religious treatment of the Declaration contributes to the rhetoric of America as “the Redeemer Nation” and amounts to a version of American exceptionalism: the idea that America is a model to be replicated by others. The problem is that this model relies upon a whitewashed version of American history that perpetuates exclusion even as it pays lip service to a more inclusive polity. Moreover, Pauline Maier has argued that seemingly every generation in the U.S. since the founding has developed an interpretation of the Declaration in the service of particular—often competing—political agendas in their day.<sup>31</sup>

While I do not claim to stand outside of the trend Maier identifies, I also do not mythologize the Declaration. My argument is motivated, in part, by reflection on

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<sup>29</sup> *An American Dilemma: the Negro Problem and American Democracy*, 20<sup>th</sup> Anniversary Edition in 2 vols. (New York: Harper and Rowe, 1967).

<sup>30</sup> Bell, “Reading, and ‘Misreading,’ the Declaration”, 79 and 78. By “ecclesiastical slavery”, he meant Puritan subordination to the Church of England (or Anglicanism).

<sup>31</sup> Maier, *American Scripture*. Her reflections on the Jefferson Memorial and the National Archives “shrine” to the Broadside edition of the Declaration are particularly indicative of her findings more generally: “The symbolism is all wrong; it suggests a tradition locked in a glorious but dead past, reinforces the passive instincts of an anti-political age, and undercuts the acknowledgment and exercise of public responsibilities essential to the survival of the republic and its ideals” (215).

contemporary American politics, especially the inability of people to find or make common ground across deep, perhaps permanent, cleavages. In response to the problem posed by American exceptionalism, Eddie Glaude has recently argued:

We have to tell better stories about what truly matters to us. The kinds of stories we tell reflect the kind of people—the kind of nation—we aspire to be...To do this, we have to tell stories of those who put forward a more expansive conception of American democracy. This will involve confronting the ugly side of our history, recalling the heroic and representative efforts of countless men and women who gave everything to achieve our country, and sacrificing the comfort of national innocence and the willful blindness that comes with it.<sup>32</sup>

One aim of my project is to tell a better story about the U.S. Declaration of Independence than what is typically promulgated in the U.S. educational system and its public imagination. My analysis weakens both the starry-eyed disposition to find too much in the Declaration and the hard-nosed determination to find too little. Furthermore, my argument advances no fantasy about a Heroic Age of the democratic past, but rather offers a resource for the democratic future. An implication of my argument is that we should venerate the Declaration not only for what it heralds, but also for what it does. I treat the Declaration—in line with a tradition of its interpreters—as an important clue into the nature of the American political community, and democratic politics more broadly; what I add to that tradition is an underappreciated element of its nature.

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<sup>32</sup> *Democracy in Black: How Race Still Enslaves the American Soul* (Crown Publishers, 2016), 202-203.