



The Meaning of Equality in America

Wednesday, December 15, 2021

Visit our media library at constitutioncenter.org/constitution to see a list of resources mentioned throughout this program, watch the video, and more.

[00:00:00] Tanaya Tauber: Welcome to Live at the National Constitution Center, the podcast sharing live constitutional conversations and debates hosted by the center, in-person and online. I'm Tanaya Tauber, senior director of town hall programs. Where did the idea that all men are created equal come from, and what did those words mean when Thomas Jefferson wrote them in the Declaration of Independence? What has equality meant in America over time, and what does it mean today? In celebration of Bill of Rights day on December 15th, we convened a panel of four experts to explore the idea of equality throughout American history. Our guests are William Allen, emeritus professor of political philosophy, and emeritus dean at James Madison College at Michigan State University; Erika Bachiochi, fellow at the Ethics and Public Policy Center; Ellen Carol DuBois, distinguished research professor at UCLA; and Jack Rakove, emeritus professor of history and political science at Stanford University. Jeffrey Rosen, president and CEO of the National Constitution Center, moderates. This conversation was streamed live on December 15th, 2021. Here's Jeff to get the conversation started.

[00:01:08] Jeffrey Rosen: Thank you so much for joining us, William Allen, Erika Bachiochi, Ellen DuBois and Jack Rakove, I'm so excited about our learning today. Our topic is the meaning of equality in America. Of course we're going to begin with the Declaration of Independence and its famous words, "We hold these truths to be self-evident that all men are created equal." Uh, William Allen, you, uh, have written so powerfully about the intellectual sources of that sentence in the natural law theory, both of classical thinkers like Aristotle and Cicero, and Enlightenment thinkers, uh, like John Locke and Montesquieu and, and Burlamaqui, all channeled through the figure of James Wilson, uh, a crucially important but, but less-recognized American founder who wrote a kind of, uh, uh, essay on the limits of legislative authority in Britain that, that Jefferson had by his side when he wrote the Declaration. Tell us about Wilson, how he understood, uh, equality and natural law theory, and how he relied on the classical and Enlightenment sources.

[00:02:12] William Allen: Certainly, uh, address Wilson, and along the way, if you'll permit me, also try to show his relationship to, especially those moments in the committee that drafted the Declaration of Independence, because they are interrelated. But Wilson was of course not there for the drafting of the Declaration of Independence, he was a subsequent participant, uh, importantly at the Constitutional Convention of 1787. And we derive our fullest understanding from his disciplined statements and his law lectures subsequently published, in which he explains in detail what he means and directs himself to the question of equality. And for Wilson, that question is enfolded within the broader question of the foundations of the government.

[00:02:53] For Wilson recognized one thing above all else, that is not merely the question of being equal, but upon what foundation equality stands. For Wilson, as all the founders knew, that those who are enslaved under despotism are all equal, and therefore there are different kinds of equality. So the question is what kind of equality is at stake in the founding? And that equality is what Wilson identified as the equal and impartial administration of the laws, in a context in which all are subject to the laws, including the lawmakers. And that is the important distinction.

[00:03:29] So the way we get to that point through the Declaration of Independence and its predecessor theory is to recognize that the foundation of political life itself is rooted in an understanding of humanity, not an understanding of any legalistic or, uh, procedural requirements of political relationship, but of humanity itself. Aristotle is plain in his work the Politics, and the underlying foundations are present in his work on the ethics that the political community consists of the equal participation of equals. And therefore, only those who can properly be described as members of the community can be called citizens, and no one who's called a citizen can be excluded from the authority of governing the community. That is because that authority's built on the spine of self-government. It requires, therefore, the fundamental recognition of the priority of self-government as a moral principle, which is why the ethics are important, that we discover the equality which is referenced in the Declaration of Independence. When it says all men are created equal, it literally means all human beings have the right of self-government, and not legitimately subjected to the authority of anyone else without their consent. Equality must be paired with a notion of consent in order to be an effective operational principle of social and political relationship.

[00:04:57] Independently of that, it has no meaning. There are other meanings of equality, we can talk about income inequalities or equalities, and social inequalities and equalities of all kinds of other things, but the one that is critical in the founding context is that moral principle that no one is born by nature to be the ruler of another. Rule is legitimate, which is to say lawful in the higher law sense, not in the positive law sense, only when it is effected by the consent of the **[inaudible 00:05:27]** individual, so that we must understand government to be self-imposed. When it's imposed in any other relationship, it is illegitimate. That is the classical tradition, that is what the moderns inherited, that is what the moderns developed.

[00:05:44] What the moderns added to it, which gives so much color to our contemporary conversations, is the radical insight that this is true for everybody, not just for a favored few. It broke through the age-old distinction between those who were capable and those who were not capable. And while they were not foolish, and they recognized that there were accidents of nature in which some were born incompetent for reasons of genetic defect or otherwise, it didn't accept that there were any who were not subject to such accidents who were not capable of self-government, that it affirmed the moral capacity of every human being in principle to the right of self-government, the exercise of self-government and therefore the requirement of consent. That is the fundamental equality.

[00:06:33] I'll say one more word about this to go back to Wilson. We like to—and often hear today people speak of equality before the law. As I said at the outset, that's not the point. For before the law would make us equal under that despotism in which all are slaves. That's before

the law. We have to be not, as subjects of the law, equal, but as authorizers of the law, equal, before in another sense. I.e., our equality comes before the law. It is not because we stand as equals in front of the bench, but because we stand as equals in creating the bench that we enjoy equality.

[00:07:13] Jeffrey Rosen: Thank you so much for that wonderful introduction to, uh, natural law theory in the classical and founding period. Erika Bachiochi, you are the director of the Wollstonecraft project and have written powerfully that Mary Wollstonecraft embraced the classical theory of eudaimonia that Bill Allen just described, the need for self-mastery of our, uh, passions and unreasonable emotions to achieve virtue and self-government, both s- both in the moral and the political sense, and you're also now a senior fellow at the Abigail Adams Institute, and of course Abigail Adams famously asked her husband John to remember the ladies in, in, in founding a government and drafting laws. Tell us about Mary Wollstonecraft's, uh, vision of equality and how it may have related to that of Abigail Adams.

[00:08:06] Erika Bachiochi: Yes, thank you, it's a real honor to be with all of you today. Um, I think a really helpful, actually, place to start in thinking about Mary Wollstonecraft's understanding of equality and that of Abigail Adams is actually with someone who influenced both of them quite, um, substantially, and that is, uh, the Unitarian minister Richard Price. Um, and it's fascinating to learn in the history that when, um, the Adams, Abigail and John Adams went, uh, you know, as John was going to serve as the first US ambassador in the Court of St. James in 1785, he and Abigail actually join, uh, Richard Price's congregation in Newington Green, and Mary Wollstonecraft is actually there as a congregant too.

[00:08:49] Um, and so fascinatingly, I mean, Richard Price is this kind of stalwart supporter of the American Revolution, he is a pamphleteer, um, he in a, in a pamphlet in 1784 writes, "Next to the introduction of Christianity among mankind, the American Revolution may prove the most important step in the progressive course of human improvement." But the thing about Richard Price and his correspondence with many of the founders, he was friends with Ben Franklin, he, of course, then new Adams, he wrote with Jefferson and Washington, is that he actually, um, decries when he sees the sort of foundational documents, at the founding, he decries, basically, um, the perpetuation of the slave trade, um, he actually, uh, you know, which he calls, of course, "Cruel, wicked, and diabolical," and he's very upset that what he sees as this great opportunity for freedom, um, which he sees as, um, you know, as, as Bill was talking about, um, the need for freedom in order to move towards self-government in one's self. We need self-government in order to have sort of self-mastery of one's self.

[00:09:54] Uh, I wanna just quote him again because it's really, uh, uh, great. "It'll appear that the American people have struggled so bravely against being enslaved themselves are ready enough to s- enslave others. The event which has raised my hopes of seeing a better state of human affairs will prove only an introduction to a new scene of tyranny and human debasement. The friends of liberty and virtue in Americ- in Europe will be sadly disappointed and mortified." So he's of course talking about the slave trade, but he's also very upset about the treatment of women in the original documents.

[00:10:21] And so Mary Wollstonecraft, of course, is listening, and so is Abigail Adams. Um, and so y- you know, I'll make one point about each. Wollstonecraft in her *Vindication of the Rights of Woman*, um, it's a very misunderstood treatise. She's often sort of thought as just sort of lumped together, uh, with John Locke in her understanding of rights, b- but she has, uh, she's sort of fighting with Rousseau in a lot of this, and Rousseau's understanding of kind of the sexed soul, uh, the feminine and masculine soul. And she says, "Hold on a second," you know, the soul is unsex and men and women are equal in dignity, because they are rational creatures created by and responsible to God, um, and so need to be afforded kind of the intellectual and moral formation they need, uh, and this is why she's such an advocate for, obviously, for women's education, um, but she's also a small-R republican, and, um, of course Price was as well. And so she's very interested in the way in which Republican forms of government would allow for the liberty to promote virtue, a- and she wants to see that as well in marriage.

[00:11:26] And this is where we come to Abigail Adams, right? So she, of course, early on, this is just before the Declaration, it's amazing in those letters with her and John Adams where she's challenging her husband, um, on basically women's place in, in the new legal constellation. And she draws this explicit parallel between the arbitrary political rule that the Declaration of Independence is repudiating, right, and the rule that husbands have over their wives. Um, of course she's referring to coverture. And it's something that both she and Wollstonecraft got very clearly, the same sort of moral logic governs the home and marriage that governs, you know, uh, sort of political rule in that if someone has arbitrary rule, um, over a subordinate, if there's that inequality it's very hard for either party to actually exercise virtue and therefore find happiness. So I'll just then quote, you know, the famous, the famous lines of Abigail Adams.

[00:12:22] She says, "In the new codes of law, which I suppose'll be necessary for you to make, I desire that you would remember the ladies, and be more generous and favorable to them than your ancestors. Do not put such unlimited powers into the hands of their husbands." Again, just as a parenthetical, William Blackstone had articulated coverture just decades before. In, in the common law, Blackstone of course was the most well-read of all, you know, the attorneys, um, who are the founders read Blackstone, it all came in, and so did coverture. So she says, "Remember all men would be tyrants if they could. If particular care and attention is not paid to the ladies, we are determined to foment a rebellion and will not hold ourselves bound by any laws in which we have no voice or representation." And so that just is sort of, you see Seneca Falls coming, you know, of course it's, it's still decades away, but the same sort of argument is the one that they make there, at the beginning of the Declaration of Sentiments and Resolutions.

[00:13:18] **Jeffrey Rosen:** Fascinating, thank you so much for that, uh, wonderful illumination of the connection between Wollstonecraft and Abigail Adams, uh, the Richard Price connection, and their joint deep rooting in the writings of, uh, classics. Uh, Jack Rakove, John Locke of course was one of many sources for Jefferson. In the *Second Treatise*, in writing about the state of nature, he defines it as a state of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another, and then he says, "This equality of men by nature, the judicious Hooker looks upon as so evident in itself, and beyond all question, that he makes it the foundation of that obligation to mutual love amongst men." Um, tell us more about Locke and

the other natural law theorists including Frances Hutcheson and, and Jean-Jacques Burlamaqui, um, an- an- and their notion of, uh, the natural equality in the state of nature, uh, which Bill Allen said was extended to all human beings and not just citizens, and then how, how, how Jefferson channeled it, and, and how he understood it as m- as more of a, a collective right amo- of, of nations, uh, t- to be equal, and how that evolved subsequently to a more individualistic conception of equality.

[00:14:29] Jack Rakove: Thanks, Jeff. A- actually, I think I'll leave it to Bill to [laughs] to bring in the other natural law theorists as he wishes. Because a- a- as I read the Declaration of Independence, I see it first and foremost as a, uh, political statement directed to solve a particular problem at the moment that the Continental Congress is about to make a decision. And so the line of influence that I would draw runs pretty directly from the great thrust of Locke's Second Treatise to the, uh, immediate political purposes of the Declaration of Independence.

[00:15:01] You know, there's a ki- I always thought there's a kind of curious irony with Jefferson being stuck in Philadelphia drafting the declaration, he actually wanted to go back to Williamsburg, uh, to his old college town, he wanted, um ... He actually thought maybe Congress should suspend its deliberation so that its members could go back and, and join in drafting the first **[inaudible 00:15:20]** constitutions, uh, which he, he, mid-A- mid-May 1776 he describes, "It's the whole object of the present controversy, uh, is actually to kind of perfect our notions of constitutional government." But, you know, the Virginia delegations was short on hands, and Jefferson had to stay in Philadelphia. And so [laughs] he s- he stuck with the, uh, you know, the, kind of the committee assignment that basically gives him his e- his eternal fame as the author of the Declaration.

[00:15:43] So Jefferson's immediate task in, you know, in, in June 1776, uh, you know, after the, you know, the debates that took place in Continental Congress and at the end of the first week is to, is to come up with a statement, uh, justifying the American claim to independence. And the direct line you draw to Locke there, uh, is essentially the line that goes from, on what basis can a people, that's to say, a collective entity, who we will define somehow as, you know, as a- as the American people, or we the people, eventually, uh, uh, at what point and on what basis do they have the right to declare themselves the self-governing entity? Uh, that's Jefferson's immediate project. The idea of reaching the more fundamental questions of, uh, civil equality or legal equality or individual equality or social equality, the issues, all the issues that have resonated in American history, uh, from, y- you know, the revolutionary period down into our own time, uh, those were not Jefferson's immediate concerns, and they were not the real subjects of debate, uh, in the Continental Congress.

[00:16:43] So the whole point here was, you know, for the American people to, you know assume the separate and eq- and equal station among the nations of the Earth, to which they're entitled by the laws of nature and of nature's God. Uh, and so that's, in a certain sense I, you know, being trained as, you know, more as a political historian than an intellectual historian, I, I give a somewhat narrow, let's say, or somewhat, you know, **[inaudible 00:17:06]** meaning, uh, to the, you know, to how one should read the declaration in terms of the immediate intentions,

uh, of its, y- of its framers and i- its adopters, uh, who included Bill, by the way, who did include James Wilson, as a modest correction here.

[00:17:20] But then I think what happens, you know, and I think maybe not in the first minute, maybe not even in the 1770s, but I think you start to see it as early as the 1780s, and certainly no later than 1790, uh, is that the reading of the Declaration that has, that has dominated American political culture, indeed, our, our culture more generally, ever since, starts to take hold pretty quickly. That's to say, the commonsense reading, uh, of, "We hold these truths to be self-evident that all men are created equal," et cetera, that y- that th- it's just the, in a certain sense, it's just that, that all men are created equal. It's reading that phrase and applying to it its most obvious meaning, uh, became the common and the commonsense interpretation of what Jefferson and his Declaration had been up to.

[00:18:02] I think you start to see this, for example, in the debates about the ant- you know, probably come back to this later in conversation, but the anti-slavery debates that start taking place in Massachusetts in the 1780s where, in a certain sense, the idea of, uh, emancipation is, uh, you know, applies the simple statement of equality principles found in the Massachusetts constitution, you certainly find it in a set of debates I've been looking at, uh, fairly closely in, in recent weeks, the, the 1790 debates in, uh, the, in the first federal Congress in, in its final session, over the three anti-slavery petitions that come from, you know, the Quakers in, um, in Philadelphia and New York. I have to say, I'm a Haverford grad, so I have a Quaker vein to [laughs] you know, my links to Philadelphia ha- have a Quaker origin as well.

[00:18:45] And then also, of course, in, in the petition that comes from the Pennsylvania Abolition Society. Congress spent some weeks with those documents, it, it, it actually, it, it, it takes a, I don't wanna say a surprisingly long time, but it, you know, there's a very contentious debate over those petitions. But, you know, when you get to the debate, you see that our, what becomes our common reading of the Declaration, is it about an, it is about a form of individual equality. It's not just about the right of the Americans as a people to assume a separate and equal station among the nations of the Earth bec- e- because we've suffered a long train of abuses, uh, from an arbitrary Crown and an arbitrary Parliament, and, you know, and we've given them, we've given them multiple chances to repent, and to put us i- return us to, kinda, in the sense of the status quo ante of 1763. They failed to do that, so now we are entitled to declare independence and seek our separate, equal station.

[00:19:33] Congress and Jefferson had one set of purposes, but over the next decade, decade and a half, the reading of the Declaration that's prevailed ever since became the norm, and we've been wrestling with its consequences as a culture and as a people for exactly that reason.

[00:19:51] Jeffrey Rosen: Thank you so much for that. Uh, it's wonderful to have your Philadelphia connections and also your deep learning-

[00:19:56] Jack Rakove: [laughs]

[00:19:56] Jeffrey Rosen: ... about the, uh, influence of those Quaker and other petitions, which show so powerfully, as you say, the, uh, a shift from a, a m- a more collective and political to an

individualistic conception of equality, and much looking forward to your, th- the work that that recent research is illuminating. Uh, Ellen DuBois, you've, you've listened to this, uh, debate about the intellectual and political sources of the Declaration. To what degree were the ideals of the Declaration, uh, influential in the, in the 19th century in helping to spark the women's suffrage movement and the movement for women's equality?

[00:20:34] Ellen DuBois: Thank you, uh, uh, yes, I can plunge right in here. To follow up on Erika, Lucretia Mott, of course a Philadelphia Quaker, was familiar, uh, with, uh, um, 19th century, I think she was born in the 1790s, uh, was familiar with Mary Wollstonecraft and instructed her young protégé, Elizabeth Cady Stanton, in these issues. And so Stanton, when she came to take the lead in the Seneca Falls Declaration, uh, was very much influenced by, uh, Mary Wollstonecraft. The Seneca Falls Declaration, it's not the Declaration of Independence, interestingly enough. It's called the Declaration of Sentiments, which is a term, uh, borrowed from the, uh, American Anti-Slavery Society. And even so, I'm not sure why they used the word sentiments, which is a term usually associated with women and the emotions.

[00:21:31] Nonetheless, of course, the Declaration of Sentiments of 1848, the prologue begins with a restatement of the Declaration of Independence, uh, with two crucial changes: all men and women are equal, it says, and it replaces the tyranny of kings with, uh, the tyranny of men over women. So it's a very radical document.

[00:21:57] Suffrage is there, uh, c- contentiously. I- it's, uh, resisted by Quakers and other radical abolitionists who think that politics is not a good way to go. But the thing I wanna emphasize is that the Declaration of Sentiments, uh, includes a full range of criticisms of the subordination of women to men, including in culture, in attitudes about, uh, women's nature, and economic equality, pr- uh, equality of access to education and professions, as well as suffrage. And it takes, really, the Civil War period before suffrage rises to become the lead form of equality.

[00:22:44] Stanton is very much influenced sh- f- her whole life, uh, her whole career focuses on, uh, independence for women. This is, uh, she's, by the way, a wife of 50 years and a mother of seven. She believes profoundly in the crucial nature of the independence of the self, as she says in her final and most moving explanation of this, the s- the solitude of self, the individual nature of the self.

[00:23:15] Uh, just one more, uh, comment, which is, uh, why have we had to leap all the way up to the 19th century? It's 1848. There are many answers, but I would say the most interesting one, to take us out of the, just the American context, is that of course 1848 is a year of revolutions about political equality throughout Europe, and because the United States is unique in its, uh, granting of political equality to all white men, the cutting-edge issue of political equality is for women. The women's rights movement, which gives birth to the women's suffrage movement later, the women's rights movement is, one could call, the, uh, American Revolution of 1848.

[00:24:05] Jeffrey Rosen: Absolutely fascinating. What a, what a wonderful connection between W- Wollstonecraft and, uh, Cady Stanton and Lucretia Mott, and thank you for helping

us understand why it took until 1848 for these ideals to be embodied in the Declaration of Sentiments.

[00:24:22] All right, for this next round, I want very much to learn from all of you about the degree to which these principles of equality and natural law, natural rights were and were not consistent with the reality of, of chattel slavery. Bill Allen, you've, you've written that James Wilson, in his important lectures on natural law ruled out slavery as, "Unauthorized by the common law, indeed it is repugnant to the principles of natural law that such a state should subsist in any social system." Tell us more about whether and why Wilson and other founders thought that slavery was inconsistent with natural law. Did Jefferson share Wilson's views, uh, when he talked about slavery, uh, harming the passions of the slaveholders, and was his ... H-how did he reconcile, uh, the existence of chattel slavery with, with his soaring words in the Declaration, and, and how did the other natural law theorists on which they relied, including the classical and Enlightenment authorities deal with the question of, of slavery?

[00:25:22] William Allen: Well le- let's begin, Jeffrey, by simply acknowledging that Jefferson recognized the error of slavery without reconciling it. It is not an uncommon thing in human life for people to hold contrary positions, uh, morally and practically, or to be unable to, uh, cash in their moral sentiments in their face of their practical necessities. A- and that certainly defined Thomas Jefferson's situation.

[00:25:47] Bu- but let me say that it is also true that someone like James Wilson didn't have that problem. And it is not an accident that the move toward abolition began immediately in the aftermath of the Declaration of Independence. The fact that it didn't happen in one stroke of lightning is insignificant. The dynamic was, from the beginning, a move toward abolition. And we saw it move progressively from the north toward the south. It, of course, reached an impasse, an impasse is politically explained, and nobody's better at doing that than Jack Rakove. But it is nevertheless the case that those principles were in- unavoidable. That they were there, they were moving, it was a dynamic process. The fact that we got to 1860 is not an accident.

[00:26:32] So we must say that in the era of the founding and of the Declaration, we saw established the pattern that would move straightforwardly through 1848 up to 1860. A- and I would want to interject that 1848, they use the word sentiments not necessarily as a, a s- stroke of momentary genius, but remember the whole Scottish Enlightenment was founded on a theory of moral sentiments. It was very different from the other Enlightenment traditions. Adam Smith wrote a book called the Theory of Moral Sentiments. And the, the principle, uh, embedded in those 18th century principles was that it was not rational deliberation that produced the conviction of the necessary equality of human beings, but an intrinsic moral sentiment. And when in 1848 they re- returned to that or recur to that, they are embracing that broad principle which encompasses men and women, not distinguishing women from men. It was not because it was a feminine principle, in other words. The Scottish Enlightenment did not make it a feminine principle, but made it an alternative to mere rational deliberation. That was the key in 1848.

[00:27:45] And I would also want to say that, you know, when I said that Jefferson wasn't involved in the Declaration with respect to the meaning of equality, I don't mean that he wasn't a

signator. What I meant was he was not part of the, those who elaborated the meaning of what was expressed in the Declaration of Independence the way he did in the Constitutional Convention and thereafter.

[00:28:03] But it is the case, of course, that that committee that developed the Declaration of Independence was trying to accomplish an immediate political objective, but it is more precisely the case that they were trying to accomplish several political objectives. And that committee was very much controlled by Richard Henry Lee and John Adams. Thomas Jefferson was drafting under direction. Changes were made in that document that were extremely important in elucidating what these principles were. John Adams had antecedently developed the theory of the pursuit of happiness. It did not get there as a stroke of Jeffersonian genius. He did it in his thoughts concerning the revolution, he did it in his, uh, proclamation he developed for the General Court of Massachusetts in January of 1776, so that in this broader picture, what we must focus on are the moving dynamics of the situation. People were being moved from day to day, it was not static. They were not positioned to say yea or nay to what they thought would be an indefinite future. They were positioned to try to leverage every opportunity they could in the direction of progressive understanding of the human situation in the world.

[00:29:13] And that's what really lies at the bottom of the Declaration of Independence, that's why equality is the key term that drives, dynamically, our whole social and political development, because that is an unsettled concept. It can only be settled through the dynamics of our social and political life, even though it has a straightforward meaning in terms of natural law. So, so that I would say, the way to get to your question and many of the observations that have been made can be gotten to in a straightforward manner through the observations that, uh, uh, Erika had already introduced from Richard Price, who s- identified two principles as foremost, and those principles were, of course, the, the founding era itself, the commitment to equality. But he said, as she quoted, next to Christianity, which is a reminder of the argument in Montesquieu's Spirit of the Laws, that the greatest gift to humankind was Christianity, coupled with the argument he made in book 11, chapter six of the Spirit of the Laws, that every man, and h- he meant every human being, who is thought to have a free soul ought to be self-governing.

[00:30:26] Now, i- i- that's the yeast of revolution. That's where we find the yeast of revolution. And planting it in the political circumstances of the 18th century produced a leavening effect that we've been living with ever since.

[00:30:42] Jeffrey Rosen: Wow, what a powerful metaphor of the leavening effect of the yeast of, of, of Montesquieu's insight. Um, Erika Bachiochi, tell us more about the sources of Price's connection between moral and political self-government, the idea that no one who e- arbitrarily exercised authority over another in the domestic sphere could be free in the political sphere, were there other thinkers in addition to Price, Bill, Bill just cited, uh, Montesquieu who drew that, uh, connection, and how did n- not only w- women's, uh, suffrage advocates like, uh, Wollstonecraft and, and Adams, uh, invoke those ideals, but also abolitionists invoked those ideals, uh, to challenge the system of, uh, chattel slavery.

[00:31:27] Erika Bachiochi: Yeah, I think it's really helpful to rem- I mean, this is, uh, you know, very much in a lot of Ellen's, Ellen's work on, on suffrage, but just to remind ourselves that those first, you know, women's, um, advocates were very much abolitionists first. Lucretia Mott, Elizabeth Cady Stanton, and they come out of that movement.

[00:31:45] And what's fascinating is, uh, a figure like Sarah Grimke, who was very much influenced by Mary Wollstonecraft, but in her 1838 book, uh, Letters on the Equality of the Sexes, she is able to do this, uh, sort of fascinating, um, thing where, you know, she, she and her sister had come up from the south, um, were very outspoken advocates, uh, for abolition, and had basically drawn kind of the fire or the ire of, um, sort of more conservative, Christian sects who basically said, like, "Women shouldn't be able to speak out against anything, because they should remain meek, and it's, you know, changing, i- i- it distorts their character," and all that.

[00:32:24] So part of what Seneca Falls is doing is really, you know, a- as Ellen was saying is, like, looking at sort of the social inequality that would keep women from speaking out, as they say, "For all righteous causes." You know, they say in Seneca Falls that women have this right and responsibility to speak out, and they're talking about, very much about, about slavery there.

[00:32:44] But the other thing that Sarah Grimke does is she does this kind of amazing, in her Letters on the Equality of the Sexes, this amazing exegesis of Genesis. And she looks at the original language, because of course Genesis and sort of the Adam and Eve story have been, like, you know, the place, kind of the grounding of, um, women's subordination for sort of so long. And so she looks there, she looks at the original, uh, language, and she basically says there's been this perversion in the interpretation of holy writ. And she shows, she kind of makes this, this thoroughgoing c- case for the original equality of men and women in the Bible, which is really fascinating, and I would s- you know, send your, um, you know, those who are watching both to those letters, but also, to her kind of amazing, um, letter, um, called Marriage, which is, has all sorts of, we could talk for hours and hours about that.

[00:33:33] But I, I bring that up because of the influence she also had on Seneca Falls, and the way you can find, as Bill's been talking about, this natural law language shot through, um, that document, um, both sort of drawing on Grimke's work, and talking about sort of the intention of the creator, it says, you know, "Women as men's equal was intended to be so by the creator, and the highest good of the race demands that she should be recognized as such," that's sort of the Grimke-esque, the more sort of Unitarian or Christian view.

[00:34:02] But then there's this real natural law approach where they actually call upon Blackstone, which is, you know, sort of ironic given, uh, that he brings us coverture too. But, um, you know, there's this line, um, there's this self-evident truth growing out of the divinely implanted principles of human nature, which they say is binding all over the globe, in all countries and all times. They say that, "Any laws which place women in a position inferior to that of man are contrary to the great precept of nature, and therefore have no force or authority," I'm quoting here.

[00:34:34] And so, you know, there again, I'm gonna give you another quote, 'cause it's just all in there. "It is time," it says, "That she should move in the enlarged sphere which her creator, her

great creator has assigned her," and that, and then this is a real Wollstonecraftian language, "That the equality of human rights results necessarily from the fact of the identity of the race in capacities and responsibilities."

[00:34:57] And so once they have, you know, they're invested with, you know, these same capabilities and responsibilities, then it talks about them having the right and the duty equally with man to promote every- to promote every righteous cause, by every righteous means, and not be sort of silenced, you know, as, as these abolitionist women had been. They also speak, of course, up against the prevailing double-standard, but they're asking men to kind of join women at a high level of virtue, they say the same amount of virtue, delicacy, and refinement of behavior expected of women should be expected of men, and then they talk about e- you know, equal participation with men in various trades, professions, commerce, and finally, that sacred right to the elective franchise, which, as Ellen mentioned, was unpopular, but then comes to be within due course.

[00:35:41] But it's this fascinating merger of natural law and the sort of Sarah Grimke-esque, uh, vision of the equality of the sexes, very much in the Bible that is grounding equality there at Seneca Falls.

[00:35:53] Jeffrey Rosen: Fascinating, thanks so much. Jack Rakove, as Bill Allen says, you've done so much to illuminate our understanding of the degree to which the effort by abolitionists to invoke the ideals of the Declaration was thwarted in the, in the years, uh, leading up to the Civil War, and how it eventually took a war to enshrine them in the Constitution. Can you tell us more about the inconsistencies? I m- wh- wh- where should listeners look to, to see Jefferson tie himself in knots trying to reconcile slavery with natural law and the Declaration, and then in addition to the political struggles, tell us about the ideological evolution from 1776 to the Civil War, uh, that ultimately led the ideals of the declaration to be enshrined in the 14th Amendment.

[00:36:42] Jack Rakove: Yeah, there's so many ways to approach this, so let me offer, I think, uh, two points of departure. First is a- i- is in a sense, um, a bit historiographical. You know, one of my colleagues at Stanford, uh, well, I should say one of my late colleagues was Don Fehrenbacher, who did, you know, the great book on Dred Scott, y- Pulitzer Prize-winning book. And early in the book, Don, uh, had a kind of si- simple formula, which, which I relied on my own work, which is to, which is to distinguish anti-slavery sentiment from pro-slavery interest. And the idea here was the interest, you know, represented by, you know, the slaveocracy, or the slave-owning south was hard, defensive, aggressive, militant.

[00:37:24] The sentiment was, in a sense, more diffuse. It was a sentiment, and it didn't quite have it didn't quite have the same driving force in motivating power. And it was somewhat confused as to what its objectives were. I mean, if you trace the history of antislavery, uh, you know, from let's say the, you know, the, the mid-18th century, or y- let's say the final third or so of the 18th century on into the 19th century, what were its objectives? Were, was it, you know ... I, I would tend to argue that its first objective is to limit and end the slave trade. Abolitionism per se, uh, in, you know, in, in, certainly in the sense of which we'd associate wi- with someone like William

Lloyd Garrison after the late 1820s and 1830s, uh, was an option that made e- even many, many advocates of antislavery, uh, nervous and diffident. Um, uh, many a- many, uh, advocates of antislavery preferred the ideas of diffusion, you're gonna d- kind of dif- Jefferson, Madison fit this. You diffuse the, the slave population across the landscape, and maybe that would turn slavery into a more modern institution.

[00:38:29] Or, of course, it's coupled with colonization, uh, the idea that, uh, emancipated, uh, uh, slaves, once freed, have to be sent somewhere else, and where that somewhere else was would be back to Africa, into Sierra Leone or eventually Liberia, an example, or would be somewhere w- you know, way out west, or, you know, below the, the Rio Grande.

[00:38:48] And I think this ties into the dilemma that Jefferson finds himself in. I mean, Jefferson wrestles with this and, uh, uh, particularly in, you know, the famous Query 14 in Notes on the State of Virginia, where he has what is to us this horribly offensive passage, which is a kind of, it's a kind of progenitor, it's a prototype of what would become the much more militant and aggressive racism that we associate with 19th century American thinking, much more than I think was the case in the 17th or 18th century, the idea that blacks are, by definition, an inferior species, an i- you know, inferior race, who are properly, you know, consigned to a condition of slavery.

[00:39:26] I mean, Jefferson, it seemed to me, was wrestling with a problem that we're stil- uh, that we're still wrestling with today. How do you create a bi- or a multiracial society? Uh, it's easy to condemn Jefferson for being the hypocrite that he was, and for failing to work out these contradictions. But I think if w- you know, as, as I've always tried to explain my students here, if you try to deal with the problem that he's trying to conf- uh, confront, not very successfully from our vantage point, in fact really, it winds up being a dismal failure. But because it's a problem we're wrestling with still, I'm, I'm inclined to cut him some slack.

[00:39:57] So Jefferson's trying to imagine if the slave population were liberated, under a general scheme of, kinda gradual emancipation scheme to which he was, you know, moderately attracted, what would happen then? If, if you go back to the famous Query 14 in the Notes on the State of Virginia, which I think is a seminal text that we all have to read and wrestle with, uh, on the one hand, Jefferson says, "Look, uh, race relations are already so soured, uh, between whites and blacks," I mean, whi- whites, wh- you know, whites live in an atmosphere of fear, and, you know, blacks have any of a number of reasons, you know, to seek a justice they've been denied o- over generations.

[00:40:32] Uh, Jefferson's first position is to say that, you know, it's very doubtful that these two peoples could ever live peacefully together. Uh, I think had he stopped there, you know, we'd be happier with Jefferson. Like, we wouldn't be happier with the result, but, you know, we'd say this is just, you know, he's, he's being kind of a realist here. Uh, and of course Jefferson goes on, he goes into this fumbling exercise to talk about, can we actually talk in some quasi-objective sense, or, you know, quasi- quote-unquote, scientific sense about the differences between the races, then makes a complete and utter mess of it, and then says at the very end of that passage, "But have to say, we haven't really studied these differences, seriously, you know, in, in the end."

[00:41:10] So I, I, I think the problem is if you try to write the history of antislavery the way historians like to do here, we tend to be fussy about dates and phases and, um, you know, the limi- you know, the limitations as well as the opportunities. So on the one hand, out of a combination of religious and political motives, antislavery sentiment, in, in the sense in which, you know, my colleague, Don Fehrenbacher, used that term, and, yeah, we can run it back to Adam Smith, uh, and th- you know, ask, you know, ask [inaudible 00:41:38], uh, is certainly growing and developing in the context of and in the aftermath of the revolution. On the other hand, it confronts an interest, you know, which is, and you see this in the 1790 debates, and you see it thereafter, which is it's hard, it's militant, it's aggressive, it's perfectly comfortable saying, "No, no, there's lots" ... You know, the Bible is perfectly, you know, happy with slavery. Uh, you know, if, if you want to take 'em to, you know, religious view of things, uh, yeah, we can, we can pull out any of a number of, you know, texts and chapters and passages, uh, you know, from, you know, from the Old and New Testament alike, uh, which seem, you know, wholly conducive to, wholly conducive to slavery.

[00:42:15] So I think that's the y- that's the kind, you know, being a historian, I'm all in favor of messiness, uh, and that's the kind of, you know, that is, in a sense, the messy situation that, you know, with which we have to deal with.

[00:42:25] **Jeffrey Rosen:** Thanks for that, uh, eloquent, uh, argument in favor of, uh, messiness and, and complexity. Uh, Barbara Brook asked, "People always quote Abigail Adams' quote, but never John's response. Was there any response by John?" I just happen to have John Adams's response saying, "As to your extraordinary code of laws, I cannot but laugh," he responded. "We've been told that our struggle has loosened the bounds of government everywhere, that children and apprentices were disobedient. We know better than to repeal our masculine system." Abigail was so distressed that she wrote to her friend, Mercy Otis Warren, recounted the exchange, and noted sarcastically about John, "So I've helped the sex abundantly, but I'll tell him I've been only making a trial of the disinterestedness of his virtue, and when weighed in the balance have found it wanting." Um, it would be wonderful, uh, Ellen DuBois, if, if you could indeed, uh, giv- give us a sense of, of precisely that question, and then take us, I know we're having very broad strokes here. You left us in 1848, ta- take us up to the adoption of the 18th Amendment, and the degree to which, uh-

[00:43:25] **Ellen DuBois:** [laughs]

[00:43:25] **Jeffrey Rosen:** ... the notions of, uh, equality embodied in the Declarations of Sentiments were invoked and also evolved, uh, in the fight for the ratification of the 19th Amendment.

[00:43:35] **Ellen DuBois:** Well, I'd actually like to speak a little bit about the question of slavery and abolition, because it's so central to the legacy of the woman's suffrage movement. I've just been reading about the World Antislavery Convention of 1840, uh, which is a famous part of, uh, the beginning of women's rights in the United States, and, uh, when the British abolitionists refused to seat women, American women, they keep on talking about women's rights as an abstract question. And it is the, that shouldn't be brought to interfere with abolition. And, uh, it is

that repeated sense that, uh, the equality of women does not have the weighty nature of abolition that continues to haunt the relationship between the two movements.

[00:44:24] Just to jump way ahead, the centennial of n- the 19th Amendment has coincided with Black Lives Matter, and has brought a lot of attention to claims of racism in the suffrage movement. And let me just say that, um, we've been spending a lot of time in the, uh, late 18th century, but the women's suffrage movement covers a quarter of American history, and its growth takes place in the late 19th and early 20th century, when the United States itself is plunged into a reactionary response to, uh, Reconstruction and Black suffrage.

[00:45:06] And, uh, so the suffrage movement is accused of excluding Black women. This is a very complex question, but I would just say that to the degree that it becomes a white-dominated movement, it is completely consistent with everything else going on in the United States. I mean, the 19th Amendment takes place, uh, in the high years of Jim Crow. Um, and, uh, is very much affected by that. And I would just add one other thing, which is Black women remained very dedicated to the issue of gender equality, uh, i- in, in general, and, uh, political equality in particular. And really, to jump even further ahead, um, Black women have consistently registered at a higher level of agreement with various feminist issues, from the ERA to abortion, than white women.

[00:46:06] Jeffrey Rosen: Thank you for that crucially important, uh, history and for reminding us of that connection. Um, I think we have time for one last intervention by each of you, and I'll leave it to each of you to focus on the th- topics you think are most relevant, but our friend, uh, Colin Tebow says, wants some notion of the topic we promised to talk about, which is not only what is the historic meaning of equality, but what can it teach us today? And, and Bill Allen, in your piece about James Wilson and the original meaning of the Declaration, you also cited King as the 20th century, uh, channel or prophet of th- of that vision. So, so in what ways did King channel natural law theory, and, and what can his vision of equality teach us today?

[00:46:49] William Allen: Certainly. One goes immediately to the Letter from a Birmingham Jail when speaking of Martin Luther King, Jr., uh, where he goes at great length both to develop from the original or antecedent classical natural law theory, up to the modern-day application of those principles. So you get a comprehensive statement from King that, as it were, traverses the whole messiness, and love that word, Jack Rakove, the whole messiness.

[00:47:14] 'Cause one of the things we discover is when we try to pain in broad categories, we always miss the realities, precisely because everything is so messy. Whether it's women's suffrage in the presence of Jim Crow, whether it's abolitionism in the presence of the women's rights movement in Seneca Falls. You know, I **[inaudible 00:47:33]** from Harriet Beecher Stowe, as you know, and I w- will observe that she not only play- was a major focus in abolitionism, but she was a major focus in commenting on the status of women. Her output is not just Uncle Tom's Cabin, there's a long list of writings of extraordinary significance, including Oldtown Folks, where she tackles the Rousseauian sexing problem with great understanding. So, so the messiness is what characterizes the day throughout our looking at this.

[00:48:00] Thomas Jefferson had a second chance after Query 14, which we remember, he closes by saying, "If God is just, we're in trouble." So, so, so he recognizes in that statement the era of slavery. But then he gets a second chance when Benjamin Banneker comes to him in 1791, and says, "Now is the time to live up to your promises," and Jefferson fails, again. So, so I won't cut him as much slack as Jack does, but I will say Jack is right, it's messy. It's all messy. But, through the mess, we see a light shining. 'Cause Abraham Lincoln said, in the debates with Steven A. Douglas, "The problem with you, Steven, and the problem with the approach you're taking is you are blowing out the moral lights among us." He wanted to keep the moral light even in the midst of all the messiness, and that's what I bring to you in terms of our contemporary understanding. The light still shines, no matter how messy it is, we can still work through this. Why? Because the fundamental principle is we are capable, that we've got this, we can do this.

[00:49:03] Jeffrey Rosen: That is so moving. Through the mess, we see the light shining. We can indeed do this, and by learning from history, we can be inspired to live up to its best ideals. Erika Bachiochi, what would you like to leave our National Constitution Center friends with about what the, the- the meaningful history you've studied, from Wollstonecraft to Adams to the 19th century can teach us about our debates today.

[00:49:28] Erika Bachiochi: Well I wanna, uh, put forward [laughs] the idea that, um, perhaps, you know, the sort of quest for the equality between men and women is even messier than, um, the quest for racial equality. And that, you know, would be for, I think, pretty obvious reasons, um, and that is that, you know, it's, I think, pretty easy to say that, um, you know, uh, all, you know, people regardless of their race, ethnicity, color, et cetera, are equal by virtue of being human, and we can say the same of men and women, but there's this small problem which ends up being a big problem. And that is, um, that there's, you know, reproduction is very asymmetrical, and so, you know, men and women engage in the same sexual acts, but it is women who, of course, both are privileged and burdened by, um, those asymmetrical consequences, obviously regarding pregnancy, childbirth, and all of that.

[00:50:19] And so, when you go up through the history of women's rights, you see responses to that asymmetry. And so if we were to continue on with a part two, we'd have to look at how, um, you know, in the book I've just written, uh, the Rights of Women, I show sort of this Wollstonecraftian strain which kind of takes seriously these asymmetries and tries to respond to them. And then more of a, a Millian, J- a, a, a strain following John Stuart Mill, which tends to be more a strict equality, which also I would say carries with, Elizabeth Cady Stanton would be in that line, and there's this kind of battle [laughs] between these two strands, and it starts really ... I mean, at the very beginning with questions about joint property and separate property ownership, but then go- goes right through kind of articulations of why women should have suffrage, um, so you can see Alice Paul versus like a Francis Willard.

[00:51:10] Um, and then it goes right up through sort of the progressive era and looking at, you know, responses to industrialization, you know, protective worker, you know, women's legislation or, um, or, you know, then comes sort of the ERA. And all of that history of the ERA, um, running up through, I mean, our time, is very much sort of this question of how do you deal with these asymmetries between men and women when it comes to reproduction?

[00:51:35] The, the easy things were answered, I think, um, by Polly Murray, Ruth Bader Ginsberg, um, antidiscrimination law, where we could kinda get, like of course men and women, there shouldn't be sex-based laws when there are no reproduction or biological differences. But when it comes to those differences, how do we respond? And I think those questions are much, much more difficult and messier, um, when it comes to questions of, of women and men, um, and their equality.

[00:52:01] **Jeffrey Rosen:** Thank you very much for that. Jack Rakove, what can the important history we've been discussing about equality and the Declaration teach us about our debates today?

[00:52:12] **Jack Rakove:** Uh, I wanna note that I'm wearing my tie which has all the signatories of the Declaration, and Thoma- from Monticello, Thomas Jefferson at the bottom. You know, I, Jeff, I don't know if I have a big answer, but I have, you know, I, I, I do have a couple reflections that I think go back to the, the Jefferson-Locke, uh, connection, uh, particularly Locke's Letter Concerning Toleration, uh, and Jefferson's plan for legislative reform, you know, the revisions, the laws of Virginia, which is, which, which was his great enterprise. You know, part of Jefferson's program, uh, was to take Virginia's, what they called the wastelands, meaning the unappropriated lands, and to divide them up among, uh, would-be republican households. You know, male and female, God created them both, husband and wife. Uh, and to give both spouses, uh, a claim on Virginia's lands. And the v- you know, the theory, the theory of this was to, um, you know, in, in effect wa- was to create self-sufficient republican households, with an adequate material basis to, you know, fulfill the idea of the, the Jeffersonian farmer. Except it would be the household itself, and not just the male [laughs] uh, you know, the dominant male figure within it.

[00:53:24] Uh, Jefferson's scheme of public education, uh, which is a, you know, for, you know, the mass of Virgi- free Virginians would only be three years, but three years in the 18th century would be a lot of education. Uh, and, you know, envisioned educating boys and girls alike, without discriminating between them.

[00:53:41] Uh, I also think that Jefferson's approach to religious liberty and, uh, you know, which I think, uh, draws a lot of inspiration from Locke, although as Jefferson said, "Where Locke stopped, we can go further." Locke in his, you know, in the Letter Concerning Toleration, had discussed, who is the more authoritative parent? You know, the, you know, the mother or the father? Uh, and actually had some fairly enlightened ideas on that point.

[00:54:03] So I happen to think if, if, if I had one big takeaway, particularly, you know, in this period when we're agonizing so much about American history, we're gonna start in ... 'Cause I'm sure you're attuned to this already, where Revolution 250, and how we think about independence is, is, is gonna have a massive impact on, on our culture. I remain a big fan of Jefferson. You know, with all his faults, with all his shortcomings, with all his contradictions, with his desire to, to, you know, to make the rebuilding of Monticello his great private project, with his terrible indifference to what would happen with slaves when his estate had to wrestle with his debts, I don't see how Americans can think about equality without wrestling with Jefferson, uh, in every

sense of the term, and that means wrestling with his shortcomings as well as his promises, that's, you know, that's part of the challenge of doing history, which as, as Bill rightfully picked up on, is necessarily a messy subject.

[00:54:56] Jeffrey Rosen: You cannot think about equality without thinking about and wrestling with Jefferson, thank you for that powerful challenge. Uh, Ellen DuBois, the last word in this wonderful discussion is to you. What lessons can the history we've been discussing teach about our debates today?

[00:55:14] Ellen DuBois: I wanna pick up on, uh, something that both I and Erika said. I, I wanna really emphasize very strongly that, um, there's still a tendency to regard women's rights as either derivative or a side issue, rather than something that opens up aspects of equality, uh, that otherwise do not exist. So it's not merely a matter of extending equality from men to women, but to consider how equality for women changes our understanding of equality. Um, because time is short, I'll just speak about the contemporary issue of women's equality, uh, deriving from the ERA, but more generally.

[00:55:59] Uh, if we look at the current political environment, it becomes completely clear that the issue of abortion is not a side issue or something particular to, uh, a group of people, but opens up the whole question of equality in personal rights and personal life. We know, uh, and Erika raises this when she talks about reproduction, nothing about the original conception of equality gets to the level of what happens to our bodies. And, uh, we can be, just to, uh, end with a sort of negative prediction, uh, I think we can be pretty sure that if and when abortion falls, gay rights will fall after that. And, uh, who knows what other aspects of the personal equality. And this was something that was central to Stanton, uh, i- i- in some ways more basic than her belief in, uh, political qua- equality, was her belief in the equality of the person and of the self, and that is what women's rights brings to this def- discussion.

[00:57:10] Jeffrey Rosen: Thank you so much, Bill Allen, Erika Bachiochi, Jack Rakove, and Ellen Carol DuBois for a extraordinarily provocative, deep, and illuminating discussion of the meaning of equality in America. I vote for a part two as well, we've already identified many issues that, uh, the Supreme Court and American society will be confronting in the new year, and it would be an honor to bring you back together to teach us about what history can, uh, tell us about them. And thanks to you, friends, for taking an hour in the middle of your day to learn and grow in wisdom and to engage deeply with history, and as always, please follow up on the great homework that we've been chatting, and read the primary sources yourself, so that you can make up your own minds, and read the great books of our brilliant panelists, uh, once more. Uh, William Allen, Erika Bachiochi, Jack Rakove, and Ellen Carol DuBois, thank you for a wonderful program, and happy Bill of Rights Day, and happy new year, and happy holidays to all. Bye, everyone.

[00:58:25] Tanaya Tauber: This episode was produced by Melody Rowell, Lana Ulrich, John Guerra, and me, Tanaya Tauber. It was engineered by Greg Sheckler. This episode was made possible through the generous support of citizens. Visit constitutioncenter.org/debate to see a list of resources mentioned throughout this episode, find the full lineup of our upcoming shows, and

register to join us virtually. You can join us via Zoom, watch our live YouTube stream, or watch the recorded videos after the fact in our media library at constitutioncenter.org/constitution. Live at the National Constitution Center is taking a break for the holidays. We'll be back in January with more great shows that you won't want to miss. In the meantime, take a listen to the episodes from the archive, or head over to our other show, We the People, for some lively and civil constitutional debates. From all of us at the National Constitution Center, we wish you a happy and healthy new year.