Darwin and the Declaration

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ABSTRACT. **Does the *prima facie* contradiction between the Declaration of Independence's description of the separate and unique "creation" of human beings and Darwin's evolutionary account indicate a broader contradiction between theories of human rights and Darwinian evolution? While similar troubling questions have been raised and answered in the affirmative since Darwin's time, this article renews, updates and significantly fortifies such answers with original arguments. If a "distilled" formulation of the Declaration's central claims, shorn of complicating entanglements with both theology and comprehensive philosophical doctrines, may still be in contradiction with Darwinian evolutionary theory, this should be cause for substantial concern on the part of all normative political theorists, from Straussians to Rawlsians. Despite the notable recent efforts of a few political theorists, evolutionary ethicists and sociobiologists to establish the compatibility of Darwinian evolutionary theory with moral norms such as the idea of natural or human rights, I argue that significant obstacles remain.**

Key words: Darwin, natural rights, human rights, Declaration of Independence, moral sense, Thomas Jefferson, Larry Arnhart, utilitarianism, distilled Declaration

The impact of Darwin's evolutionary theory on the American political tradition has largely occurred by way of the age old tension between science and religion. This impact has been more acutely felt in recent times with the rise of the Religious Right as a significant political force. Many on the Religious Right subscribe to one of the major alternatives to evolutionary theory, whether "intelligent design" or some form of "creation science," and explicitly link their adherence to this alternative with faithfulness to America's founding principles and political traditions. For these religious conservatives, Darwin's theory implies atheism or agnosticism, neither of which is compatible with the American political tradition since the Founding.[1] This position has been challenged within the conservative camp by a few prominent scholars who argue that Darwinian evolution actually provides a sound basis for morality and politics in a manner that supports broadly conservative principles.[2] For American political liberals, on the other hand, for whom the realm of politics is more clearly separate from that of religion, Darwin has been integrated without general incident into political perspectives as an ally, or at least not an enemy, of the American political tradition.

One of the most illuminating and potentially controversial intersections of the American political tradition with Darwin's thought occurs within the Declaration of Independence. The Declaration is often cited by religious conservatives as clear evidence of the centrality of religious belief to America's founding principles, and may by extension be noted as evidence of the incompatibility of the Darwinian evolutionary account with these founding principles. The Declaration states, after all, that "all men are *created* equal, that they have been endowed by their *Creator* with certain unalienable rights" (emphasis added); the crux of Darwin's theory, on the other hand, consists in the clear denial of the doctrine of "separate creation" and

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the affirmation of modification and descent in its place. There are, however, at least two plausible ways to deal with this prima facie contradiction: first, one could argue that the Biblical account of creation in Genesis may be interpreted in a manner compatible with Darwin's theory, and thus that Darwinian evolution does not rule out the existence of a "Creator;"[3] and second, it may be argued that human equality and rights are actually founded on an alternative basis, such as human nature or Darwin's theory itself, and thus that the "Creator" is merely an optional addition to this foundation. Each of these two replies to the prima facie contradiction point toward a "post-Darwinian Declaration" that differs from the original Declaration in a manner analogous to that in which evolutionary interpretations of the Book of Genesis differ from literal interpretations.

Much of the conflict between contemporary religious conservatives and political liberals may, in fact, be framed with reference to their respective adherence to either an original Declaration or to a post-Darwinian one.[4,5] For religious conservatives, human rights and dignity are inextricably bound up with the relationship to a Creator in the manner expressed by the original Declaration; for political liberals (as well as pro-Darwinian conservatives), human rights and dignity are justified and affirmed independently of (though not necessarily in contradiction with) any conception of the relationship to a Creator, and thus in a manner apparently compatible with a Darwinian perspective. Both sides of this debate would, however, be able to affirm a distilled formulation of the Declaration's central claim: namely, the proposition that "all human beings equally possess certain basic rights." This proposition, drawn in a general way from the Declaration itself, would elicit consent from nearly all Americans, and serves as a bedrock principle or touchstone for the American political tradition.

Even this "distilled Declaration," which is similar to what Larry Arnhart has referred to as the "minimal form" of the Declaration,[6] however, does not cohere with Darwinian evolutionary theory in an immediate or unproblematic manner. The immediate difficulties encountered in attempting to square Darwin's theory with the distilled Declaration may be summarized by saying that the signification of the phrase as a whole becomes vague and uncertain, since the primary terms of which it is comprised, "all human beings" and "certain basic rights," each begin to look increasingly blurred from the Darwinian perspective. For the faithful Darwinian, the developmental continuity between various species indicates that the concept "human being" is constructed arbitrarily for the sake of convenience, and is thus both subject to change over time and of necessarily uncertain extension. Darwin's theory of developmental continuity would also seem to indicate that ascribing special rights or dignity to a single species is similarly arbitrary and subject to considerations of convenience. The distilled Declaration, by contrast, necessarily assumes not only the clarity and stability of the concept "human being," but also the uniqueness of human beings in their possession of certain basic rights; in other words, there is something that reliably distinguishes human beings qualitatively from other beings, and this distinction carries with it the possession of a certain dignity or basic rights.

These sorts of difficulties involved in squaring Darwin's theory with reigning moral norms were indeed noticed by many of Darwin's contemporaries.[7,8,9] The apparent tension between Darwin's theory and the idea of natural or human rights contained in the Declaration of Independence, in particular, was expressed by Carl Becker in his classic study.[10] In more recent years, however, such unsettling commentaries have been increasingly overcome by a wave of optimistic attempts to reveal the harmony between Darwinian evolutionary theory and moral norms such as those affirmed in the distilled Declaration. Faced with the conjunction of a growing certainty regarding the claims of evolutionary theory and a renewed commitment to absolute moral norms such as the idea of equal human rights, the latter half of the twentieth century witnessed a flurry of influential efforts to establish the compatibility of the one with the other.[11,12,13,14,15,16,17,18,19,20]

In addition to these immediate or direct tensions which were almost immediately noticed but have recently diminished in prominence, other, hitherto unnoticed potential difficulties arise through Darwin's elaboration and defense of a form of moral sense philosophy in his *The Descent of Man*. This moral philosophy is associated, both in Darwin's writings themselves and in the writings of more well-known moral sense philosophers, with a utilitarian outlook that traditionally rules out strong conceptions of individual rights such as that reflected in the distilled

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Declaration. Although the mutual exclusivity of moral sense philosophy and doctrines of individual rights may be questioned, this tradition of moral and political philosophy arose in explicit reaction to those such as John Locke, whose predominant attention to the individual led not only to "self-love" moral doctrines but also to strong rights-based political ones.[21]

These difficulties involved in reconciling Darwinian evolutionary theory with the distilled Declaration are of far-reaching importance not only within the context of American political thought but also within the wider context of global politics and international relations. This is because the distilled Declaration, though drawn primarily from the American political tradition in particular, has become an important proposition in the international arena through the U. N. 's adoption of the Universal Declaration of Human Rights. Since, moreover, this proposition is not universally recognized throughout the world and by every concerned individual, it is of the utmost importance that the friends of the distilled Declaration be able to both rationally assent to it themselves and defend it against its opponents.

This article will uncover and attempt to clearly locate the commonly unnoticed, yet crucially important, theoretical tensions between Darwinian evolutionary theory and the distilled Declaration, both of which are simultaneously held by a majority of citizens within Western liberal democracies. The tensions between Darwinian evolutionary theory and the distilled Declaration may be divided into two types: 1) direct, or arising immediately from Darwin's theory itself; and 2) indirect, or arising in a manner mediated by associations and implications of Darwin's theory. I will address and explicate each type of tension in turn, arguing throughout that these tensions, while not necessarily intractable, stand as formidable obstacles to reconciling evolutionary theory with the idea of natural or human rights affirmed by the distilled Declaration. I will then address a few of the most important objections that might be raised against this argument on behalf of the idea of "Darwinian natural right" that has been cogently advocated by Larry Arnhart and others.

Direct tensions

The proposition "all human beings equally possess certain basic rights," or the distilled Declaration, necessarily assumes two important points: 1) that there is a group of beings called "human" whose members are specifically different from other organic beings; and 2) that each individual within this specific group of beings equally possesses things we call "basic" or "human rights." Since, moreover, the possession of rights is predicated both universally and equally of human beings, these two points are intimately connected such that the possession of basic rights is somehow included within the definition of what it is to be human, and point (2) actually helps to establish point (1). In order for this proposition to be tenable from a theoretical standpoint, the category "human being" must both correspond with a discrete or definite group of organic beings, and also be at least partially defined by some feature or characteristic that results in the possession of basic rights. Figure 1 outlines the situation presented by the distilled Declaration.

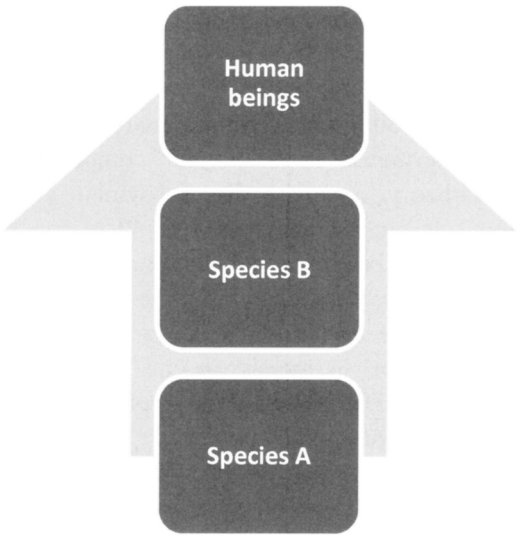


Figure 1. Depiction of the distilled Declaration.

Human beings are clearly distinguishable from other species, and one of their specific differences from Species A and B is associated with the possession of basic rights. The upward direction of the arrow is indicative of the fact that the possession of basic rights raises human beings above the level of every other species; by positing the existence of human rights, one assumes that human beings have a certain dignity not enjoyed by other species.

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Where, then, does the faithful Darwinian stand with respect to the situation represented by the distilled Declaration? In Chapter II of *On the Origin of Species*, Darwin treats the crucial case of "doubtful species," i.e., forms which are ranked by some naturalists as "undoubted species" and by others as mere "varieties."[22] Such cases, according to Darwin, reveal that "no certain criterion can possibly be given by which variable forms, local forms, sub-species, and representative species can be recognized" (p. 64). In order to illustrate this point, Darwin presents three parallel examples which link the realization of this fact to the transition from youthful naiveté to mature enlightenment.

Darwin's first example is autobiographical: before encountering and studying the birds on the Galapagos archipelago and comparing them to birds on the mainland, the young Darwin assumed that the distinctions between species, varieties, local forms, etc. were fairly clear. After doing so, however, Darwin says he "was much struck how entirely vague and arbitrary is the distinction between species and varieties" (p. 64). Darwin's second example involves the botanist de Candolle, who sanguinely sets himself the task of defining species of oak tree before discovering that

> They are mistaken, who repeat that the greater part of our species are clearly limited, and that the doubtful species are in a feeble minority. This seemed to be true, as long as a genus was imperfectly known, and its species were founded upon a few specimens, that is to say, were provisional. Just as we come to know them better, intermediate forms flow in, and doubts as to specific limits augment (p. 66).

Darwin's third example is of a hypothetical "young naturalist" whose first impressions of a world neatly organized into well-defined species are shattered "as he extends the range of his observations" and encounters many cases of difficulty (p. 67). Each of these parallel examples are designed by Darwin to illustrate one of the central points of the *Origin*; namely, that the term species does not correspond with a discrete or definite group of organic beings in the natural world, but rather that this term is "one arbitrarily given, for the sake of convenience, to a set of individuals closely resembling each other" (p. 68). Darwin's method of illustrating this nominalist point by way of the three examples is, moreover, rhetorically quite effective. By associating the "realist" or essentialist view of the term species with understandable first impressions and a mere lack of relevant experience, Darwin invites his readers to follow him on the path to mature enlightenment rather than condemning them as simply ignorant.

Specific differences are, according to Darwin, only quantitatively distinguishable from the differences marking sub-species; the differences marking sub-species are similarly only quantitatively distinguishable from those marking varieties; and similarly all the way down to the differences marking individuals. It is not, in other words, one *kind* of difference which separates species and another which separates varieties or even individuals, but only a vaguely definable quantity of difference which does so. Each of these levels of differences, Darwin explains, "blend into each other by an insensible series" (p. 67). Whereas the respective quantities of difference at each level (genus, species, variety, etc.) were previously conceived in terms of a discrete series that explained the total amount of difference between different individuals, on Darwin's conception this series becomes continuous, or "insensible." This means, for example, that one elephant is different from another elephant in precisely the same way that either is different from a flying lemur; the differences between these differences is only a matter of degree or quantity. They are thus in principle commensurable, so that this elephant might be one or two thousand times more different from a flying lemur than he is from another elephant.

Darwin's other great work, *The Descent of Man*, is devoted to showing the controversial extension of the *Origin*'s continuity doctrine to human beings. Darwin argues for this extension on the basis both of the "bodily structure" and the "mental powers" of human beings.[23] While the former basis is taken by Darwin to positively support the continuity position, the latter functions more as an obstacle to be overcome. In terms of bodily structure, Darwin argues that human beings are physically composed of the same materials and in the same general manner as many other organic beings, that their embryological development is strikingly similar to that of other vertebrates, and that they possess rudimentary structures which indicate evolutionary development from a very different ancestor (pp. 42–43). While Darwin is confident in the

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persuasiveness of his arguments for physical continuity, he realizes that he will have a higher hurdle to overcome in the case of "mental powers." As he states at the opening of Chapter 3,

> We have seen in the last two chapters that man bears in his bodily structure clear traces of his descent from some lower form; but it may be urged that, as man differs so greatly in his mental power from all other animals, there must be some error in this conclusion. No doubt the difference in this respect is enormous... (p. 85)

Although Darwin is thus sensitive to the qualms that continue to prevent some critics from following him all the way to human beings, he nevertheless proceeds to argue that this apparent obstacle to continuity may indeed be smoothed over.

The centerpiece of this argument is identical to that provided in the *Origin*; namely, that many apparently qualitative differences are in fact only quantitative differences of great amounts. As Darwin says in the *Descent*,

> If no organic being excepting man had possessed any mental power, or if his powers had been of a wholly different nature from those of the lower animals, then we should never have been able to convince ourselves that our high faculties had been gradually developed. But it can be shewn that there is no fundamental difference of this kind (p. 86).

Darwin proposes to show, in other words, that the difference in mental powers between human beings and other species is like the difference between the various levels of classificatory difference discussed in the *Origin*. The differences in both cases are quantitative rather than qualitative; just as an elephant might be one thousand times more different from a flying lemur than she is from another elephant, so a human being might be one hundred times more intelligent than an orangutan. The remaining chapters of Part I of the *Descent* are, in fact, entirely devoted to arguing for such a commensurability on the basis of the quantitative character of the intellectual, emotional and behavioral differences between human beings and other animals.

Taking Darwin's arguments bearing on the specific differences defining human beings in the *Descent* and the *Origin* together, the steps of this argument may be represented as follows: 1) specific differences in general are vaguely and arbitrarily defined, since they actually differ only in amount or quantity from mere individual differences; 2) the entirety of organic nature presents an "insensible" or continuous series rather than a discrete one, since all differences between individual organic beings are in principle commensurable; and, 3) human beings are not exempt from this situation. Darwin's portrayal of the natural world may thus be represented in the manner indicated by Figure 2.

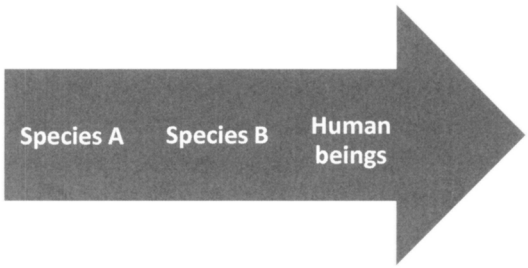


Figure 2. Revised depiction of human distinction based on Darwin.

Compared to the representation associated with the distilled Declaration, Darwin's conspicuously lacks both the lines of demarcation defining each species and the hierarchy implied by the upward-pointing arrow. The directional orientation that is still present in Darwin's version represents not hierarchy but rather historical time, degree of evolutionary development, or increasing complexity of organization.

The incongruity between the two representations reflects a corresponding incongruity between the distilled Declaration's view of the natural world and the place of human beings within it on the one hand, and the faithful Darwinian view on the other. From the perspective of Darwinian evolutionary theory, the assumptions of the distilled Declaration regarding the existence of a defined group of beings who uniquely possess basic rights appear entirely untenable. An acceptance of Darwinian evolutionary theory may thus directly entail an inability to affirm the distilled Declaration.

Indirect tensions

In addition to the immediate difficulties involved in simultaneously affirming Darwin's theory and the

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distilled Declaration, the close affinities of Darwinian evolutionary theory with Scottish moral sense philosophy, as well as the association of both with utilitarianism, pose more indirect, but no less significant, problems for the aspiring Darwinian friend of the distilled Declaration. Where the distilled Declaration clearly prioritizes the rights and inviolable dignity of the individual over conceptions of the aggregate good or overall happiness when the two appear to conflict, moral sense philosophy and utilitarianism reflect the opposite priority. These two clusters of ideas are, therefore, very uneasy bedfellows whose conjunction is inevitably problematic from a theoretical standpoint.

Although attempts to associate a particular moral or political philosophy with Darwinian evolutionary theory are still most frequently met, outside of the relatively small sociobiology, biopolitics, or evolutionary ethics circles, with the charge of imposing upon or distorting the pure science contained in Darwin's writings, this tendency has been progressively weakened by a number of influential studies in defense of the legitimacy of such attempts.[11,12,13,14,15,16,17,18,19,20] This recent scholarship confirms and clarifies what might have been gained from a careful reading of Darwin's much lesser-known great work, *The Descent of Man*. Although Darwin's *On the Origin of Species* is commonly taken to be the sole *locus classicus* for Darwin's theory, this is only partly true; while the *Origin* does contain the entirety of Darwin's theory in outline, it leaves the single most conspicuous and potentially problematic case study for the theory almost unmentioned. While his notorious modesty and caution prevented Darwin from directly addressing this case study in the *Origin*, aside from a single provocative line at the end of the work, historical accounts of the time period immediately following publication of the *Origin* indicate that Darwin himself viewed his argument for evolutionary theory as problematically incomplete until he could persuasively extend it to include that "wonder and glory of the Universe" (p. 193), the human being.[23]

As explained above with respect to the direct tensions between Darwin's theory and the distilled Declaration, Darwin opens the *Descent* with a clear outline of the structure of the argument to follow: he will show that human beings are not exempt from the evolutionary theory of the *Origin* by considering their "bodily structure" and their "mental powers" (p. 22) in turn. In each case, Darwin proposes to show that the differences between human beings and the other animals are differences only *in degree* or in quantity, and not differences *in kind* or in quality (p. 86). Under the heading of the "mental powers" part of his overall argument, Darwin first considers emotions such as courage, love, and jealousy and intellectual faculties such as curiosity, wonder, imagination and reason, as well as higher intellectual powers such as abstraction and self-consciousness, and concludes with an extended discussion of language.

Next, in a separate chapter entitled "Comparison of the Mental Powers of Man and the Lower Animals—continued," Darwin addresses what he takes to be "by far the most important" of the differences in mental powers between human beings and the other animals, consisting in "the moral sense or conscience" (p. 120). Darwin begins his treatment of this moral sense or conscience, and his argument that the differences between the other animals and human beings in this area as well are a matter of degree rather than kind, by noticing that "Animals of many kinds are social," and that such animals are equipped by natural selection with certain "social instincts" in addition to the usual selfish ones (pp. 123, 127). Among these social instincts, "the all–important emotion of sympathy" is the most important for Darwin (p. 129). Darwin then argues that human beings may be counted among the social animals, and that they are accordingly equipped with a variety of social instincts in addition to their selfish ones. Human beings, as well as the other social animals, are driven by "instinctive impulses," acquired over time through natural selection and strengthened by education, common opinion and habit, towards altruistic actions exhibiting sympathy and other selfless sentiments (p. 134).

Moral behavior, according to Darwin, is the result not of rational self-denial or reasoned judgment, but rather of "the greater strength of the social instincts than that of any other instinct or motive; for [moral actions] are performed too instantaneously for reflection, or for pleasure or pain to be felt at the time" (p. 134). For Darwin, human action is, like all animal actions, determined by the relative strengths of competing or opposing instincts rather than disinterested calculation. Social instincts tend, in social animals such as human beings, to be of a persistent and enduring character; selfish instincts tend to be

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strong, but are quickly satisfied and transitory. Whichever instincts are the strongest at the moment of action are the ones that are followed in every case; since, however, human beings possess a considerable power of "reflection" on past actions, they are able to reconsider this moment of action from a perspective removed from the transitory selfish instincts which might have been influential at the time. If the selfish instincts were followed in the moment of action at the expense of the social instincts, human beings upon reflection tend to feel that they *ought* to have followed their social instincts, which have outlived the selfish ones and now outweigh them in the scale of the potential determinants of action. From such reflections arise, according to Darwin, the feeling of obligation referred to as the "moral sense or conscience" (pp. 133–134).

Darwin's "moral sense" is also joined to a form of utilitarianism that fits seamlessly into his overall theory as expressed in the *Origin*. In Chapter VI of the *Origin*, Darwin considers the truth of "the utilitarian doctrine that every detail of structure has been produced for the good of its possessor" (p. 188).[21,10] In opposition to the competing argument that some beautiful structures have been produced simply for the sake of beauty, Darwin concludes that "the structure of every living creature either now is, or was formerly, of some direct or indirect use to its possessor," since "natural selection acts solely by and for the good of each [organic being]" (pp. 188–189, 191). Since this same natural selection ultimately lies behind the human moral sense, it makes sense that, for Darwin, the "Greatest happiness principle," or rather the "general good," is "the standard of morality" (pp. 144–145).[23] With the "general good" as the "standard" and the "social instincts" as the "motive" for moral behavior, Darwin triumphantly concludes that "the reproach is removed of laying the foundation of the noblest part of our nature in the base principle of selfishness" (p. 145).

Even if, as Darwin claims, he is the first to approach moral philosophy "exclusively from the side of natural history," it is clear that he arrives squarely within the well-trodden path of moral sense philosophy blazed by Francis Hutcheson and others before him. This connection is directly indicated by Darwin's frequent references to the "moral sense or conscience" as well as to well-known moral sense philosophers such as James Mackintosh, Adam Smith and David Hume (pp. 120, 129, 132). It is also further confirmed by the close identity between the content of Darwin's account of moral behavior and that offered by many moral sense philosophers. Darwin, like Hutcheson, sets his own account in direct opposition to the "principle of selfishness" or the "self-love" school of thought, and, like Hutcheson and Hume, emphasizes the "social instincts" and "social virtues" as the foundation for morality. He clearly follows Adam Smith in his emphasis on the "all-important emotion of sympathy," and follows Hutcheson, Hume and others in his assertion of the utilitarian "greatest happiness principle" as the ultimate standard for morality. Darwin's account of the mechanism of moral deliberation and decision making, involving a straightforward weighing of different instincts of varying strengths, is also virtually identical to the account offered by the moral sense philosopher Lord Kames:

> [W]here opposite motives counterbalance and work against each other, the mind fluctuates for a while, and feels itself more loose: but at last, must as necessarily be determined to the side of the most powerful motive, as the balance, after several vibrations, to the side of the preponderating weight. The laws of mind, and the laws of matter, are in this respect perfectly similar...[24]

It is therefore abundantly clear that Darwin was a self-avowed moral sense philosopher and classical utilitarian, and that he viewed both as emerging seamlessly out of his evolutionary theory. Insofar, moreover, as this combination of moral sense philosophy and utilitarianism may be shown to be in serious tension with rights-based political conceptions, Darwin's theory may also find itself in indirect, though no less serious, tension with the distilled Declaration as well.

Moral sense philosophy, utilitarianism, and the distilled Declaration

The origins of our contemporary rights-based political conceptions may with confidence be traced to the thought of John Locke.[25] While Hobbes may indeed be credited with constructing the first rights-based political theory, it was only with Locke's contribution that such a political theory would ultimately become predominant in political practice

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and attain a form recognizable to the modern eye. [26] In addition to his historical importance as the theoretical progenitor of strong rights-based conceptions of politics, Locke also propounded a robust moral philosophy founded upon a complex understanding of the "self" and its rather self-centered concern for happiness, pleasure, and ease.[27] It was against precisely this kind of "selfish" moral philosophy that Hutcheson, and Shaftesbury before him, elaborated what would become known as moral sense philosophy.

Although Hutcheson clearly pits his own moral philosophy against Locke's in his *Inquiry*, he nevertheless attempts to reconcile moral sense philosophy with Locke's epistemology on the one hand and with Locke's natural rights-based political philosophy on the other. With respect to the former, Hutcheson is at pains to show that the moral sense he describes does not "suppose any innate Ideas, Knowledge, or practical Proposition" such as those Locke famously rejects in his *Essay*.[28] With respect to the latter, Hutcheson devotes the final section of his *Inquiry* to a "Deduction of some Complex moral Ideas, viz. of Obligation, and Right, Perfect, Imperfect and External, Alienable, and Unalienable, from this moral Sense." Hutcheson accomplishes this deduction in the case of the idea of certain basic rights as follows:

> Whenever it appears to us, that a Faculty of doing, demanding, or possessing any thing, universally allow'd in certain Circumstances, would in the whole tend to the general Good, we say that any Person in such Circumstances, has a Right to do, possess, or demand that Thing. And according as this Tendency to the publick Good is greater or less, the Right is greater or less (p. 183).

From this definition of individual rights, it is clear that the "general Good" or the "publick Good" determines the existence and content of rights, and not the other way around. The social whole or community takes precedence over the individual, such that the latter may not raise a claim of right that is in conflict with the interests of the former. It does not make any sense, on this view, to assert the individual possession of certain basic rights independently of, apart from, or in opposition to the larger political community of which one is a member. While the language of rights may be useful in some cases, these rights are the mere shadows of the public good rather than independently constitutive elements of it.

Although Hutcheson intends this derivation of rights to effect a reconciliation of his moral sense philosophy with Locke's political philosophy, Locke's natural rights are, in fact, quite different from Hutcheson's. This difference results directly from the disparate ways in which each understands what has been termed the "foundational problem";[29] while Hutcheson's rights are superadded to a "general Good"-based political philosophy, Locke's rights are themselves located at the foundation of his political philosophy, with the public good arising out of and being largely defined by these rights. The very hallmark of Lockean political philosophy is, in fact, the potentially revolutionary consequences of the primacy of natural rights within conceptions of the public good. It was for this reason the American revolutionaries seized upon Locke's writings in justifying their actions; Locke's strong conception of natural rights informed his rights-based political philosophy, and a rights-based political philosophy carries an inherent revolutionary potential that is absent from public good-based ones such as Hutcheson's. On the Hutchesonian view, the individual bestowal of rights by the Creator depicted in the Declaration of Independence grossly misrepresents the actual origin of such rights in the public good; on the Lockean view, this original bestowal accurately reflects the foundational importance of individual rights. On the Hutchesonian view, the theoretical section of the Declaration of Independence is mostly beside the point, or a sort of red-white-and-blue herring; on the Lockean view, it is the very essence of normative political theory.

Furthermore, the affiliation of moral sense philosophy with utilitarianism, a traditional enemy of strong conceptions of individual rights such as that reflected in the Declaration of Independence and expressed in the distilled Declaration, is clearly evidenced in the writings of many moral sense philosophers. Since moral sense philosophy arose in opposition to the "self-love" school of moral philosophy, this affiliation with utilitarianism is perfectly natural: just as the standard of "self-love" morality is the happiness of oneself, the standard of the selfless moral sense is the happiness of others or of the social whole of which one is a part. If, moreover, the overall happiness of the social whole is the ultimate standard of the morality of

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human action, a strong conception of individual rights is necessarily precluded as falling outside of or potentially counteracting the goal of the greatest good for the greatest number.

In Section III of his *Inquiry*, Hutcheson clearly traces the connection between the moral sense and utilitarianism in his attempt to elucidate "The Manner of computing the Morality of Actions." The reference to "computing" in this title is not understood metaphorically: parts of this section appear more suited to a mathematics text than one of moral philosophy, including long strings of relatively complex equations and lists of "axioms" and "corollaries." According to Hutcheson, "we are led by our moral Sense of Virtue to judge thus; that in equal Degrees of Happiness, expected to proceed from the Action, the Virtue is in proportion to the Number of Persons to whom the Happiness shall extend" (p. 127).[27] On Hutcheson's account, virtuous action is in large part a mathematical exercise:

> [W]e may see what Actions our moral Sense would most recommend to our Election, as the most perfectly Virtuous: viz. such as appear to have the most universal unlimited Tendency to the greatest and most extensive Happiness of all the rational Agents, to whom our Influence can reach (p. 127).

It is the moral sense philosopher Hutcheson, and not one of the more commonly recognized classical utilitarians such as Bentham, who first formulates the foundational utilitarian principle that "that Action is best, which procures the greatest Happiness for the greatest Numbers; and that, worst, which, in like manner, occasions Misery" (p. 125). In Hutcheson's quantity-based moral system, there is a basic equality among individuals and every one counts in the overall calculus of the general happiness; this is little comfort, however, to the individual whose particular misery might increase the number of other happy individuals. Nor would this unfortunate individual have any recourse in claiming the possession of certain basic rights; as we have seen, these rights are, on the Hutchesonian moral sense view, inextricably tied to the same general happiness against which the individual stands.

David Hume follows Hutcheson in drawing utilitarian conclusions from the premises of moral sense philosophy in his *An Enquiry Concerning the Principles of Morals*. Though Hume approaches the subject of the foundations of morality in a more circumspect and nuanced manner than Hutcheson, he concludes in Hutchesonian moral sense fashion that

> The final sentence, it is probable, which pronounces characters and actions amiable or odious, praiseworthy or blameable; that which stamps on them the mark of honour or infamy, approbation or censure; that which renders morality an active principle, and constitutes virtue our happiness, and vice our misery: It is probable, I say, that this final sentence depends on some internal sense or feeling, which nature has made universal in the whole species.[30]

This universal "internal sense or feeling" is, for Hume as it was for Hutcheson, directed towards others rather than towards oneself. As Hume states in treating the importance of benevolence, "no qualities are more entitled to the general good-will and approbation of mankind than beneficence and humanity…or whatever proceeds from a tender sympathy with others, and a generous concern for our kind and species" (p. 18). Where "reason" tends towards the kind of selfish calculation characteristic of the "self-love" school and cannot explain or justify moral behavior, the moral sense or feeling tends towards altruism and proclaims the "final sentence" on the morality of human actions. Finally, Hume connects the altruistic moral sense with a proto-utilitarianism, asserting that "In all determinations of morality, this circumstance of public utility is ever principally in view," and that "The happiness of mankind, the order of society, the harmony of families, the mutual support of friends, are always considered as the result of [the social virtues'] gentle dominion over the breasts of men" (p. 20). With respect to questions of justice in particular, Hume famously states that, "the rules of equity or justice depend entirely on the particular state and condition, in which men are placed, and owe their origin and existence to that UTILITY, which results to the public from their strict and regular observance" (p. 23). For Hume as for Hutcheson, it is the public utility or the general happiness that determines the justice of human actions, including the assignation of merely provisional and subordinate individual rights.

Despite this inevitable tension between strong conceptions of individual rights and moral sense

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philosophy with its attendant utilitarianism, it is nevertheless not impossible for a reasonable person to simultaneously embrace moral sense philosophy and the proposition that "all human beings equally possess certain basic rights," at least in a certain way or to a limited extent. The clearest and most important example of this occurs in the case of Thomas Jefferson, who was both the primary author of the Declaration of Independence and a devotee of Scottish moral sense philosophy. While Jefferson's credentials as a friend of the Declaration, distilled or otherwise, are unquestionable, the intriguing moral sense aspect of Jefferson's thought was brought to light first and most clearly by Garry Wills, who argued that Jefferson owed much more to moral sense philosophers such as Thomas Reid and Francis Hutcheson than to the natural rights doctrine of John Locke.[31] The evidence from Jefferson's letters does, indeed, confirm the strength of his adherence to Scottish moral sense philosophy. In a letter to Peter Carr, for example, Jefferson asserts that "The moral sense, or conscience, is as much a part of man as his leg or arm,"[32] and in a letter to Thomas Law he similarly claims that "nature hath implanted in our breasts a love of others, a sense of duty to them, a moral instinct, in short, which prompts us irresistibly to feel and to succor their distresses…" (p. 224). Both letters contain, furthermore, statements reflecting the notion that "The Creator would indeed have been a bungling artist had he intended man for a social animal, without planting in him social dispositions" (p. 224). Any of these assertions might have been uttered by prominent representatives of Scottish moral sense philosophy, and serve to clearly indicate the strength of Jefferson's attachment to their principles.

Jefferson's moral sense philosophy is also associated with a utilitarian strain not normally noticed in Jefferson's thinking. In the same letter to Carr, Jefferson says that "Man was destined for society. His morality therefore was to be formed to this object. He was endowed with a sense of right & wrong merely relative to this" (p. 161). In other words, the moral sense does not merely coincide with that which is good for living in society or determine the content of this common good, but is rather "formed to" and "merely relative to" the social good as to an externally determined "object." In the letter to Law, this connection is substantially strengthened:

> [N]ature has constituted *utility* to man the standard and test of virtue. Men living in different countries, under different circumstances, different habits and regimens, may have different utilities; the same act, therefore, may be useful, and consequently virtuous in one country which is injurious and vicious in another differently circumstanced (p. 224).

The same "nature" which has implanted the moral instinct or sense in human beings has, according to Jefferson, directed this moral sense exclusively and solely toward "utility" as its object, irrespective of the content of this "utility" in any given case.

While Jefferson's personal correspondence clearly manifests his attraction to moral sense philosophy and its attendant utilitarianism, the question of whether this influence is similarly manifested in the Declaration of Independence itself, as Wills claims, is highly questionable and has been persuasively challenged.[33] Although the Declaration in its adopted form, as well as in Jefferson's draft, may exhibit subtle traces of moral sense philosophy, Wills' argument that these traces and their source in Hutcheson's writings overshadow the presence of Locke's influence is tenuous at best. The Declaration of Independence was, after all, not simply Jefferson's work but was revised and ultimately adopted by the Continental Congress; it was also, according to Jefferson himself, simply "an expression of the American mind" (p. 267).[33] Given these facts, it is unlikely that Jefferson's relatively idiosyncratic attraction to moral sense philosophy could have found its way into the Declaration, much less overshadowed or competed with the clearly more popular and well-known political philosophy of John Locke.

It is more likely that Jefferson himself simply overlooked, or failed to fully grapple with, the significant yet rather subtle tensions between a Hutchesonian public good-based political philosophy and a Lockean rights-based one. While moral sense philosophy and utilitarianism may indeed be found to favor individual human rights in a number of ways and in a variety of practical circumstances, this occurs merely accidentally. In principle, moral sense philosophy and its attendant utilitarianism represent the antithesis of strong conceptions of human rights such as that reflected in the distilled Declaration. Since Darwin's evolutionary theory clearly embraces and

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implies the former, it cannot avoid standing in significant tension with the latter.

Darwinian natural right(s)?

In noticing and tracing the connections between Darwin, Hume and Jefferson, the forgoing analysis has followed a path recently blazed by a few political theorists, evolutionary ethicists and sociobiologists who have performed a signal service to their respective fields by challenging modern disciplinary barriers that impede the progress of knowledge and persuasively building conceptual bridges between previously segregated realms of inquiry.[11,12,13,14,15,16,17,18,19,20] Many of these pioneers have, however, sought to establish precisely the opposite point to that argued above; namely, that Darwinian evolutionary theory is actually supportive of and underpins the sort of moral norms affirmed by the distilled Declaration. Larry Arnhart, in particular, has cogently argued for the idea of a "Darwinian natural right" that joins Darwin's writings and subsequent evolutionary biology to Hume, Jefferson, the Declaration of Independence, and even Aristotle.[34] In so doing, Arnhart has deftly and intriguingly attempted to navigate what many have perceived as an impassible minefield separating modern natural science from much of the tradition of political philosophy, specifically addressing the very plot of conceptual ground covered herein along the way.[35] Since I have argued that this minefield has yet to be crossed, at least at the specific point connecting Darwinian evolutionary theory with the distilled Declaration, it will be appropriate before concluding to briefly defend the most important points on which the foregoing arguments challenge Arnhart's well-known synthesis. This defense will not have the aim of refuting the central claims of Arnhart's extensive work in this area, but rather of establishing the foregoing arguments as a legitimate counterpoint in the crucially important ongoing debate which has been shaped in large part by Arnhart's writings.

The specific points on which my arguments differ from Arnhart's account consist primarily in the following: 1) whether Darwinian evolutionary theory can support a conception of the human species or human nature that is sufficiently stable and distinct to cohere with the idea of natural or human rights found in the distilled Declaration; and, 2) whether "moral sense" philosophy can serve as an adequate or appropriate support for this idea of natural or human rights. While Arnhart clearly answers both questions in the affirmative, I have argued that significant and perhaps insurmountable obstacles to affirmative answers remain.

With respect to the first point, Arnhart argues that Darwin himself, as well as Darwinian evolutionary theorists generally, are not necessarily committed to the sort of radical nominalism that some of their anti-essentialist rhetoric might initially suggest, and that would render evolutionary theory incompatible with the distilled Declaration (pp. 501–504).[6] Arhnart correctly notes Darwin's ambivalence, or even occasional self-contradiction, regarding the question of whether human beings possess the sort of differences in kind from other animals which might justify viewing them as really (i.e., in a reality beyond the human mind) stable and distinct species (pp. 503, 506). Rather than simply supporting one or the other side of this Darwinian ambivalence, however, Arnhart argues for the existence of certain middle positions between the essentialism/nominalism dichotomy on the one hand, and the difference in kind/difference in degree dichotomy on the other. According to Arnhart, the Darwinian evolutionary account of species is "neither strictly essentialist nor strictly nominalist," admittedly lacking the eternality of the strictly essentialist option but possessing a stability and reality far beyond the idea of arbitrary groupings characteristic of the strictly nominalist option (p. 502). Similarly with respect to the question of differences in kind versus differences in degree, Darwin failed to perceive the third option between these two extremes consisting in "superficial" differences in kind as distinguished from "radical" ones (p. 507). Since the differences between human beings and other animals amount to the sort of "superficial" difference in kind that emerges out of an underlying difference in degree, Darwinian evolutionary theory is capable of affirming real differences in kind while acknowledging the developmental continuities attending mere differences in degree. Therefore, since Darwinian evolutionary theory affirms both a quasi-essentialism and a certain sort of difference in kind with respect to the human species, it is capable of supporting a conception of human nature that is sufficiently stable and distinct to

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underpin the idea of rights asserted in the distilled Declaration.

Although Arnhart's attempts to improve upon Darwin's thought and render it more clearly compatible with the idea of natural or human rights are intriguing and plausible, I would argue on the contrary that Darwin had thoroughly considered and well-supported reasons for maintaining his ambivalence regarding the status of the human species, reasons which are not in fact circumvented by Arnhart's middle positions. In the first place, Arnhart's depiction of the Darwinian stance on the essentialism/nominalism distinction as splitting the difference between the two, and thus as neither the one nor the other, is not entirely persuasive. Arnhart's staking out of this middle position relies on a dramatic shift of the spectrum according to which essentialism or realism and nominalism are identified; while at the essentialist or realist end of Arnhart's spectrum species need be neither eternal nor existing entirely beyond human convention, the nominalist end is defined by a radical arbitrariness in grouping individuals within empirically unfounded categories (pp. 503–504). It is as a result of this shift that Arnhart is able to argue for the reconciliation of Darwinian evolutionary theory with the essentialism or realism required by the distilled Declaration. According to the traditional scale which I, along with Darwin, have in mind, Arnhart's conception of a species as a collection of individuals which, for certain well-founded biological reasons, may be grouped under a single definition for a very long period of time would be readily identified as nominalist—perhaps, indeed, a sort of nominalism-light, but nominalism nonetheless. This is because a very long period of time is not, in fact, any closer to eternity than a single moment, and the most empirically well-founded constructions of the human mind are not, for that reason, any less constructions.

Similarly with respect to Arnhart's argument for a category of "superficial" differences in kind which arise out of differences in degree, I would argue that Darwin had excellent reasons for persistently denying that any difference in kind exists between different species. Darwin correctly saw that if one species is placed on a temporal continuum with a preceding species, all differences between these species that are explicable with reference to natural mechanisms must be differences in degree. Such differences in degree may never themselves *become* differences in kind for the same reason that the difference between "double" and "triple" can never itself become or give rise to the difference between "turquoise" and "beige": such differences simply belong to disparate fundamental categories of thought.[36] To say that a larger or more complex brain gives rise to a different kind of mental power is, therefore, akin to asserting that very large numbers can give rise to words, or very complex equations to essays. If a sort of "critical threshold" such as that indicated by Arnhart with respect to brain size and complexity exists, then, it indicates either 1) a purely conventional agreement to treat the quantitative differences beyond this threshold as qualitative differences for the sake of convenience, or 2) the presence of a real difference in kind that exists *in conjunction with* rather than *as a result of* a difference in degree. For this reason, while we may choose to speak of certain differences in degree that cross a critical point as differences in kind, Darwin was nevertheless correct to deny the existence of real differences in kind between species as a direct consequence of his evolutionary theory.

Why, then, does Darwin occasionally speak of human beings as if they were, in fact, members of a real species in the essentialist sense, possessing true differences in kind from other species rather than mere differences in degree? While Arnhart attempts to explain this clear self-contradiction by appealing both to rhetorical considerations and failures to draw necessary distinctions, it is my contention that these examples manifest and reflect Darwin's unique position in intellectual history between the previously dominant paradigm of thinking about human beings and the new paradigm he helped to bring into view. A particularly illuminating way of seeing the interaction of these two paradigms in Darwin's writings lies in attending to the contrast Darwin frequently draws between commonsense perceptions of the natural world and the new evolutionary perception for which he is arguing. Examples of this contrast in the *Origin* include Darwin's three parallel illustrations of "doubtful species" in Chapter II, and may be seen in its most dramatic form in Darwin's fascinating treatment of the eye in Chapter VI. Darwin opens this treatment with a clear statement of the clash of paradigms with which he himself is struggling along with his reader:

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> To suppose that the eye, with all its inimitable contrivances for adjusting the focus to different distances, for admitting different amounts of light, and for the correction of spherical and chromatic aberration, could have been formed by natural selection, seems, I freely confess, absurd in the highest possible degree.[21]

As this particular example illustrates, imagination, common sense, and previously dominant essentialist conceptions of species concur in pronouncing many of the legitimately derived conclusions of Darwin's evolutionary theory simply "absurd." Since Darwin himself is not immune to the powerful influence of each of these factors, he occasionally succumbs to this influence and allows himself to write in terms that are congenial to the reigning common sense and previously dominant paradigms but, in fact, "absurd" when considered from the new perspective established by evolutionary theory. Darwin's apparent self-contradictions on these points may, therefore, be plausibly explained as the understandable result of his particular intellectual historical context.

The second primary point of contention, namely, whether "moral sense" philosophy can serve as an adequate or appropriate support for the idea of natural or human rights, may be considered most effectively in relation to the issue of slavery, an issue which was particularly important to Darwin himself.[20] In arguing that "Darwinian natural right" offers a persuasive condemnation of slavery, Arnhart offers excellent presentations of the versions of moral sense philosophy adopted by Lincoln, Darwin, Jefferson, Hume, and even (in a certain sense) Aristotle.[11] Through these presentations, Arnhart reconstructs a carefully nuanced argument against slavery which combines the idea of a natural moral sense, norms of reciprocity necessary for shared social life, and the idea of species-specific equality between all human individuals and races.

While the latter elements represent significant specifications and applications of the natural moral sense relevant to issues of natural or human rights, it is the existence of the moral sense that drives and grounds the argument Arnhart reconstructs. The ideas of species-specific equality and norms of reciprocity only become "moral" and acquire obligatory force, on this argument, by being objects of (as well as being partially constituted by) the moral sense. Slavery is wrong not primarily or directly because it violates equality or reciprocity, but "because it violates a natural moral sense rooted in human biology" (p. 210). The immorality of slavery results from its being "contrary to our moral feelings" as these feelings have developed in response to various environmental pressures during the course of our long evolutionary history (p. 190). While the idea of species-specific equality stands as a refutation of certain claims to legitimate rule by some over others, it doesn't serve as a sufficient argument for the legitimacy of the complaints of these others against being ruled.[37,38] The valuing of natural or human rights associated with condemnations of slavery is, according to a Darwinian version of moral sense philosophy, fundamentally the result of a "strong feeling" which has become instantiated in the genetic structure of modern-day human beings.[12]

While this biologically grounded version of moral sense philosophy is indeed persuasive as far as it goes, it stops short of the threshold separating the descriptive from the normative realm, or "is" from "ought," in the manner required of actual moral justification. Moral sense philosophy, like all "naturalistic" moral philosophies, is comprised of two basic steps or elements: the first step consists in a descriptive or empirical basis, the relevant moral "data," and the second step consists in a normative inference or set of inferences from this descriptive basis. While the first, descriptive step is sufficient for explaining moral behavior, the second, normative step is necessary for justifying this behavior. The distinction between these two steps is particularly significant in the case of moral sense philosophy, since one of its hallmarks consists in the primacy of feeling or the passions with respect to the first, explanatory step, while the second step is conducted entirely by reason or reflection. Since moral sense philosophy is relatively unique among naturalistic moral philosophies in this regard, however, it is quite easy to treat the first step as if it accomplished the work of both, as it does (in a certain sense) in other naturalistic moral systems.

In tracing the indirect tensions between Darwinian evolutionary theory and the distilled Declaration, I have explained and elaborated upon the manner in which the early moral sense philosophers, including Hutcheson and Hume, took this second step of inferring the actual standard of moral justification from the descriptive phenomena supplied by the moral

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sense itself. This normative conclusion arising from the descriptive idea of a moral sense turns out, as I have argued, to be a form of utilitarianism. Although, for both Hume and Darwin, the moral sense explains and motivates human moral behavior as a matter of descriptive fact, it plays no role in actually *making* this behavior moral—this is accomplished by appeal to the principle of utility, or the greatest good for the greatest number. So while the many complex evolutionary mechanisms Arnhart and others describe may indeed *explain* why certain activities are engaged in by human beings, they do not justify either the morality of these activities or the immorality of their contraries. For this reason, Arnhart's contention that the human moral sense has evolved in a manner that condemns slavery and favors the idea of natural or human rights does not contradict my contention, argued above, that moral sense philosophy is itself unfriendly to the distilled Declaration. That slavery violates the human moral sense is the accidental result of a fundamentally contingent temporal process; that the idea of such a moral sense leads in directions opposed to the idea of natural or human rights is a necessary logical conclusion.

Conclusion

The purpose of this article has been to renew and update a fundamental misgiving as old as Darwin's theory itself. While, particularly in recent times, the logic of Darwinian evolutionary theory has been perceived as threatening primarily to political conservatives, I have attempted to show that a foundational pillar of American political thought, conservative as well as liberal, may in fact be vulnerable to this logic. If the distilled Declaration, shorn of complicating entanglements with both theology and comprehensive philosophical doctrines, may still be in contradiction with Darwinian evolutionary theory, this should be cause for substantial concern on the part of all normative political theorists, from Straussians to Rawlsians.

Rather than simply taking a stance against the political theorists, evolutionary ethicists and sociobiologists who have recently sounded more optimistic notes in relating Darwinian evolutionary biology to moral norms such as those contained in the distilled Declaration, it has been my intention to indicate the need for increased attention to the importance of their work in this area. While much has already been accomplished, much more research is yet required before the crucial terrain connecting modern scientific and political philosophical understandings of human beings can be rendered passable. Although it is not clear that Darwinian evolutionary theory cannot be rendered compatible with the distilled Declaration, the arguments herein suggest that the task of doing so is even more difficult than it might have previously appeared. Many valuable steps have indeed been taken, but many more yet remain.

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