

# ESSAY

## THE RESOLUTION OF INDEPENDENCE\*

*Ronald R. Garet\*\**

### I.

My subject is the Declaration of Independence: its meaning and its significance for constitutional law. I am chiefly concerned with the first and second sentences of the Declaration, as well as the closing lines. You know these words as well as I do, but it will be useful to recall them.

When, in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness . . . .

. . . .  
And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.<sup>1</sup>

---

\* This essay is adapted from a speech given at the University of Houston Law Center on Nov. 4, 1992, the first in the Law Center's Young Scholar Lecture Series.

\*\* Professor of Law and Religion, University of Southern California. I wish to thank David Dow and the faculty of the University of Houston Law Center for the opportunity they have given me to share in the intellectual life of their school.

1. THE DECLARATION OF INDEPENDENCE paras. 1, 2, & 32 (U.S. 1776) (Dunlap Broadside text).

A truly great text has many uses. The Declaration is such a text. At the time it was written, it served in part to undermine the position of Loyalists and to elicit foreign recognition or assistance. Recently it has served as a model for other nations struggling to break away from empires or from multinational states. I will not address these services, even though they merit our attention and perhaps, in some cases, our concern.

My theme is a contribution that the Declaration might make to a certain kind of thought: reflective, intuitive, almost meditative. There is a place for such contemplative thought in our efforts to understand the Constitution's provisions and to apply them to some of the issues of our day. Defining this thought, defending its legitimacy in interpreting the Constitution, and relating it to the tasks and techniques of justification that must be comprehended within any full theory of constitutional adjudication, are objectives that are worthy but beyond my aspirations. My limited aim is to *exhibit* a kind of speaking whose theme and goal are thought.

Jefferson's Declaration, as I discuss it here, belongs in a company that might seem strange at first: a company that includes Thoreau's *Walden*, Emerson's "Nature," and William Cullen Bryant's transcendentalist poem "Thanatopsis." There is an American tradition of pressing language to stimulate nature's ability to morally educate us, and Jefferson belongs to that tradition. But this tradition is not only an American one. Without trying to define this company closely or to police its intellectual boundaries, I will say that among its main figures are the English Romantic poets. Of these, Wordsworth perhaps does more than any other to activate Jefferson's appeals to nature, to make them work, to ready them for the deliberative and sensitizing role that they might play when we are called upon to decide what liberty is and who shall enjoy it, what equal protection is and when it is denied.

My method is to telescope the constitutional text into Jefferson's and Jefferson's into Wordsworth's. Here is an example.

The Due Process Clauses of the Fifth and Fourteenth Amendments say that Congress and the states may not deprive a person of life, liberty, or property without due process of law. Jefferson relates life and liberty to the pursuit of happiness and includes these among our natural portion, part of our created endowment, on behalf of which we must speak. Wordsworth then speaks:

Dear Liberty! Yet what would it avail,  
But for a gift that consecrates the joy?  
For I, methought, while the sweet breath of heaven  
Was blowing on my body, felt within  
A correspondent breeze, that gently moved  
With quickening virtue, but is now become  
A tempest, a redundant energy,  
Vexing its own creation.<sup>2</sup>

Here Wordsworth gives not only content but also beauty, a motivating force, to the Declaration's main ideas: liberty, happiness, endowment, creation. Not only are we created—heaven's sweet breath blowing on the body recalls the first book of Genesis and brings sweetness and definition to the Declaration's category—but, being created in the image of a creative God, we too create. We feel within a responsive creativity, not easily cabined. And in the exercise of this creativity we deepen and consummate Liberty. Gift, Consecration, and Joy bring allusiveness and color to the category of Happiness, helping us to see what sort of happiness is afforded by Liberty. We gain a glimpse, too, into what it is to be a person: at once created and creating, maturing Endowment into Gift, Happiness into Joy, as we in partnership with nature make Liberty not only available but availing.

## II.

My thesis, then, has two parts. The first concerns what I will call the "appeals to nature" in the Declaration: the allusions to the laws of nature and of nature's god and to humankind as enjoying an endowment by the Creator. I believe that we can refresh our intellectual encounter with these appeals to nature. The language is so famous that sometimes we do not bother to think about it. Or we relegate it to a convenient category: "deist," "natural law," "natural rights." Let us revitalize, if we can, the imaginative power of this old and cherished text. If we make it a partner in our thoughts, it will be a good friend, the kind with whom one wants to stay up half the night, talking earnestly about the things that matter most in life.

The second part of my thesis assumes a view of the meaning of certain constitutional concepts. I assume that when the Constitution uses words such as "person," "liberty,"

---

2. WILLIAM WORDSWORTH, *THE PRELUDE* OF 1850 book one, ll. 31-38 (1850). I follow the text of the evolving versions of *The Prelude* set out in *THE PRELUDE: 1799, 1805, 1850* (Jonathan Wordsworth et al. eds., 1979).

"commerce," or "religion," it is referring to features of human existence, aspects of life that have stirred the imagination of poets. Defending this assumption, even stating it clearly, is not part of my tasks today. My thesis is that the Declaration of Independence preserves the existential reference of constitutional concepts, gives it a certain content and valence by directing our attention to "nature." Attending to nature preserves a sense of wonder that otherwise seeps away from constitutional concepts like Liberty or Person, bids us strengthen our powers to see and feel these goods more deeply.

Before resuming the main work that I want to do here, which is *interpretive* work, I must offer some very brief explanations or qualifications of these two parts of my thesis. Concerning the first part of my thesis, the claim about the meaning of the Declaration's appeals to nature: I make no claim today about what Jefferson meant by his famous lines. So many labels—deist, rationalist, empiricist—have been stuck to Jefferson that he does not need another. So I do not say that Jefferson was really a romantic after all. I do believe that the gulf between his thought and Wordsworth's is not as great as might be imagined. In looking to rustic life for clear imagery of virtue, in insisting that mind and world are suited to one another, in seeking space for solitude and independence within the press of social duties, Jefferson resembles Wordsworth. When Jefferson says that he is "savage enough to prefer the woods, the wilds, and the independence of Monticello, to all the brilliant pleasures of [Paris],"<sup>3</sup> we think of Wordsworth in the Lake District and come to appreciate more tangibly the connection that the Declaration draws between independence and nature. If we sought to generalize, though the generalization itself will not be useful, perhaps we could say that both men stressed the humanizing value of a personal encounter with the natural world, in which feelings of wonder and perceptions of form and beauty deepen into moral thought.

But I am not recalling Wordsworth the better to understand Jefferson. Instead, my aim is to refresh the power of the text to excite our imagination, to tease us into thought. In pursuit of this aim I find it profitable to read Jefferson against the *near* horizon of naturalist thought, the thought of the half-century that followed 1776, rather than against the *far* horizon defined by Jefferson's own intellectual background.

As to the second part of my thesis, the claim about the specifically *constitutional* value of a naturalist reading of the

---

3. ELEANOR D. BERMAN, THOMAS JEFFERSON AMONG THE ARTS 57 (1947).

Declaration, I hope that it will be useful to situate this claim within the tradition, by now two centuries old, of looking to the Declaration to elucidate the meaning of the Constitution. I am at work upon a history of this tradition, but I cannot here describe this history in any detail. Allow me to make do with three observations.

*First*, the standard way of drawing the Declaration into constitutional argument has been to assume that the Constitution embodies what are almost always called the Declaration's "principles": equal human worth, natural rights that persons enjoy because they are persons, self-government, and a retained right to overthrow tyranny. It is not unusual for justices, whether liberal or conservative, to quote the Declaration, especially the second sentence. For example, Justice Douglas, dissenting in *McGowan v. Maryland*, quotes the second sentence and goes on to affirm that "the body of the Constitution as well as the Bill of Rights enshrined those principles."<sup>4</sup> Justice Goldberg, concurring in *Bell v. Maryland*, takes a somewhat different view, stressing that it is only with the adoption of the Reconstruction Amendments that the Constitution has come to embody what he calls the "creed" of the second sentence.<sup>5</sup> More recently, in *City of Richmond v. J.A. Croson Co.*, Justice Scalia's concurring opinion insists that racial preferences violate the principle that "all men are created equal"<sup>6</sup> while Justice Marshall, in dissent, urges that race-based remedies are permissible to vindicate the principle that "all persons have equal worth."<sup>7</sup>

*Second*, as the illustration from *Richmond* perhaps reveals, the typical recourse to the Declaration in constitutional argument is question-begging or at least unilluminating. What one wants to know, for example, is not whether equal human worth is a valid or even a constitutional principle, but wherein that worth consists, and how it is either served or disserved. Normally a quotation from or a citation to the Declaration does not raise these questions; one might almost say it conceals them. Furthermore, although the language that judges quote from the Declaration includes appeals to nature, the judges seldom notice these references to "nature's God" or created endowments. It is as if what the judges want is only the principles themselves; the appeals to nature are seen, perhaps, as at best

---

4. 366 U.S. 420, 563 (1960) (Douglas, J., dissenting).

5. 378 U.S. 226, 286 (1963) (Goldberg, J., concurring).

6. 488 U.S. 469, 528-29 (1989) (Scalia, J., concurring).

7. *Id.* at 559 (Marshall, J., dissenting).

colorful language or at worst the discredited "natural law" idiom of another day. So what I propose here differs from the common practice, I hope, in two respects, perhaps not unrelated to one another. I would have us read the Declaration to stimulate reflective thought, not to produce argument stops; and I would have us place the appeals to nature in the foreground, not the background, of our thinking.

*Third*, what I have been describing as the standard approach to the Declaration in constitutional argument has sometimes been pressed with real profundity. This more profound recourse to the Declaration's principles characterizes Abraham Lincoln's style of constitutional argument.<sup>8</sup> Lincoln's uses of the Declaration are profound both morally and politically. He has handed down to us an approach to the Declaration's principles, and especially to the proposition that "all men are created equal," that features three insights. First, the meaning of the Declaration's principles is not fixed by Jefferson's or any other person's understanding of them; that is, the extension of "all men" is not determined by Jefferson's intentions or beliefs. Second, when the Declaration says "all men," it refers to all those who actually are human persons. Third, the people are duty-bound to realize or satisfy the Declaration's principles as completely as the political limits of the time permit.

This understanding of the Declaration's principles is naturalistic in an important sense. Consider *Dred Scott*,<sup>9</sup> the most famous case involving the Declaration in constitutional argument. The threshold question in that case was whether free blacks were citizens of a state within the meaning of the Diversity Jurisdiction Clause of Article III. Chief Justice Taney held that they were not, because they were not persons within the meaning of the Constitution or of the Declaration of Independence.<sup>10</sup> Taney never asked whether blacks are *really* persons; instead, he asked whether the authors of the Constitution and Declaration believed them to be persons.<sup>11</sup> If he had asked whether blacks are really persons, he might have answered in the affirmative; had he done so, he might have answered the Article III question in the affirmative. But perhaps he would not have given these answers; our capacity to be wrong transcends the ways we pose our questions. Still, the Declaration's

---

8. See generally Ronald R. Garet, *Creation and Commitment: Lincoln, Thomas, and the Declaration of Independence*, 65 S. CAL. L. REV. 1477 (1992).

9. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 393 (1857).

10. *Id.*

11. *Id.*

appeals to nature have a value, a specifically naturalist value, if they direct us to a higher understanding of a moral or political principle, an understanding in which we see that there really are persons in the world, who really have rights just because they are persons.

Perhaps we can call this view—if it is not Lincoln's, it is at least Lincolnesque—a natural law view of the Declaration of Independence. It is profound, and it is consistent with the twin intuitions behind these appeals: (1) that we *have* a nature, and in virtue of that nature we possess rights; (2) that we *live* in nature, and in virtue of that nature there are laws. The natural law view offers a salutary corrective to *Dred Scott*. But is it equally illuminating of the issues in, say, *Roe v. Wade*?<sup>12</sup> Working out the legal and moral implications of having a nature and living in nature can be accomplished in many ways; whether the natural law view develops these ideas in the best direction is a complex question which I shall not attempt to answer here.

Let us notice, too, that the natural law view distracts our attention from some peculiarities in the text. The second sentence of the Declaration does not say that all men *are* created equal; it says that “[w]e hold these truths to be self-evident, that all men are created equal.” The affirmation, the collective public *holding*, comes first, followed by self-evidence (which again relates to the self that is so holding), followed finally by creation as the object of the affirmation and the correspondent of the self-evident truth. And while the first sentence does state that the laws of nature are the final ground of America's independence, the sentence concludes, as we have seen, by saying that “a decent respect to the opinion of mankind requires that [the people] should declare the causes which impel them to the separation.” In other words, while it is nature that justifies independence, it is convention or opinion, properly observed and weighted, that justifies *speaking out* on behalf of nature on behalf of independence. Decent respect for opinion is to natural law as collective affirmations and self-evidence are to natural rights.

Jefferson is tethering nature as a final ground of independent government, of self-government and of rights, to the verbal articulation of justifications. I do not mean that he identifies truth with justification. But what others might contrast as nature and convention, *physis* and *nomos*, Jefferson relates. Later in his career, serving as Secretary of State, Jefferson gave

---

12. 410 U.S. 113 (1973).

President Washington his view of the constitutionality of a bill to charter the Bank of the United States. In the course of his memorandum to the President, Jefferson said that unless a President were convinced that Congress was "clearly misled," "a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion."<sup>13</sup> What is natural and what accommodates opinion are associated here—and almost in the Declaration's exact language.

The point is that the Declaration is just that: a Declaration, a speaking-out in words. The words spoken are words of nature. I conclude that the true legitimacy and authority of the Declaration consist in *words which speak nature to us*.

### III.

Words that speak nature to us have a special power to challenge and console us, to quiet us for meditation and self-knowledge. William Cullen Bryant tells us of this value in the opening lines of "Thanatopsis," one of the central achievements of American transcendentalism:

To him who in the love of Nature holds  
Communion with her visible forms, she speaks  
A various language; for his gayer hours  
She has a voice of gladness, and a smile  
And eloquence of beauty, and she glides  
Into his darker musings, with a mild  
And healing sympathy, that steals away  
Their sharpness, ere he is aware.<sup>14</sup>

So the poet counsels us to "Go forth, under the open sky, and list / To Nature's teachings."<sup>15</sup> We may pause to wonder about these teachings. Does Nature give us knowledge; does it bring us closer than we otherwise would be to the truth about the human situation, about right living and right dying? Or does it rather address our moods and feelings, soothing or stirring us, improving our gladness while moderating our sadness? These famous lines of Bryant's also raise the not altogether unrelated question of what the poet's words add to Nature's teachings. To be addressed by Nature, one must love her and in that love hold communion with her visible forms; but the address does

---

13. THOMAS JEFFERSON, *Opinion on the Constitutionality of the Bill for Establishing a National Bank*, in 19 THE PAPERS OF THOMAS JEFFERSON 275, 280 (Julian P. Boyd et. al. eds., 1974).

14. WILLIAM CULLEN BRYANT, "Thanatopsis," in THE POETICAL WORKS OF WILLIAM CULLEN BRYANT 21, 23 (1909).

15. *Id.*



not consist of this communion or take place within it. Nature addresses verbally, not mystically; she "speaks," she has a "language" and a "voice," and only for this reason can her communications be praised as "eloquence."

Surely something intuitive and plausible is contained in the idea that poetry or speech touch us particularly deeply when they act upon images and associations already in the mind, residue of childhood and its early impressions of wind and sky, blooms and rain. The idea is Wordsworth's, expressed (for example) in his narrative poem *Michael*. Introducing the story he will retell, a Lear-like story of almost excessive human strength and tragedy, the poet says:

And hence this Tale, while I was yet a Boy  
 Careless of books, yet having felt the power  
 Of Nature, by the gentle agency  
 Of natural objects, led me on to feel  
 For passions that were not my own, and think  
 (At random and imperfectly indeed)  
 On man, the heart of man, and human life.<sup>16</sup>

The sentence is complex. Complexifying clauses removed, it says only that the Tale led the boy to feel more widely and to think of weighty human things. Clauses restored, the meaning is that the tale leads the boy on to feeling and thought because he has already felt the power of nature; indeed, the story itself educates "by the gentle agency of natural objects."<sup>17</sup> Poetry and nature together apply the moralizing force.

It is a paradox of poetry that lines which succinctly state some thesis about the relation between nature, human being, and thought may reflect a lesser art than lines more complex and indirect. Heidegger said that the work of art is so called not because it is worked by the artist but because it works us, induces us to grow, brings out the *physis*.<sup>18</sup> So we most need to read where Wordsworth's art is highest, as it is, for example, in *Tintern Abbey*. The poem begins with an avowal of the passage of time and concludes with a hope extended toward a time not yet come. Temporality frames the human structure of learning and loving.

Once again  
 Do I behold these steep and lofty cliffs,

---

16. WILLIAM WORDSWORTH, *Michael*, in WILLIAM WORDSWORTH II. 27-33 (Stephen Gill ed., 1984).

17. *Id.*

18. See GEOFFREY HARTMAN, *THE UNREMARKABLE WORDSWORTH* 199 (1937) (quoting MARTIN HEIDEGGER, INTRODUCTION TO METAPHYSICS).

That on a wild secluded scene impress  
Thoughts of a more deep seclusion; and connect  
The landscape with the quiet of the sky.<sup>19</sup>

The way we "hold truths" in nature is that we *behold*, a reciprocal relation in which what is seen impresses thoughts upon us. Thoughts deepen the solitude of the natural setting into a reflective seclusion, aware of time's power over life, aware of loss. But intimations of loss that would otherwise be unsettling are strangely healing, for thoughts transpire in the medium of a scene, and in the scene there is a quieting completeness: the landscape is connected with the quiet of the sky.

The poet recalls that once he played in nature with "glad animal movements"; though time has taken this rapture from him, it has given him thoughtfulness in its place.

For I have learned  
To look on nature, not as in the hour  
Of thoughtless youth; but hearing oftentimes  
The still, sad music of humanity,  
Nor harsh nor grating, though of ample power  
To chasten and subdue. And I have felt  
A presence that disturbs me with the joy  
Of elevated thoughts; a sense sublime  
Of something far more deeply interfused,  
Whose dwelling is the light of setting suns,  
And the round ocean, and the living air,  
And the blue sky, and in the mind of man,  
A motion and a spirit, that impels  
All thinking things, all objects of all thought,  
And rolls through all things. Therefore am I still  
A lover of the meadows and the woods,  
And mountains; and of all that we behold  
From this green earth; of all the mighty world  
Of eye and ear—both what they half-create,  
And what perceive; well pleased to recognize  
In nature and the language of the sense,  
The anchor of my purest thoughts, the nurse,  
The guide, the guardian of my heart, and soul  
Of all my moral being.<sup>20</sup>

The poet looks on nature from a wiser maturity; but nature still affords pleasure, and it is still nature in an earthy and verdant sense, not a safe abstraction, not Capitalized. Without these satisfactions, nature's power would be strictly epistemic;

---

19. WILLIAM WORDSWORTH, *Lines Composed a Few Miles Above Tintern Abbey* ll. 4-8, in WILLIAM WORDSWORTH, *supra* note 16, at 131 [hereinafter *Tintern Abbey*].

20. *Id.* at ll. 89-112.

it would afford no motivation for right action. Still pleasurable but in a newly thoughtful way, nature now in partnership with mind communicates a disturbing joyous presence that balances humanity's sadness, and addresses the structures of temporality and seclusion with which the poem commences.

Indeed, "Tintern Abbey" ends with a deep affirmation of *withness*, the being that Heidegger called *Mitsein*, being-with.<sup>21</sup>

For thou art with me, here, upon the banks  
Of this fair river; thou my dearest Friend.  
My dear, dear Friend.<sup>22</sup>

Seclusion is not an end in itself but, in part at least, a means to a fuller social being, responsive to the passage of time and even to the fact of human mortality. The simple affirmation, "We stood together," resolves independence into a higher mutual dependency, based upon memory.

Oh! then,  
If solitude, or fear, or pain, or grief,  
Should be thy portion, with what healing thoughts  
Of tender joy wilt thou remember me,  
And these my exhortations! Nor, perchance,  
If I should be where I no more can hear  
Thy voice, nor catch from thy wild eye these gleams  
Of past existence, wilt thou then forget  
That on the banks of this delightful stream  
We stood together; and that I, so long  
A worshipper of Nature, hither came,  
Unwearied in that service: rather say  
With warmer love—oh! with far deeper zeal  
Of holier love. Nor wilt thou then forget,  
That after many wanderings, many years  
Of absence, these steep woods and lofty cliffs,  
And this green pastoral landscape, were to me  
More dear, both for themselves, and for thy sake.<sup>23</sup>

Rather than struggle to hold on to precious life against the inevitability of death, the poet has come to recognize that loving memory affords a sweet, enduring union, a being-with that compensates for the loss of a more naive independence. Rather than lament the loss of boyish high spirits in nature, the poet has come to value the deepening and intensification of his

---

21. MARTIN HEIDEGGER, *BEING AND TIME* 308 (1962). See generally Ronald Garey, *Dancing to Music: An Interpretation of Mutuality*, 80 KY. L.J. 893 (1991-92).

22. *Tintern Abbey*, ll. 115-17.

23. *Id.* at ll. 143-60.

thoughts. Nurturing our "intense conceptions," as Wordsworth elsewhere calls such thoughts, and our capacity "to feel intensely," Nature prepares us "to receive deeply the lesson deep of love."<sup>24</sup>

#### IV.

Keats, like Wordsworth, spoke of twin intensities.

Verse, fame, and beauty are intense indeed,  
But death intenser — death is life's high meed.<sup>25</sup>

So it is in the context of death and its relation to life and love that Jefferson's words of nature have found "fit audience, though few" on the high Court. Nancy Cruzan lay clenched for seven years in an irreversible coma, a persistent vegetative state, before her case and her parents' reached decision in the United States Supreme Court. The issue to be decided was whether the state law that kept Nancy alive against her parents' wishes deprived her of liberty without due process of law. None of the Justices who wrote in the case squarely addressed the question of whether Nancy remained a person, retaining the rights of persons. Person or not, she was alive; the state asserted an interest in maintaining that life. On behalf of her life and of the lives of those like her, the state had legislated that a patient's life-sustaining treatment could not be withdrawn without clear and convincing evidence of the patient's competent wishes.

The Court upheld the state's standard;<sup>26</sup> Nancy's feeding tube was removed only when the trial court decided, on the basis of new testimony, that the evidentiary standard was met. Dissenting, Justice Stevens wrote the only opinion I know of in which the Declaration stirs thought rather than clinches an argument.

Stevens' dissent begins with the following paragraph, into which he interpolates, as a footnote, the full second sentence of the Declaration.

Our Constitution is born of the proposition that all legitimate governments must secure the equal right of every person to "Life, Liberty, and the pursuit of Happiness." In the ordinary case we quite naturally assume that these three ends are

---

24. WILLIAM WORDSWORTH, *The Excursion* book one, ll. 191-96, in *THE POETICAL WORKS OF WORDSWORTH* (Thomas Hutchinson ed., rev. ed. 1904).

25. JOHN KEATS, *Why did I laugh tonight? No voice will tell*, 11. 13-14, in *COMPLETE POEMS* 243 (Jack Stillinger ed., 1978).

26. *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990).

compatible, mutually enhancing, and perhaps even coincident.<sup>27</sup>

To say that "we naturally assume" the compatibility of these ends means, perhaps, that we ordinarily or conventionally do; but is there not some friction between Nancy's life and her parents' liberty, or perhaps even her own? If we look beyond self-evidence, if we listen with Bryant for nature's "still, soft voice," what do we learn of the meaning of life and death?

Choices about death [says Justice Stevens] touch the core of liberty. Our duty, and the concomitant freedom, to come to terms with the conditions of our own mortality are undoubtedly "so rooted in the traditions and conscience of our people as to be ranked as fundamental" (*Snyder v. Massachusetts*), and indeed are essential ingredients of the unalienable rights to life and liberty endowed us by our Creator.<sup>28</sup>

Justice Stevens' basic insight is that natural rights are hollow if the states are permitted to give liberty, happiness, and life itself any meaning or no meaning. To give content to these framing values of human existence is, in a most profound sense, to *think*. Yet the Constitution itself says nothing to guide our thoughts. The Declaration's discourse of nature, then, must be recalled from the inert or decorative state to which it is ordinarily consigned and made to stimulate perceptions and meanings adequate to the task. I quote again from Justice Stevens:

The more precise constitutional significance of death is difficult to describe; not much may be said with confidence about death unless it is said from faith, and that alone is reason enough to protect the freedom to conform choices about death to individual conscience. We may also, however, justly assume that death is not life's simple opposite, or its necessary terminus, but rather its completion. Our ethical tradition has long regarded an appreciation of mortality as essential to understanding life's significance.<sup>29</sup>

Death and life, then, have significance, especially in relation to one another; and in virtue of this human significance they possess a correlative constitutional significance. A court must grapple with these meanings, not with confidence, but thoughtfully, aware that they are the stuff of faith and that individual conscience must be free in matters of faith. Taking thought in this

---

27. *Id.* at 330-31 (Stevens, J., dissenting).

28. *Id.* at 343.

29. *Id.*

way, Justice Stevens concludes that death completes life. Meaning and ending are related to one another in life as in narrative art; the state does wrong to deprive Nancy of the sense of an ending. It wrongs her because she finds "in more of life true life no more."<sup>30</sup> In Justice Stevens' words:

Nancy Cruzan's death, when it comes, cannot be an historic act of heroism; it will inevitably be the consequence of her tragic accident. But Nancy Cruzan's interest in life, no less than that of any other person, includes an interest in how she will be thought of after her death by those whose opinions mattered to her. There can be no doubt that her life made her dear to her family, and to others. How she dies will affect how that life is remembered.<sup>31</sup>

While Nancy has no interest in the preservation of her biological life, her parents do have an interest in her *meaningful* life, framed by time and completed in death. Memory, as we learn from *Tintern Abbey*, offers "healing thoughts / Of tender joy,"<sup>32</sup> but the necessary occasion for this healing is grief. Justice Stevens asks on behalf of Nancy's parents that they be permitted to let go of their daughter the better to preserve the bond of love. His plea is that of Tennyson's *In Memoriam*: "Let Love clasp Grief lest both be drown'd."<sup>33</sup>

Such serious meditations on life, liberty, and the pursuit of happiness disclose a new and perhaps unexpected meaning to the words that speak nature to us. In declaring our independence, they speak also to our dependence, and lead us to see that the latter is not to be despised. Grieving for Nancy, her parents entertain loving memories:

So once it would have been—'tis so no more;  
I have submitted to a new controul:  
A power is gone, which nothing can restore;  
A deep distress hath humanised my Soul.<sup>34</sup>

## V.

"We mutually pledge to each other our lives, our fortunes, and our sacred Honor." In these words the most memorable statement of our rights concludes by undertaking the most

---

30. Alfred, Lord Tennyson, *In Memoriam A.H.H.*, stanza 26.

31. *Cruzan*, 497 U.S. at 344.

32. *Tintern Abbey*, ll. 144-45.

33. Tennyson, *supra* note 30, at stanza 1.

34. William Wordsworth, *Elegiac Stanzas, Suggested by a Picture of Peele Castle*, ll. 33-36, in WILLIAM WORDSWORTH, *supra* note 16, at 327.

solemn obligations. We are stirred by this magnificent resolution, shaken out of the moral lethargy of daily life, awakened to higher possibilities of dangerous commitment. We admire this dedication and wish to re-enact it. To this wish Lincoln appeals in the Gettysburg Address: words ostensibly dedicating a cemetery perform a rededication of the people, a re-enactment of the Declaration's last sentence. Lincoln does not say that we *believe* in equality but that we are "dedicated to the proposition that all men are created equal." It is for the living to be *dedicated* and increasingly *devoted* to that proposition and to its flanking tenets of liberty and self-government. After using the word "dedicate" six times in his short speech, Lincoln concludes by performing the commitment: "we here highly *resolve* that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth."<sup>35</sup>

By resolving, we exercise our independence *for* our independence, autonomy for autonomy, community for community. This is very plain and very human. What is not plain at all is how these old texts can claim us, in whose or what name they speak to us: *to us*, who have not done any resolving recently, not on this heroic scale. We have voted, we have permitted others to rely on us, we have transacted business in the coinage of tacit consent. But with the exception perhaps of those of us who have gone to war, *we* have not pledged our lives, our fortunes, or our sacred honor. What then is the ground of *our* obligation?

The orator's answer differs from the poet's. The orator's words cause us to mistake the thrill for the deed, the goosebumps raised by old pledges for the moral relations created by new ones. The poet's words cause us to recollect that there is that in and around us in virtue of which we are already obligated. So, in Book IV of the *Prelude*, Wordsworth recalls a youthful night of merry-making in good company, ending in a sunrise walk along the fields to home.

Magnificent

The morning was, a memorable pomp,  
More glorious than I ever had beheld.  
The Sea was laughing at a distance; all

---

35. ABRAHAM LINCOLN, *Gettysburg Address*, in 7 THE COLLECTED WORKS OF ABRAHAM LINCOLN 23 (Roy Basler ed., 1953). See generally GARRY WILLS, LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA (1992); Garet, *supra* note 8, at 1494-96.

The solid mountains were as bright as clouds,  
Grain-tinctured, drenched in empyrean light;  
And, in the meadows and the lower grounds,  
Was all the sweetness of a common dawn,  
Dews, vapours, and the melody of birds,  
And labourers going forth into the fields.  
— Ah! need I say, dear Friend, that to the brim  
My heart was full? *I made no vows, but vows  
Were then made for me; bond unknown to me  
Was given, that I should be, else sinning greatly,  
A dedicated Spirit.* On I walked  
In blessedness, which even yet remains.<sup>36</sup>

The poet is a partner in those vows; the poet is the congregation witnessing my vows, and equally is the dusty old wedding album that recalls them to me; the poet shows me to myself as I already am, "a dedicated Spirit."

We live, according to Marcel Proust, "under the empire of those unknown laws we have obeyed because we bore their teaching within us without knowing who had taught us, those laws which all deep work of our intelligence brings closer to us . . . ."<sup>37</sup>

Speak to us, Jefferson. Address again the deep work of our intelligence and bring closer to us those unknown laws whose teachings we bear within us, the laws of nature and of nature's God.

---

36. WORDSWORTH, book 4, ll. 330-45, *supra* note 2 (emphasis added).

37. GABRIEL MARCEL, *HOMO VIATOR: INTRODUCTION TO A METAPHYSICS OF HOPE* 8 (Emma Crawford trans., 1951) (quoting MARCEL PROUST, *LA PRISONNIERE*).