

templation of this universe, articulated as it is into the intelligible hierarchy of beast, man, and God, which not only brings consent as a principle into view, but also enlightens it, and brings it thereby into harmony with "the Laws of Nature and of Nature's God." To repeat, the proposition that all men are created equal implies an understanding of man, in the light of the universe, in the light of the distinction between the human and the subhuman on the one hand, and of the human and the superhuman on the other. As we have already observed, it does *not*, for this reason, ignore the very important differences between man and man. On the contrary, it is for the sake of those differences that it denies any man the right to rule others, *as if* those others were beasts. And there are no standing rules, and impartial judges, to govern the differences between slaves and their owners and masters. For the rule of a master to be a matter of right, the master would have to differ from the servant, as God is supposed to differ from man. Whatever one's beliefs as to the *existence* of Divinity, it is evident—or self-evident—that no man possesses that power or wisdom which we suppose that God—if He exists—possesses. While not supposing for a moment that the Founders did not believe in the actual existence of God, their assumptions about Equality—which include assumptions about the subhuman and the superhuman—are independent of the validity of any particular religious beliefs. In the decisive respect, their assumptions are not assumptions at all, but observations of a world in which the difference between men and beasts provides a clear and distinct idea of what the Divine nature, in its politically relevant aspects, must be.

Kendall and Carey suppose that the constitutional morality of *The Federalist* has nothing whatever to do with Equality. That they are wrong becomes clear the moment one understands that the proposition that all men are created equal is not about man alone, but about man, God, and Nature; and that Nature implies the difference between the human and the subhuman, as well as that between the human and the superhuman. Consider the famous passage of Madison's in the fifty-first *Federalist*:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.<sup>38</sup>

Here the very nature of the problem that constitutionalism is meant to solve is determined by the meaning of Equality.

But does not constitutionalism imply an ethics as well as a politics? Do we not recognize that the equality of all men by nature, leading as it does to civil society, is the justification for the *inequalities* of civil society? Do we not thereby see that officials are but men and must live under the laws