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SUPPLEMENTAL COURSE PACKET
Thomas Hutchinson and James Otis on Sovereignty, Obedience, and Rebellion

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By the 1760s and 1770s, no colonial figure was more reviled and subject to the wrath of the American colonists than Thomas Hutchinson (1711-1780). According to one colonist, he was "the first, the most malignant and insatiable enemy" of the colonies, having "committed greater public crimes, than his life can repair or death satisfy." 1 James Otis's (1725-1783) public reputation was less consistent. In the fall of 1765, however, when Hutchinson's infamy was settled and public fury over the Stamp Act was at its peak, no colonist was more revered than Otis.2 And no colonial figure was more dedicated than Otis to soiling Hutchinson's reputation or more responsible for debasing it.3

Whatever the ultimate source of Otis's animosity, if the motivation was a belief that Hutchinson was a traitor to the colonial cause, then Otis's (and the public's) venom was misplaced. Hutchinson opposed the Stamp Act, lobbying the ministry privately against its passage. In fact, Otis and Hutchinson were in many respects political and philosophically kin. Both men were liberals who derived legitimate politics from the consent of the governed, linked liberty inexorably to the security of private property, and articulated a right to resist repressive rulers. Both men merit study because they were especially able and active political thinkers, standing at the cusp of an intellectual revolution in American political thought as the colonists replaced the common law tradition with a new constitutionalism.

In their writings, Hutchinson and Otis drew generously from liberal sources—in particular, John Locke's Second Treatise of Government (1690). Their indebtedness to Locke was typical among colonial thinkers of the period, who were drawn to Locke in part because the Second Treatise was a response to a seventeenth-century constitutional crisis not unlike the one emerging in the colonies. The former crisis involved a contest between the king and Parliament for possession of sovereignty. The 1688 Glorious Revolution resolved the conflict, locating sovereignty in Parliament (strictly speaking, in the King-in-Parliament). Three-quarters of a century later, parliamentary sovereignty was itself being challenged as the colonists replaced the common law tradition with a new constitutionalism.

The colonists objected to the Stamp Act because, in their opinion, Parliament had levied a tax on them without their consent. Because they were legally denied the franchise in parliamentary elections, they were not represented at Westminster. Denied representation, Parliament could not lawfully tax them; otherwise, Parliament would possess arbitrary power over them, a power which, as Locke had shown, no government could rightfully wield. Of course, the colonists' argument could also justify noncompliance with all parliamentary law. At first, the colonists avoided this conclusion. Instead, they claimed that they had originally consented (through the colonial charters) to parliamentary rule over the general affairs of the empire, particularly in matters of trade and commerce. The colonial governments individually retained the power to tax and authority over their "internal police," that is, over matters wholly internal to a particular colony. In other words, the colonists presented a view of the empire in which sovereignty was divided among different legislatures, a direct challenge to the doctrine of parliamentary sovereignty.

Over the next decade, as the colonists questioned their relationship with England, they revolutionized the way people conceived of constitutional government. At the core of the new constitutionalism was the idea that a constitution is a fixed body of law, paramount to government and enforceable through the courts. Sovereignty resides with the people, who
express their will and delegate authority through the constitution. Political authority might be embodied in a single, centralized government, or it might be divided federally among a central and local governments.

On the issue of sovereignty, Hutchinson and Otis actually maintained the traditional view, conceiving it as indivisible and locating it politically in Parliament. In order to justify parliamentary rule over the colonies, Otis and Hutchinson, while rejecting the typical argument for virtual representation, nonetheless discovered sources of colonial consent to parliamentary rule. Both men thus conceived the empire as a decentralized rather than a federal state, acknowledging Parliament's plenary power over the colonies while counseling against its exercise of that authority. By conceding parliamentary sovereignty, and in presenting an equitable rather than a rights-based claim against parliamentary taxes, Otis and Hutchinson offered arguments concerning parliamentary rule far more conservative than those presented by the colonists generally.

In other important respects, however, Otis began to break away from both Hutchinson and from received constitutional thought. Hutchinson maintained the traditional, organic understanding of a constitution as an evolutionary body of laws and institutions that, while made venerable by time and custom, were nonetheless indistinguishable from statutory law. In contrast, Otis was a more original thinker, conceiving of a constitution as a body of fundamental law that limits governmental authority. Otis additionally suggested a role for the courts in upholding constitutional limits to legislative authority, and in doing so he seemed to advocate the doctrine of judicial review.

While Otis's writings today seem to resonate modern constitutional doctrine, Otis himself failed to discern the full import of his argument. Wedded to the idea of parliamentary sovereignty, faithful to the idea of a benevolent Parliament intent on acting in accordance with equity and law, and conceiving the courts as executive bodies, Otis ultimately failed to articulate and defend the claim for judicial review. All the same, Otis was the first colonial theorist to infuse these modern constitutional notions into the public discourse, and his writings are significant because they reflect—and indeed, helped to seed—the revolution in political and legal thought that was just starting to blossom in British America, as the colonists began to rethink the nature of constitutional government and their own constitutional relationship to Great Britain.

**Otis as Constitutional Innovator**

By 1765, when Parliament passed the Stamp Act, the doctrine of parliamentary sovereignty had become orthodoxy in English political thought. This doctrine held that sovereignty was by nature indivisible, illimitable, and resided in the King-in-Parliament. James Otis penned the first significant colonial response to the theory of parliamentary sovereignty. In his pamphlet *The Rights of the British Colonies Asserted and Proved* (1764), Otis suggested that a constitution is a written form of fundamental law, created by the people (or their representatives) acting as a constituent sovereign and legally superior to ordinary legislative acts. He further suggested that the courts were empowered to enforce compliance with that fundamental law and could do so by refusing to execute statutory law that conflicted with it.

Otis's pamphlet in many ways was a restatement of an argument that he had made three years earlier while serving as counsel for Boston merchants in *Paxton's Case* (more famously known as the writs of assistance case [1761]). At the heart of that controversy lay a dispute over whether the Massachusetts Superior Court could issue writs of assistance to Crown officials in the colonies. The writs sought by the Crown officials were general search warrants that conferred broad police powers. A general writ empowered its holder, when
accompanied by a Constable, Headborough, or other public officers . . . and in the day time to enter and go into any House, shop, Cellar, Warehouse or Room or other Place, and in Case of Resistance to break open Doors, Chests, Trunks and other Package, there to seize ... any Kind of Goods, or Merchandize whatsoever prohibited and uncustomed and to put and secure the same in his Majesties store House.  

There were few significant restrictions on the use of these warrants. The holder of such a warrant decided which places to search, when to search them, and on what basis to conduct the search. He did not have to petition the court for a new warrant each time he wished to conduct a search, and thus he did not have to show a magistrate just cause for each search.

The controversy before the court stemmed from ambiguity in the statutes governing the use of writs of assistance. Through a number of seventeenth-century statutes, Parliament had ex- tended to the Court of Exchequer the power to issue writs of assistance; however, it was unclear whether the legislation was intended to authorize the use of general warrants or, alternatively, special (i.e., limited) warrants. Jeremiah Gridley, the Crown attorney in the case, argued that precedent showed that in carrying out these parliamentary acts, the Exchequer had issued general writs. Moreover, under law, colonial customs officers enjoyed the same powers as their English counterparts. Finally, a provincial law had extended to the Massachusetts Superior Court the powers of the Exchequer. As a result, the court could issue the writ.

Otis challenged the reliability of the source of Gridley's precedent and further argued that the court was not required to follow a precedent that was inconsistent with fundamental principles of law. Otis then offered a far more sweeping and unconventional argument against the use of general writs. He told the court that an "Act [of Parliament] against the Constitution is void: an Act against natural equity is void: and if an Act of Parliament should be made, in the very Words of this Petition [i.e., the writ], it would be void. The executive Courts must pass such Acts into disuse." He then added a reference to Lord Coke's opinion in the celebrated Bonham 's Case (1610), which he claimed supported his position.

While rhetorically effective, Otis's claim here was not true to Coke's original meaning. Coke was not making a constitutional argument for limits to legislative authority, nor was he implying the power of judicial review. Instead, he was stating the common law doctrine regarding the judicial construction of statutes. Coke believed that statutes ought to and could be construed according to the common law because he believed that Parliament, in its capacity as the high court of England, was guided by the same principles of reason and justice that guided all judicial determinations. Through statutory interpretation, judges brought statutes into conformity with the principles of law inherent in the common law and which Parliament itself intended to promote. As Coke explained in Bonham 's Case, "some statutes are made against law and right, which those who made them perceiving, would not put them into effect ... and because it would be against common right and reason, the common law adjudged the said act of Parliament as to that point void." Still, in construing a statute strictly or narrowly, a judge did not rule it unconstitutional in the modern sense. It was only through statutory construction that judges were able to control statutory effects in particular cases. Coke never directly challenged Parliament's legislative authority. As the high court, Parliament remained the final interpreter and expounder of the common law and ultimately of its own power. Where statutory intent was manifest, Parliament's word was final.

Otis, however, seemed to challenge Parliament's statutory authority directly. Otis told the court that if Parliament were to enact a statute manifestly allowing the use of general warrants, the statute would be against natural equity and the constitution-and hence void. Furthermore, he added that the courts would pass such a law "into disuse." The implication that the constitution forms a body of fixed law that the courts are charged to apply even in
the face of contradictory parliamentary statutes reappeared three years later in an appendix to The Rights of the British Colonies. There Otis repeated almost verbatim the argument he had made to the superior court in Paxton's Case, and he cited and quoted a number of authorities to support his claim that Parliament could not enact a statute contrary to natural equity or the constitution. Among the sources he quoted was a lengthy passage from Emmerich de Vattel's Law of Nations (bk. 1, chap. 1, § 34). The passage from Vattel, used in this context, is so suggestive of the new constitutionalism that it deserves to be quoted at length.

A very important question here presents itself. It essentially belongs to the society to make laws both in relation to the manner in which it desires to be governed, and to the conduct of the citizens: this is called the legislative power. The nation may entrust the exercise of it to the prince or an assembly, or to the assembly and the prince jointly, who have then a right of making new and abrogating old laws. It is here demanded whether if their power extends so far as to the fundamental laws they may change the constitution of the state. The principles we have laid down lead us to decide this point with certainty that the authority of these legislators does not extend so far, and that they ought to consider the fundamental laws as sacred if the nation has not in very express terms given them the power to change them. For the constitution of the state ought to be fixed; and since that was first established by the nation, which afterwards trusted certain persons with the legislative power, the fundamental laws are excepted from their commission. (RBC 476)

Otis seemed to distinguish between a constitution and statutory law. Considered in the context of Paxton's Case, Otis seemed to argue that Parliament could not mandate the use of general search warrants without exceeding the powers conferred on it by the constitution.

Additionally, Otis again suggested that insofar as the constitution embodies the fundamental laws of the state, these constitutional limits could be enforced by ordinary courts of justice. "Tis hoped," Otis wrote,

it will not be considered as a new doctrine that even the authority of the Parliament of Great Britain is circumscribed by certain bounds which if exceeded their acts become those of mere power without right, and consequently void. The judges of England have declared in favor of these sentiments when they expressly declare that acts of Parliament against natural equity are void. That acts against the fundamental principles of the British constitution are void. . . . It is contrary to reason that the supreme power should have right to alter the constitution. This would imply that those who are entrusted with sovereignty by the people have a right to do as they please.... This is not very remote from a flat contradiction. (RBC 476-77)

As if to confirm the authority of the courts to pass laws "into disuse," he then cited numerous legal precedents on that point. Quoting the words of Sir Thomas Powys, who in the Duchess of Hamilton's Case (1712) had cautioned that "[j]udges will strain rather hard than interpret an Act void ab initio [from the beginning]," Otis added: "This is granted, but still their [Parliament's] authority is not boundless if subject to the control of the judges in any case" (RBC 476).9

Where, exactly, did Otis purport to find this fixed body of law that circumscribed Parliament's authority? Otis maintained that British subjects had always lived under a compact. When King James II abdicated the throne in 1688, "the original compact was broken to pieces" (RBC 470). A new compact was needed and the Convention Parliament subsequently produced one. "[T]he form and mode of government is to be settled by compact, as it was rightfully done by the
Convention after the abdication of James II" (RBC 429). For Otis, the Bill of Rights and the Act of Succession constituted a type of fixed, fundamental law which Parliament could not lawfully transgress. "The present establishment," he wrote, was "founded on the law of GOD and of nature [and] was begun by the Convention with a professed and real view in all parts of the British empire to put the liberties of the people out of the reach of arbitrary power in all times to come" (RBC 430). Otis then transcribed large portions of the Bill of Rights in order to "show the rights of all British subjects, both at home and abroad," which stand as "the first principles of law and justice, and the great barriers of a free state and of the British constitution in particular" (RBC 430).

Moreover, Otis anticipated the objection that the Bill of Rights was enacted by Parliament and thus was not a constitution in the modern sense of the term. He likewise anticipated the argument that King James had merely abandoned the throne and that, consequently, no dissolution of government had occurred. After stating that the "form and mode of government" were settled by the Convention Parliament, he explained that "[t]here was neither time for nor occasion to call the whole people together." Nevertheless, "[i]f they had not liked the proceedings [of the Parliament,] it was in their power to control them, as it would be should the supreme legislative or executive powers ever again attempt to enslave them" (RBC 429). In short, Otis implied that the Convention Parliament represented the people in their constituent capacity in a manner consistent with modern constitutional theory.

Otis's argument in the Paxton's Case and The Rights of the British Colonies is significant because it posits a rule of law superior to Parliament and further implies the doctrine of judicial review. Otis suggested that even an expressly stated statute which ran afoul of the constitution or natural equity would be passed "into disuse" by the courts. Moreover, his language implies that the court's invalidation of statutory law is decisive, and it is decisive precisely because Parliament's authority is not illimitable. Instead, its power is limited by a constitution derivative of the people. Paraphrasing Blackstone, Otis agreed that "an original supreme, sovereign, absolute, and uncontrollable earthly power must exist and preside over every society, from whose final decisions there can be no appeal but directly to Heaven." But this absolute power, he concluded, "is therefore originally and ultimately in the people" (RBC 424). In short, political authority was both limited and fiduciary, and it derived from the people acting in their capacity as the constituent sovereign.

**Hutchinson the Constitutional Conservative**

Hutchinson rejected the implication of judicial review in Otis's writings. According to Hutchinson, courts should not possess the power to declare statutes void; otherwise, it would give legislative power to an executive body-in his opinion, the very definition of tyranny. "If you once allow courts and juries to observe the laws or not according to their discretion, instead of being governed by known, established laws you are subjected to an arbitrary government by making the legislative and executive powers one and the same." Consequently, in Paxton's Case, Hutchinson ignored Otis's more radical claim and instead focused on the question of precedent. Hutchinson investigated and found that general writs had been issued regularly by the Exchequer to the commissioners of the customs. Because customs officers in the colonies had the same powers as customs officials in England, and because the superior court had the powers of the Exchequer, the court ruled that it had the power to issue the writ.

By focusing on the issue of precedent, Hutchinson was operating within the common law tradition. Strictly speaking, the common law is not judge-made law. The common law emanates from established practice and custom, and through judicial determination, it is transcribed into law. Long established custom, codified through judicial rulings, is presumed...
to conform to reason. A judicial ruling that breaks with established precedent is presumptively unreasonable or unjust and cannot be considered law. When a judge disregards a bad precedent, he simply recovers an established custom from a judicial ruling that contravened it.

Although Hutchinson found the precedent for the issuing of general warrants to be well established, he could accept as a judicial principle Otis's charge that bad precedent could be overlooked by the court. He likewise believed that judges could construe statutes in order to reconcile them to fundamental constitutional principles "in all cases where there is room for doubt or uncertainty" about legislative intent (DAE 401). Where Parliament's intent was clear, however, judges were bound to apply its statutory word. As Hutchinson explained, judges could not "determine an act of Parliament to be void because it appears to them to be contrary to their rights. This would be \textit{jus dare} instead of \textit{jus dicere}-that is, the power to make law rather than to discover and apply it (DAE 354). The power to make or annul law lay within the province of Parliament; the courts, which Hutchinson viewed as executive instruments, were charged only with interpreting and enforcing that law.

Legally, then, Parliament's authority was illimitable, and necessarily so, for if there existed another authority capable of overruling the legislature, law would grow arbitrary. For Hutchinson, government by definition assumes a lawmaking power whose decisions are binding and which can compel compliance. "By entering into \textit{a} state of government," Hutchinson explained, "I subject myself to a power constituted over a society of which I become a member. It is immaterial in whom this power is lodged. Such power must be lodged somewhere or there is no government" (DAE 391). Yet, while the courts composed part of that governing power, no legislative power could be vested there. Specifically, if judges were allowed to annul statutes, they might rule differently in similar cases. Judicial discretion of this nature is objectionable precisely because it undermines the order and stability that civil society provides. To grant judges such power would be equivalent to conceding the notion that "every individual has a right to judge when the acts of government are just and unjust and to submit or not submit accordingly," a doctrine that Hutchinson proclaimed "repugnant to the very idea of government" (DAE 391). In short, to allow individuals (whether in their private or judicial capacities) to disregard legislative acts would return men to the state of nature. According to Hutchinson, this government-less state of nature was anarchic and insecure, a condition that easily explained why people voluntarily formed governments.

The question now is not which is best, a state of nature or a state of government and civil society. Indeed nothing can make me doubt which is best. Such disorders and confusions as of late have prevailed not in the colonies only but in the kingdom from whence they sprang perhaps are necessary to convince men of the deplorable state they would be in without government and to reconcile them to the restraint of their natural liberties. (DAE 393)

Hutchinson's choice of words in this passage is revealing. The state of nature for Hutchinson is \textit{deplorable}: it is literally a wretched state, a condition inferior to the state of government, for it is only in the civil state that personal security and the enjoyment of rights are ensured.

Men escape the insecurity inherent in the state of nature by freely entering into civil society. When they enter civil society, however, they relinquish their claims to natural rights. "\textit{E}very change from a state of nature into government more or less deprive[s] us of the rights we enjoyed as men" (DAE 402). While there are principles of right associated with the state of nature, it is impossible for any particular government to incorporate all of these principles into its civil code. The civil law necessarily diminishes natural liberty while increasing civil liberty. Men willingly make this trade-off-giving up a claim to natural rights in return for the guarantee of some civil rights-precisely because the natural law remains a mere (and frequently violated)
moral prescription until it is incorporated into and enforced through a community's legal code.

Since legal codes inevitably vary among societies, men in different countries enjoy varying degrees of rights. While the colonists claimed a natural right to dispose of their property by their own consent or that of their representatives, Hutchinson argued that they have "confounded the general principles of government with the principles of the particular constitution of the English government" (DAE 392). In other words, this principle of government that the colonists claim as a natural right and which they correctly perceive in the British constitution is not a principle that every government recognizes. "In Europe," Hutchinson explained,

"The supreme authority acknowledge that it is a principle in the constitution that no man's property shall be taken from him without his consent in person or by his representative." Still, Hutchinson explained, "they say there is a higher principle than this - Salus Populi, the great end of all government" (DAE 398). Government's predominant obligation is to the public good, and the reasonableness of all legislation must be measured against that standard.

Moreover, the rights that a government accords its citizens might vary over time, and some citizens might not enjoy the same rights enjoyed by other members of their society. "What this writer means by the rights of citizens is very uncertain seeing you will scarce find any two cities where they are just the same, and the rights of British subjects vary in every age and perhaps every session of Parliament" (DAE 402). How can a government's recognition of rights vary over time and among citizens? More to the point, how could Parliament justify levying taxes on British subjects who lacked representation at Westminster? "The supreme authority acknowledge that it is a principle in the constitution that no man's property shall be taken from him without his consent in person or by his representative." Still, Hutchinson explained, "they say there is a higher principle than this - Salus Populi, the great end of all government" (DAE 398). Government's predominant obligation is to the public good, and the reasonableness of all legislation must be measured against that standard.

Hutchinson additionally argued that even those subjects denied the suffrage lived consensually under British law. British subjects were free to leave Great Britain and to become citizens of another country. Subjects who continued to live under British rule, even under conditions that they might deem inequitable, were nonetheless construed to consent to such rule. According to Hutchinson, though the American colonists were legally barred from voting in parliamentary elections and therefore not represented in Parliament, they were nonetheless subject to parliamentary rule." The colonists certainly claimed a regular voice in parliamentary elections as their birthright. But "it is impossible the rights of English subjects should be the same," Hutchinson asserted, "in every respect, in all parts of the dominions." In fact, the parliamentary franchise was not even guaranteed to adults residing in England. In the colonists' case, they remove[d] from the kingdom, where, perhaps, they were in full exercise of this right, to the plantations, where it cannot be exercised, or where the exercise of it would be of no benefit to them. Does it follow that the government, by their removal from one part of the dominions to another, loses its authority over that part to which they remove, and that they are freed from the subjection they were under before. . . ? Will it not rather be said, that by this, their voluntary removal, they have relinquished for a time at least, one of the rights of an English subject?" After all, Hutchinson observed, colonists could reclaim the franchise simply by moving to a part of the empire where the right could be exercised.

Hutchinson similarly rejected the colonial claim, more prevalent after passage of the 1768 Townshend Acts, that their charters gave them legislative independence from Parliament. According to this view of the empire, it had always been understood that the colonists could not be represented in Parliament. That is why when the colonies were established their charters em-powered them to form their own legislatures. Properly speaking,
the colonies were united with Britain not through a common legislature but rather through an allegiance to a common king. Hutchinson challenged this claim, pointing out that "allegiance is not local but perpetual . . . and as far as you owe allegiance to the King so far you owe it to the King in Parliament" (DAE 377). Why else, he asks, would the colonists seek charters from the Crown before departing England?

Why did they not upon their arrival become subjects to the Indian princes? Instead of that, they took a formal possession for and in behalf of the government of England by virtue of charters and commissions from the crown, and this possession has been continued to this day, and the whole territory so possessed has been de facto for more than a century the dominions of England. (DAE 377-78)

Government policy, then, was geared toward the public good; and while Parliament ought not to tax those who were not represented at Westminster, it could legally do so when it deter-mined that such policy was in the public interest. Likewise, while it might be unfair for Parliament to pass a law that affects "the property of particular subjects unequally," Hutchinson reasoned "that the property of these subjects from the very nature of government is at the disposal of the supreme authority for the good of the whole not in such easy and just proportions only as those subjects themselves shall judge necessary to promote his good but as the supreme authority shall judge it so" (DAE 396). For example, despite the constitutional maxim that no man's property shall be taken without his consent or that of his representative, Parliament had determined that it is "very agreeable to it and necessary to the ends of government that they [English Catholics] should be taxed and double taxed to the support of the nation" (DAE 398). Were the colonial and Catholic cases not analogous? Catholics were denied the suffrage and thus were not represented in Parliament. Could they not also refuse to comply based on the claim that such laws violated the constitution and natural equity?

Effective government for Hutchinson requires that it possess complete authority to make laws for the public welfare, even when those laws arguably are inequitable or unjust. Indeed, Hutchinson claimed that when it came to their own exercise of legislative power, the colonists made the very same argument. As for the taxation of Catholics, Hutchinson was willing to grant "for argument sake" that Catholics hold religious principles "repugnant to government" and consequently have no reason to complain about inequities in the law (DAE 398). Even conceding the point, Hutchinson asked skeptically, what justified the colonial treatment of Quakers? Did the colonial legislatures not force Quakers to comply with laws they conceived to be contrary to natural justice? After all, the Quakers held all war to be morally abhorrent, yet the colonial legislatures compelled Quakers to help pay for the support of it. Hutchinson continued: "Now I cannot see how you can justify exercising your authority to compel them to an act which they think contrary to natural justice, and at the same time urge an exemption from acts of a power you acknowledge to be the supreme authority over you because such acts are contrary to natural justice" (DAE 399). Furthermore, the colonists' justification for their treatment of Quakers was identical to the one used by Parliament to defend its taxes on the colonies. "You justify yourselves by saying the Quakers are people under your authority and your legislatures have a right to judge when to apply their property to answer the great end of government and when not" (DAE 399). This was precisely Hutchinson's point: allegiance is absolute, and once individuals have consented to live according to the laws of the land, they cannot pick and choose which laws to obey. Otherwise, Hutchinson cautions, the "compact [that] . . . you suppose [brought you out of the state of nature] would be a mere rope of sand" (DAE 399).

What Hutchinson described was a decentralized state, analogous to the relationship Rome had with her coloniae. The Roman coloniae, he explained, were "formed out of Roman Citizens or inhabitants of Latium and led forth to take possession of and inhabit
Countries acquired by the Roman People." Many of these colonies, however, were too distant for their inhabitants to "exercise the Privileges of Citizens in Rome" (ECR 483-84). These colonies were therefore allowed to establish local governments and local self-rule, although they remained legally subordinate to Rome. Similarly, the American colonies were simply one among "a variety of corporations formed within the kingdom, with powers to make and execute such by-laws as are for their immediate use and benefit, the members of such corporations still remaining subject to the general laws of the kingdom." Parliament could still bind the colonists through its statutory authority. It could even revoke the colonial charters. The charters issued by the kings were "nothing more than a declaration and assurance on the part of the Crown, that . . . [the colonies] would be considered as part of the dominions of the Crown of England" and consequently "retain the liberties and immunities of free and natural subjects, their removal from, or not being born within the realm, notwithstanding" (SGM 337, 339). In other words, the charter did not grant or withhold any rights that the colonists would have enjoyed without a royal charter.

Instead, the colonists derived their rights from the British constitution. And while the constitution articulated certain fundamental principles that Parliament ought to hold dear, the colonists were misguided about the nature of these fundamentals. "[L]ook into the history of any government," Hutchinson wrote, and "you will find that in the course of years frequent material alterations have been made in fundamental points not by subsequent new agreements made by each individual but by acts of the supreme authority of such governments, and such alterations become to all intents and purposes parts of the constitution" (DAE 400). In theory, perhaps, the people, acting in a constituent capacity, might establish fundamental principles of law and government. In fact, however, "the [British] people [have never] assembled together in one body so as that we may suppose these fundamentals to have been settled by the majority of individuals" (DAE 403). Instead, it was their representatives in Parliament who had established and from time to time had altered and even repealed various fundamentals, including parts of Magna Charta. "The same power may just as well alter them and in fact from time to time have been making continual alterations ever since we have any knowledge of the history of the constitution" (DAE 403-4). Parliamentary alterations of the fundamentals by which British freedom was defined was both historically preceded and constitutionally sound. And why not? If "[k]ing, nobles, and people agree to make an alteration in what were before fundamentals, who is there to complain" (DAE 403)? Hutchinson concludes: "Indeed, I know of no principle in the English constitution more fundamental and which is more certain always to remain than this, viz., that no act can be made or passed in any Parliament which it shall not be in the power of a subsequent Parliament to alter and repeal" (DAE 401). In short, Hutchinson held the traditional view of the British constitution. Through its statutory power, Parliament could alter the constitution, and it could (and did) periodically redefine the rights enjoyed by British subjects.

Nonetheless, in theory at least, it was conceivable that Parliament might abuse its fiduciary power and govern contrary to the public good. What recourse did the people have in the face of an irresponsible and unresponsive legislature? For Hutchinson, the people always retained a right to resist tyrannical government. The colonists, however, misconstrued the nature of that right. The right was neither an individual nor a legal right; rather, it was a communal and moral right. The right was communal in that only a majority of the community could refuse submission to government.

You will say, perhaps the people never delegated the power of departing from fundamentals: admit it and see what will be the consequence. Not that every man or every part of the community may refuse obedience to such acts, for this, as I observed before, would be directly contrary to the fundamental principles in all government, but the body of the people may rise and change the rulers or change the very form of the government, and
this they may do at all times and on all occasions, just when they please. (DAE 406)

Despite the contrary and popular view maintained in the colonies, Hutchinson wrote
correctively, this communal understanding of the right was the proper interpretation of
Locke's *Second Treatise*.

I never can believe that [Locke] . . . could intend that it is a principle in government
that any individual or any number of individuals short of the majority may refuse submission
to every act of government which he or they determine in their own minds abridge them of
more of their natural rights than the ends for which such government was instituted make
necessary. (DAE 395)

Otherwise, government would fall prey to the innumerable grievances of individuals
and minorities, and it would be incapable of fulfilling the primary function for which it was
created. "Now if individuals or any particular parts of a government may resist whenever
they shall apprehend themselves aggrieved, instead of order, peace, and a state of general
security-the great ends of government-we may well expect tumults, wars, and a state of
general danger" (DAE 393).

Equally important, the right to resist government was a moral rather than a legal right. Again,
the colonists misconstrued Locke's argument.

[I]f you take the whole of Mr. Locke's work together you will find he intends no more
by the passage you think so favorable to your cause than this, viz., that when the
legislative and executive powers of government shall cease to make the ends for
which government is instituted the rule of government, the people are under no moral
obligation to continue subject to them but may revolt and remove their governors or
mold themselves into any other form of government they think proper. (DAE 396-97)

Hutchinson's argument is carefully wrought here. While Parliament might govern in a
manner seemingly inconsistent with the public interest, neither the people (nor again, the
courts) have the constitutional power to overrule it. The colonists might satisfy themselves
that morally they are not obligated to comply with a law they believe violates fundamental
rights. Nevertheless, a duly enacted statute is by definition constitutional and binding on
individuals and the courts. That is why subjects may pronounce a bill void while it is being
considered, yet once it becomes law it is criminal to declare it so (DAE 404). Individuals who
refuse to comply with a law, even out of a sense of obligation to a higher law, are
necessarily subject to the "penal consequences of not conforming to the law" (DAE 405).

Similarly, an individual who seeks to foment revolution "must take the consequence of a
mistake if he attempts to stir up the body of a people to a revolt and should be
disappointed." Hutchinson explains that "in a moral view he may perhaps be innocent
(whether his attempt succeeds or not), but consider him as a member of the political body and
he must be pronounced guilty by the judiciary powers of that society if he fails of success.
This is a principle essential to the nature of government and to the English constitution as well
as all others" (DAE 406). In short, there is no legal or individual right to revolution. To claim
otherwise is to invite and justify the anarchy that government is instituted to overcome.

For Hutchinson, Parliament's statutory authority over the colonies was plenary. "I
know of no line," Hutchinson wrote, expressing the orthodox view of sovereignty, "that can
be drawn between the supreme authority of Parliament and the total independence of the
colonies: it is impossible there should be two independent Legislatures in one and the same
state" (SGM 340). Surely, Parliament ought to govern the colonies in accordance with
long-established legal principles. It was nonetheless conceivable that in its pursuit of the
public interest it might be necessary and reasonable for Parliament to "abridge British
Subjects of what are generally called natural rights" (ECR 481). Only Parliament could make such determinations. And since "the Parliament must be the final Judges and it is possible that it may be determined that the natural right of a Colonist is not the same with the natural right of an Inhabitant of Britain and that the Colonists have no sufficient Plea from their Charters or Commissions for exemption from Parliamentary taxes," Parliament might well determine that taxes levied on the colonists are in fact reasonable and necessary for the public good (ECR 487).

What remains for the colonists is to seek a repeal based on a claim in equity, which Hutchinson was confident Parliament would receive sympathetically. "I would humbly hope notwithstanding [Parliament's authority to tax] that we shall be considered in equity and if we have not strictly a claim of right we have of favour" (ECR 487). Still, an equity plea is not equivalent to a claim for a legal exemption, and Parliament is not obligated to accept the plea. Nor, despite the colonists' baseless invocation of Locke, does Parliament's decision to tax them justify acts of resistance.

Your quotation from Mr. Locke, detached as it is from the rest of the treatise, cannot be applied to your case. I know of no attempt to enslave or destroy you, and as you, very prudently, would not be understood to suggest that this people have occasion at present to proceed to such extremity as to appeal to heaven, I am at a loss to conceive for what good purpose you aduce it.15

The parliamentary measures that bind the colonies, particularly the tax measures, may be inequitable. However, they do not, however, constitute grave threats to the liberty of the colonists. Revolution-the extralegal "appeal to heaven"-is not warranted. Instead, the colonists must seek a repeal of the objectionable legislation by petitioning Parliament to repeal or alter the offending statute. Prudence dictates that such appeals should be made with due humility, for Parliament is less inclined to be sympathetic to an equity plea from the colonists that simultaneously appears to question Parliament's legal authority. Nevertheless, Hutchinson remains optimistic that Parliament will judge fairly. "When, upon the united representations and complaints of the American colonies, any acts have appeared to Parliament, to be unsalutary, have there not been repeated instances of the repeal of such acts?" (SGM 380).

Otis's Constitutional Argument Reconsidered

At this point, Otis and Hutchinson appear to occupy polar opposite positions. According to Hutchinson, Parliament was legally sovereign, and while it ought to honor the rights of British subjects "strengthened and confirmed by the most solemn sanctions and engagements," ultimately it defined those rights (ECR 481). Otis suggested the modern understanding of constitutional government in which political power is legally prescribed by a body of fundamental law that is judicially enforceable. In The Rights of the British Colonies, he argued that it is a natural right and a fundamental maxim of the British constitution for people to be free from taxation "but by their consent in person or deputation," and he seemed to maintain that the colonists were not represented in Parliament (RBC 446). From these premises one might expect Otis to call on the courts to pass the Stamp Act "into disuse." One might even expect Otis to conclude that Parliament did not possess any lawful authority over the colonies whatsoever.

In fact, however, Otis recognized Parliament's plenary authority in the colonies. "No less certain is it that the Parliament has a just and equitable right, power, and authority," he stated, "to impose taxes on the colonies, internal and external, on lands as well as on trade" (VBC 555). Like Hutchinson, Otis accepted the notion that Parliament was the sovereign or final legislative power in the empire. "In all states there is (and must be) an absolute
supreme power, to which the right of *legislation* belongs: and which by the singular constitution of these kingdoms is vested in the King, Lords, and Commons" (*VBC* 560). Because final legislative authority was vested in the King-in-Parliament, Parliament necessarily possessed the authority to tax the colonists. Otis thus rejected the distinction between taxation and other forms of legislation. It was illogical to declare that Parliament was the supreme political authority in the empire and yet claim that it lacked the authority to tax the colonies. The power to tax, Otis explained simply, "is involved in the idea of a supreme legislative or sovereign power of a state" (*VBC* 555-56). If Parliament did not possess the authority to tax the colonists, it lacked any legitimate claim of authority over them whatsoever. "If the Parliament had not such authority," Otis reasoned, "the colonies would be independent, which none but rebels, fools, or madmen will contend for" (*VBC* 565).

For Otis, however, political authority-and particularly the power to tax-was grounded in representation. The colonists were not represented in Parliament; therefore, Parliament could not tax the colonies. Nevertheless, Parliament was the supreme authority in the empire and thus possessed plenary authority in the colonies. Otis reconciled these positions by conceding in principle the notion of virtual representation. Given his view that the legislative authority in a society must be indivisible; given his beliefs that political authority was fiduciary and that representation is a necessary precondition for the exercise of lawful authority; and given the fact that the colonists were denied the suffrage in parliamentary elections, the acceptance of virtual representation stood perhaps as the only path by which Otis could defend parliamentary rule. This concession was rather expedient, a necessary step given his belief that Parliament's authority over the colonies was either complete or nugatory. Moreover, it was a concession with which he was never fully comfortable, as evidenced by the occasional lack of clarity in his remarks on the issue and by his consistent plea for extending the suffrage to the colonists.

Yet while Otis accepted the notion of virtual representation, he did not simply echo the argument for virtual representation offered by leaders in England. Like Hutchinson, Otis rejected the claim that the colonists were virtually represented in the House of Commons. Lack of representation in the House of Commons, however, did not imply a similar denial "of the authority of that august and transcendent body the Parliament, which is composed of the three branches of the grand legislature of the nation considered as united" (*VBC* 556). The "king, lords and commons, conjointly, as the supreme legislature, in *fact* as well as in *law*," Otis emphasized, "represent and act for the realm, and all the dominions, if they please" (*CBC* 125). What explained the distinction between a lack of virtual representation in the House of Commons and the actual (as well as virtual) representation in Parliament? Since in "truth ... the colonists are no more represented in the [H]ouse of Commons than in the [H]ouse of Lords," the answer must reside with the king (*CBC* 125).

Otis ultimately argued that it was the king and not members in Commons who represented British subjects throughout the empire (and in particular, in the dominions). The king served this representative function in two capacities. First, the king represented the colonies in the administration of the laws. "The king in his executive capacity, in *fact* as well as *law*, represents all his kingdoms and dominions" (*CBC* 125). For example, it was the king (and not the Lords or Commons) who enforced the laws through his various colonial officers, and colonial interests and grievances were heard in the king's privy council and other royal boards such as the Board of Trade. Second, the king represented the colonists as a participant in the supreme legislature. The king could serve in this second, representative capacity because he saw in the welfare of the empire the legacy of both his person and the Crown. A genuine love for his subjects and a desire to achieve glory led the king to pursue the common good for all his subjects. "We are blessed," Otis declared, "with a prince who has given abundant demonstrations that in all his actions he studies the good of his people and the true glory of his crown, which are inseparable" (*RBC* 448).
Otis’s argument about representation is important to understanding his response to the Stamp Act; once Otis found that the colonists were represented in Parliament, it followed that Parliament’s plenary power rightfully extended to the colonies. And if Parliament was the supreme legislative power for the colonies, it followed that the Stamp Act did not raise a constitutional issue regarding Parliament’s legal authority. Rather, for Otis—as for Hutchinson—the issue of parliamentary taxation raised the issue of equity. "The right of a supreme power in a state to tax its colonies is a thing that is clear and evident; and yet the mode of exercising that right may be questionable in point of reason and equity" (VBC 564).

According to Otis, Parliament possessed the legal authority to tax the colonists; however, long-standing custom showed that the colonies had always been exempt from parliamentary taxation—a point with which Hutchinson largely concurred. More important, "the rules of equity and the principles of the constitution seem to require this [exemption]" (RBC 468). Since the colonists did not participate in parliamentary elections and thus did not return members to Commons, Parliament ought not to levy taxes on them. Still, because the colonists were ultimately represented in Parliament by the king, the British legislature possessed the legal authority to tax them.

[[I]n special cases the British Parliament has an undoubted right as well as power to bind both [Ireland and the American colonies] by their acts. But whether this can be extended to an indefinite taxation of both is the great question. I conceive the spirit of the British constitution must make an exception of all taxes, until it is thought fit to unite a dominion to the realm. Such taxation must be considered either as uniting the dominions to the realm or disenfranchising them. If they are united they will be entitled to a representation as well as Wales; if they are so taxed without a union or representation, they are so far disenfranchised. (RBC 467)

For Parliament to tax the colonists while they were denied an actual representation in Commons violated fundamental principles of equity and the spirit of the constitution. The politically just thing to do, Otis insisted, was for Parliament to allow an American representation at Westminster. "When the Parliament shall think fit to allow the colonists a representation in the House of Commons, the equity of their taxing the colonies will be as clear as their power is at present of doing it without, if they please" (RBC 465). Equity demanded that taxation and the franchise coincide. Until the colonists returned members to Commons, justice demanded that they remain exempt from parliamentary taxation.

Furthermore, because for Otis the Stamp Act raised issues pertaining to equity and not legal authority, Otis did not call upon the courts to judge the Stamp Act void. It was evident to Otis that in equity cases judges could not disregard the manifest intent of Parliament. "The equity and justice of a bill may be questioned with perfect submission to the legislature," Otis explained. "Reasons may be given why an act ought to be repealed, and yet obedience must be yielded to it till that repeal takes place" (RBC 449). Why were the courts powerless in the face of legislative statutes that seemed to violate natural equity? "There would be an end of all government if one or a number of subjects or subordinate provinces should take upon them so far to judge of the justice of an act of Parliament as to refuse obedience to it" (RBC 448). Otis was sensitive to the same objections Hutchinson raised regarding the judicial authority. If the courts could rule authoritatively in equity cases, political stability would suffer. Upset over the effects of legislation, subjects might appeal to judges to have the laws annulled. Judges exercising such discretionary power might act more as legislators than as judges, and if subjects could appeal to judges to have statutory laws vacated, they might always look for a judge sympathetic to their plea.

Once Otis’s concerns regarding the courts’ equity jurisdiction are understood, his remarks about the Stamp Act grow clear. Judges could pass judgment on legislation they
conceived to be inconsistent with equity, but when the legislature spoke declaratively, judges were bound to apply the statute. Judicial opinions against an inequitable law were just that: opinions. They were dicta and carried no legal weight. When the legislature spoke decisively, judicial opinions against a statute were akin to private judgments. "If there is not a right of private judgment to be exercised," Otis explained in a passage that captures his constitutional argument,

so far at least as to petition for a repeal or to determine the expediency of risking a trial at law, the Parliament might make itself arbitrary, which it is conceived it cannot be by the constitution. I think every man has a right to examine as freely into the origin, spring, and foundation of every power and measure in a commonwealth as into a piece of curious machinery or a remarkable phenomenon in nature, and that it ought to give no more offense to say the Parliament have erred or are mistaken in a matter of fact or of right than to say it of a private man, if it is true of both. If the assertion can be proved with regard to either, it is a kindness done them to show them the truth. With regard to the public, it is the duty of every good citizen to point out what he thinks erroneous in the commonwealth. (RBC 449-50)

Like private individuals, judges could voice their opinions on the inequity of a law. When judges declared that a law violates natural equity, they merely exercised the right that "every subject has ... to give his sentiments to the public, of the utility or inutility of any act whatsoever, even after it has passed, as well as while it is pending" (RBC 449). This right was consistent with parliamentary supremacy. Voicing objections to a statute was not in itself a sign of disloyalty. It was a sign of fidelity, an act of "kindness" which reconfirmed the public's faith in Parliament's benevolence. Only acts of disobedience could be construed as a sign of faithlessness.

Otis went further. It was not merely a right but a public obligation for subjects to express their opinions on parliamentary measures. For judges, it was a constitutional obligation. "If the reasons that can be given against an act are such as plainly demonstrate that it is against natural equity, the executive courts will adjudge such acts void. It may be questioned by some, though I make no doubt of it, whether they are not obliged by their oaths to adjudge such act void" (RBC 449). Only by expressing their legal objections to a parliamentary statute could judges, as representatives of the king, exercise their constitutional function to check and balance the legislature. In the British constitution, he maintained, "[t]he supreme legislative and the supreme executive are a perpetual check and balance to each other. If the supreme executive errs it is informed by the supreme legislative in Parliament. If the supreme legislative errs it is informed by the supreme executive in the King's courts of law" (RBC 455). Judges thus played an important role in maintaining the constitution and in restraining Parliament from exercising its power in an inequitable manner. Judges performed this role in part through their power of statutory interpretation. But Otis stops short of arguing that judges could check legislative action by refusing to enforce a statute in cases where Parliament's intent was clear. "There is nothing in all this [the judicial construction of statutes] that can in the least impeach their power, right and authority to make laws" (DHL 169). Where Parliament sought to govern, the courts could merely "inform" Parliament of its error. In sum, while judges could not disregard a clear statutory mandate that contradicted natural equity, they could rule in a way that would alert Parliament to its error, confident that the legislature, which sought to govern in accordance with equity and the constitution, would alter or rescind the law once it became aware of the statute's flaw.

But what if Parliament deliberately enacted a law patently offensive to reason and justice? It was impossible to conceive. It would "be the highest degree of imprudence and
disloyalty to imagine that the King, at the head of his Parliament, could have any but the most pure and perfect intentions of justice, goodness, and truth that human nature is capable of" (RBC 448). Because one might presume that Parliament intended to govern according to law and equity, one could trust that judicial determinations would bring relief. Meanwhile, people must obey the law while it was in place, confident that Parliament would remedy the mistake. The point was that Parliament sought to govern for the common good. Statutes which were not in the common interest or which violated principles of equity were either the result of inadvertent error or, as was unfortunately the case with the colonies, the result of erroneous information given to Parliament by "vile informers" who deliberately misled Parliament in an effort to promote their own fortunes (CBC 119).

What Otis's Rights of the British Colonies was designed to do, then, was to persuade Parliament of the inequitable nature of the Stamp Act and to secure its repeal in a manner consistent with respectful, private judgment. In fact, Otis's pamphlet can be read as a type of legal brief, a complaint in equity typically reserved for pleas in private cases. Otis's pamphlet sought to demonstrate that the colonists had standing to bring the suit and that the statute effected particular, that is, unequal injustice in the colonies. Still, the pamphlet was directed at Parliament, since equitable relief from an onerous statute was available only from Parliament itself.

Conclusion

In the end, Otis offered an argument that was nearly identical to Hutchinson's in its conclusions and in significant ways similar in its presuppositions. Sovereignty was by nature indivisible, and in the wake of the Glorious Revolution it was placed in the King-in-Parliament. By discovering sources of colonial representation or consent, Otis and Hutchinson reconciled the fact of parliamentary rule with their beliefs about the consensual basis to legitimate politics. At the same time, both men urged that the colonial charters ought to be considered "as a perpetual rule of Government for the respective Colo[nies] that they should have Assemblies of their own chusing to ma[ke] laws for their government [and] to raise moneys by taxes &c." (ECR 481-82). As long as the colonies were denied representation in the House of Commons, adherence to equity and constitutional principles required that they remain exempt from parliamentary taxation.

Otis further held that even if Parliament invited the colonists to return members to Parliament, there remained compelling reasons why the colonial legislatures, rather than Parliament, ought to exercise the taxing power in the colonies. "No representation of the colonies in Parliament alone would . . . be equivalent to a subordinate legislative among themselves," he concluded, "nor so well answer the ends of increasing the prosperity and the commerce of Great Britain. It would be impossible for the Parliament to judge so well of their abilities to bear taxes, impositions on trade, and other duties and burdens, or of the local laws that might be really needful, as a legislative here" (RBC 445-46). Prudence, if not equity, directed that the colonial governments continue to enjoy the privileges they historically had been granted. There was no compelling need for the introduction of parliamentary taxes. After all, Parliament had regularly exercised its authority over colonial trade—even to the point of prohibiting certain commercial endeavors in the colonies—for the benefit of the mother country. It was for the very purpose of protecting and expanding the "advantageous trade she had so long carried on with her Colonies," Hutchinson observed, and not to "save them from french Vassalage," that Great Britain waged the Seven Years' War (ECR 489). Nevertheless, the colonies contributed generously to the war, despite the fact that England was the prime beneficiary and despite the fact that historically the colonies had not received any assistance from England to defend themselves from the French.
One could understand, then, why Otis chafed at the notion held by members of Parliament, as well as by Hutchinson, that the colonies were equivalent to corporations (i.e., subordinate governments) in England. Unlike the colonies, Otis pointed out, such corporations were in fact represented in Parliament, and they were not burdened with the "great expense [of] raising men, building forts, and supporting the King's civil government here [in the colonies]" (RBC 468). For Parliament to tax the colonies while they were denied the franchise "would seem to be a contradiction in practice to the theory of the constitution" (RBC 470). Still, Otis ultimately presumed that parliamentary law was legally binding until Parliament, "convinced that their proceedings are not constitutional or not for the common good," amended or rescinded the offending statute (RBC 448). Like Hutchinson, Otis perceived the courts to be a component of the executive. Lacking coequal constitutional status with the legislature, the courts could not compel Parliament to comply with the constitution. Certainly, there were limits to Parliament's authority.

To say the Parliament is absolute and arbitrary is a contradiction. The Parliament cannot make 2 and 2, 5: omnipotence cannot do it. The supreme power in a state is *jus dicere* only: *jus dare*, strictly speaking, belongs alone to GOD.... Should an act of Parliament be against any of his natural laws, which are *immutably* true, *their* declaration would be contrary to eternal truth, equity, and justice, and consequently void. (RBC 454)

The point was that Parliament itself would adjudge it void once it recognized its error. "Upon this great principle Parliaments repeal[ed] such acts as soon as they find they have been mistaken in having declared them to be for the public good when in fact they were not so" (RBC 454-55). To say that *strictly speaking* Parliament could do no wrong, however, did not preclude Otis and Hutchinson from looking to extralegal measures as the ultimate check on government's exercise of power. Here, finally, we begin to discern important (if subtle) differences between them. Otis was much more aggressive than Hutchinson in his assertion of the right to revolution. Whereas Hutchinson seemed far more concerned about the potential abuse of the right, Otis emphasized its obligatory nature. For Otis, the law of nature requires that "they [who] verge towards tyranny . . . are to be opposed" (RBC 427). While Otis never directly explains the nature of this obligation—when analyzing the right, he instead appears content to quote at length from Locke—his suggestion that the duty stems from a source of binding law independent of government is an important indication of the novel constitutional framework he was attempting to erect.

It is in his characterization of the British constitution as a rule of law that Parliament is bound to respect that Otis's argument takes on special significance. For Otis, the British constitution establishes "first principles of law and justice" that limit Parliament as well as the king. Indeed, for Otis the constitution was "re-established at the Revolution" with the intent of securing in perpetuity the rights of British subjects (RBC 446). These rights are "part of a British subject's birthright, and as inherent and perpetual as the duty of allegiance" and therefore are to be "held sacred and inviolable" (RBC 466). Moreover, Otis suggested that these limits are fixed and known at law. It is here in particular that Otis's writings reveal the efforts of an innovative thinker grappling with new ideas and their implications. In suggesting that the British constitution was a fundamental body of law paramount to Parliament, Otis's argument diverged from Hutchinson's and challenged a prevailing norm. For Otis, unlike Hutchinson, it was possible for Parliament to enact a law that was unconstitutional. The constitution was in this sense fixed. That is why citizens could pronounce their opinions about legislation even after it became law. Judges in particular were obligated to declare their opinions on parliamentary statutes. Passing judgment on legislation—even nonbinding
judgment—was for Otis not merely an abstract moral duty but a constitutional obligation, for it was through this process that Parliament was led to correct its errors and govern in accordance with the constitution. While ultimately he did not articulate the power of judicial review, he nonetheless perceived a constitutional role for the courts in controlling Parliament and, therefore, in maintaining the constitution.

Finally, while Otis did not recognize the full implications of his argument, and while in his various essays he failed to articulate his ideas clearly and thus left himself open to charges of inconsistency, he was the first colonial thinker to inject these ideas into the political discourse. Other thinkers would build on them. Within a decade, clear expressions of modern constitutional doctrine were available in the colonies. Years later, John Adams would reflect on Otis's influence on colonial thinkers. "Otis was a flame of Fire," Adams would write, reminiscing on Otis's performance before the bench in Paxton's Case. "With the promptitude of Classical Allusions, a depth of Research, a rapid Summary of Historical Events and dates, a profusion of legal Authorities, a prophetic glare of his eyes into futurity, and a rapid Torrent of impetuous Eloquence, he hurried away all before him; American Independence was then and there born." 17

Notes


2. According to the American colonists, the Stamp Act (1765), along with the Sugar Act (1764), represented a major change—and a dangerous precedent—in British policy toward the colonies. Both laws levied taxes on the colonists. The Stamp Act was viewed by the colonists as especially objectionable, requiring the use of specially stamped paper (shipped from London and for which the colonists would pay a tax) for legal documents, diplomas, property deeds, newspapers, advertisements, and more.

3. There is no single cause for Hutchinson's public disaffection. Even before the Stamp Act crisis, Hutchinson had a reputation—not wholly unearned—for being covetous of appointed office. At the time of the Stamp Act, he held four posts in the Massachusetts colony: lieutenant governor, president of the council, chief justice, and judge of probate. Hutchinson himself believed that his role in the writs of assistance case in 1761 (discussed below) had helped to make him an unpopular figure. Moreover, by 1761 Hutchinson and Otis were feuding, the result of Hutchinson's appointment in 1760 as chief justice of the superior court. Otis's father believed that he had a claim to a position on the bench, and when Governor Bernard instead tapped Hutchinson, Otis concluded that Hutchinson had cheated his father out of the office. From that moment, Otis and Hutchinson continually feuded. As leaders in their respective legislative chambers, Otis and Hutchinson often clashed, with Otis's public declarations against Hutchinson intensifying in the months following passage of the Stamp Act. On Hutchinson's political career and his relationship with Otis and Bostonians generally, see Bernard Bailyn, The Ordeal of Thomas Hutchinson (Cambridge, Mass.: Harvard University Press, 1974).

4. The idea of virtual representation was a response to the claim that people denied the suffrage were not represented in Parliament. Essentially, virtual representation assumed a compatibility of interests between voters and nonvoters. Nonvoters were represented because they shared common interests with citizens who possessed the franchise: while representing the interests of voters, members of Parliament would simultaneously pursue the interests of nonvoters. During the Stamp Act crisis, members of Parliament argued that the colonists were virtually represented. The colonists rejected this claim.

5. This statute was enacted in 1662 and is quoted in Legal Papers of John Adams, ed. L. Kinvin Wroth and Hiller B. Zobel, 3 vols. (Boston: Harvard University Press, 1965), 2:131. The editors provide a fine summary of the controversy, to which I am indebted.

6. Papers of John Adams, 2:127-28. In Bonham's Case, Thomas Bonham was fined by the president and censors of the Royal College of Physicians for practicing medicine in the city of
London without a certificate from the college. The president and censors also forbade him, under pain of imprisonment, from practicing medicine until he had been admitted by them. Bonham continued to practice, however, and when he was imprisoned, he brought an action of false imprisonment against the leading members of the college. Chief Justice Sir Edward Coke ruled that the college did not possess the authority to fine and imprison unlicensed physicians. Because the censors were to receive one-half of the fines, they would be judge and party to any case that came before them. The statute in question thus contradicted a maxim of the common law that no man can be a judge in his own case. Coke wrote: "And it appears in our books that in many cases the common law will control acts of parliament and sometimes adjudge them to be utterly void: for when an act of parliament is against common right or reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such act to be void." The reference to Bonham's Case is in Coke, The reports of Sir Edward Coke ... , Bk. 8:118a, cited by Otis from an extract provided in Charles Viner, A General Abridgment of Law and Equity, Alphabetically Digested under Proper Titles ... (Aldershot, 1741-1751), 19:512-13.

7. Bonham's Case, in Coke, The reports of Sir Edward Coke ... , Bk. 8:118a.


9. Otis cites three cases which purport to buttress Coke's argument in Dr. Bonham's Case. The cases are: Hobart's judgment in Day v. Savadage (1614), Duchess of Hamilton v. Fleetwood, and Holt's decision in City of London v. Wood (1701). According to John Adams, who was present during oral argument in Paxton's Case and whose notes provide the only documentary record of those arguments, Otis used the same references (including the reference to Vattel) in his argument before the bench. See John Adams to William Tudor, August 21, 181, in Works of John Adams, ed. Charles Francis Adams, 10 vols. (Boston: Little and Brown, 1850-1856), 10:351.


11. Hutchinson apparently accepted the idea of virtual representation in Parliament, but he denied that the colonists were virtually represented there. See Thomas Hutchinson, "Essay on Colonial Rights (1764)," in Edmund S. Morgan, "Thomas Hutchinson and the Stamp Act," New England Quarterly 21 (1948): 486, hereafter cited in the text as ECR.


13. Under English law at the time, Roman Catholics were subject to double taxation on land.

14. Hutchinson adopts the interpretation of the 1688 Revolution put forth by the Convention Parliament, namely, that no dissolution had occurred and that Parliament, acting in accordance with precedent and the constitution, had merely filled a vacancy of the throne. He writes: "There was no new constitution settled at the [Glorious] Revolution. The Bill of Rights was declaratory. In former reigns there had been a deviation" (DAE 376).


16. One might read Otis narrowly here to mean only that subjects could question the wisdom-and not the legality-of legislation once it had passed. I think he intends otherwise. Recall that he states that subjects may properly question a law's compatibility with the constitution: "I think
every man has a right to examine as freely into the origin, spring, and foundation of every power and measure in a common-wealth as into a piece of curious machinery or a remarkable phenomenon in nature, and that it ought to give no more offense to say the Parliament have erred or are mistaken in a matter of fact or of right than to say it of a private man" (RBC 450). Moreover, even if one reads Otis's statement as a prohibition of sorts against private individuals "declaring" a law to be contrary to the constitution and hence void, it does not follow that judges, acting in their legal capacity, are similarly bound.

Chapter 4

Benjamin Franklin: A Model American and an American Model

Steven Forde

Though he was one of the most renowned and influential of the American Founders, Benjamin Franklin (1706–1790) never produced a systematic work of political philosophy. He tended to think of such exercises in “metaphysical Reasonings” as futile and unreliable guides to political and moral life. Yet he was not a man of uncertain conviction. To the contrary, he was quite outspoken in his political views, and all his public writings are devoted in one way or another to spreading a certain set of principles and ideas. These ideas and principles constitute a well-considered and coherent body of thought, but one whose contours must be inferred from writings whose focus is hardly ever theoretical. In all important respects, Franklin’s ideas are in accord with those of his fellow Founders. Intellectually, Franklin is firmly within the horizon of modernity laid out by the likes of John Locke and David Hume. Due to his distinctive intellectual concerns, Franklin’s thought makes some novel contributions to the modern intellectual project as a whole.

Franklin’s career took him down a very different path from that of the other American Founders. Born in very humble circumstances in Boston in 1706, he made his way to Philadelphia at age seventeen, where he set up as a printer. This trade kept him in constant contact with the intellectual productions of Britain, and it helped him become an accomplished essayist (and propagandist) himself. His researches in electricity, which made real contributions to scientific understanding, gained him notice on both sides of the Atlantic. He had a long-standing interest in politics and served in many official and unofficial capacities in Philadelphia. In 1757, he was sent to London to represent the interests of colonial Pennsylvania. He stayed there, representing one or more of the colonies, for all but two of the years from 1757 to 1775. In 1776, after a brief return to America, he was sent to Paris as diplomat from the fledgling United States to the French court. He returned to Philadelphia in 1785 and participated in the Federal Convention of 1787 before his death in 1790. By the end of his life, Franklin’s reputation in America was such that some thought the Constitution was ratified only due to widespread knowledge that he and George Washington supported it. Franklin was the only American whose name was widely known outside America before 1776, based on his researches into electricity and his diplomacy on behalf of the American colonies. Jacques Turgot’s famous eulogy, *Eripuit caelo fulmen scep-trumque tyrannis*—“he seized lightning from the heavens and the scepter from tyrants”—encapsulated Franklin’s international renown. These two things—the advancement of science and the struggle for political freedom—epitomize not only Franklin’s career but also the aspirations of modern philosophy as such.
His *Autobiography* (written in three parts, in 1771, 1784, and 1788, but published posthumously) is the most extensive piece of writing Franklin produced. Though it is unfinished, it was written deliberately for educational purposes, and it represents the most complete statement of the teaching Franklin wanted to bequeath to his posterity. The *Autobiography* shows Franklin rising from low origins to a position of prosperity and influence, all the while living a life of the greatest contentment. It shows Franklin learning some hard lessons, curing himself of some vices, and discovering the virtues that lead to success and happiness both. The *Autobiography* presents Franklin self-consciously as a model citizen for the democratic and commercial societies that were then taking shape. It reflects Franklin's considered teaching regarding the requirements of such societies and of the happiness of the individuals in them.

The early pages of the *Autobiography* show us an unusually bookish young man, initially destined for the clergy, who devoured the volumes he found in his father's library in Boston. Among these were Plutarch, Daniel Defoe's *Essay on Projects*, and Cotton Mather's *Essays to Do Good*, all of which, Franklin tells us, had a profound, positive effect on him. He also found many books of "polemic Divinity," whose influence was less salutary. They helped give his thinking and his speech a disputatious turn, a vice into which "Persons of good Sense" seldom fall. As to the substance of these books, the precocious Franklin found the Deist positions being attacked more persuasive than the polemics against them, making him a "thorough Deist" by age fifteen. He soon fell upon a copy of Xenophon's *Memorabilia* and adopted an eristic style of questioning patterned on the Socrates he found there. Putting these two things together, he took to questioning his fellow Bostonians on their religious beliefs. In short order, he came to be regarded by them with "Horror," as an "Infidel or Atheist" (1321, 1325). For this and other reasons, he shortly felt compelled to leave Boston.

This series of events, Franklin tells us, taught him something about civility and social order: an affirmative and dogmatic conversation is liable to make enemies rather than friends, make social relations unpleasant, and limit one's influence by limiting one's ability to persuade (1321–22). Hence, he abandoned his dogmatism and his eristic style and developed the habit of almost never expressing himself in terms of affirmative certitude. He did not, however, lose his fascination with abstract reasoning upon religious and philosophical subjects, at least not immediately. To the contrary, he was so enamored with this type of thought that, at different moments during his early life, he composed two separate essays arguing opposite and incompatible positions on free will, virtue, and Providence. Yet the two arguments were equally unimpeachable, so far as he could tell. This experience led him to the momentous conclusion that such questions could not be resolved by human reason. "The great uncertainty I found in metaphysical reasonings disgusted me," he later told a correspondent, "and I quitted that kind of reading and study for others more satisfactory" (1016; cf. 1359).

The new studies to which Franklin turned embraced the subjects of politics, morality, and even religion. What he renounced were attempts to ground his understanding of these matters in "metaphysics." The *Autobiography* relates a pivotal series of episodes in which the young Franklin discovered that his metaphysically anchored Deism corrupted some of his companions. His demonstrations convinced them that there could be no particular Providence; but, without the prospect of divine rewards and punishments, their morality proved evanescent. These friends subsequently "wronged me greatly without the least Compunction," Franklin complains, leading him to an epiphany of sorts. "I began to suspect that this Doctrine tho' it might be true, was not very useful," and he replaced it with a moral outlook based on the premise that "Truth, Sincerity
& Integrity in Dealings between Man & Man, were of the utmost Importance to the Felicity of Life” (1359).

We must be careful to understand correctly this intellectual and moral turn in Franklin’s life, for it forms the foundation of all his subsequent thinking. It is not that Franklin rejects “truth” in favor of what is “useful”; rather, he is careful to clarify, the harmful consequences of his Deism led him to suspect that the logic behind it had been defective, since error is liable to creep into all speculative “metaphysical Reasonings” (1359). It is their uncertainty that leads Franklin to leave such reasonings behind in favor of the conviction that “Truth, Sincerity & Integrity in Dealings between Man & Man” is the touchstone of morality. Henceforth, this principle and its derivatives become the poles of Franklin’s moral compass.

In doubting metaphysics, however, Franklin does little more than some of his predecessors in modern moral philosophy. Locke’s Essay Concerning Human Understanding, a work with which Franklin was familiar, begins with a declaration that human reason is incapable of resolving many of the metaphysical disputes in which earlier philosophy (and theology) became embroiled. Locke nonetheless says that reason is capable of putting morality on a new and more solid foundation, rooted in an empirical assessment of what is good for man’s life. David Hume, a man personally known to Franklin, says that our social and political duties have two sources, neither of which is “metaphysical”: the first is humane moral sentiments; the second is the benefits that moral action brings to society. It is essentially an empirical question what rules of justice and decorum benefit society. Hume’s well-known denial of the social contract reflects this outlook: our obligations stem not from some hypothetical original agreement but from the goods that society confers on us. The obligation is based not on a priori speculation but on a posteriori discovery of social utility.

Franklin is not simply a disciple of Locke or Hume, but these examples show the type of reasoning that lies behind his political and moral thought. When he renounces “metaphysical Reasonings” about morality in favor of the principle of “Truth, Sincerity & Integrity in Dealings between Man & Man,” he is not outside the fold of modern philosophy. His moral lodestar is not metaphysically, but empirically derived. Morality is that which experience shows to be most conducive to human happiness—“the Felicity of Life,” as he put it. That this type of utility is the cornerstone of morality is a theme Franklin returned to again and again in his writings. In part II of the Autobiography, where he gives the most systematic account of his moral teaching, he states his position this way: “vicious Actions are not hurtful because they are forbidden, but forbidden because they are hurtful, the Nature of Man alone consider’d” (1392). Morality is (or should be) nothing but the sum of rules that serve our happiness, according to a proper understanding of our nature. Virtue is not in its essence self-suppression or self-sacrifice; rather, it is almost the reverse. Virtue might require the regular denial of certain appetites and pleasures but only in the name of greater overall happiness.

Armed with this view of things, Franklin (like Locke, Hume, and others) sifted the morality that had been bequeathed to him, rejecting some rules and accepting others based on his candid assessment of human nature and the happiness of which it is susceptible. This is what allows Franklin, despite his metaphysical skepticism, to make such sweeping statements as: “the chief Ends of Conversation are to inform, or to be informed, to please or to persuade” (1322). This statement is the culmination of Franklin’s critique of disputatiousness and dogmatism in speech: these become vices because they undermine the prospects of pleasant and mutually beneficial social relations, and thereby the happiness of the speaker and those with whom he has to deal. The same principle is at work in the remarkable “Speech of Miss Polly Baker” (1747), a fictional piece in which the heroine is hailed before a court “for having a Bastard Child”—for the fifth time (305–8). In her defense, she appeals to nature, whose purposes include the propagation of
the race. Though a perfectly upstanding citizen in every other respect, she says, she has been repeatedly abandoned by scurrilous men, including some prominent in the community. In fine, not her behavior but the law needs adjustment, in order to bring it into line with nature and with human well-being. In typical fashion, Franklin adds that this speech induced the court to pardon her—and one of the judges to marry her.

It is easy to see, on the basis of vignettes like this, why John and Abigail Adams regarded Franklin as a libertine. Yet this is only a consequence of Franklin’s principle that every moral stricture that cannot be justified by social utility and personal happiness is to be rejected, no matter how apparently sacrosanct. A large part of Franklin’s motivation as a thinker and essayist is the humane one of liberating mankind from needless restrictions on their appetites, clearing the way for the pursuit of happiness rationally understood. In this fundamental undertaking, he treads solidly in the footsteps of his philosophical forebears.

II

This background is necessary in part because Franklin is so often viewed as the apostle of a dreary bourgeois morality, a bloodless and repressive “Protestant Ethic.” This impression stems from Franklin’s emphasis on industry, frugality, and the other virtues of economic gain, and from the relentless moralizing of Poor Richard in largely the same vein. A compendium of Poor Richard’s sayings that Franklin composed in 1757 became widely known as “The Way to Wealth”—and for good reason. There is no denying that this is the part of Franklin’s moral teaching that he took most care to spread far and wide. He tells us that he inserted the sayings of Poor Richard in his almanac “as a proper Vehicle for conveying Instruction among the common People, who bought scarce any other Books” (1397). He also proposed putting such sayings on coins, fireplace tiles, and other places where they might be constantly seen (888, 1011). He wished no opportunity for instruction in these simple virtues to go unused.

The Autobiography explains Franklin’s reasoning. He advertised industry and frugality “as the Means of procuring Wealth and thereby securing Virtue, it being more difficult for a Man in Want to act always honestly, as . . . it is hard for an empty sack to stand upright” (1397). The emphasis on these two virtues is appropriate because they form a bulwark against poverty and the temptations to dishonest gain that it brings. A certain level of economic prosperity is necessary to “secure” virtue. Industry and frugality are vital precisely because they are linked to economic gain; gain to prosperity; and prosperity ultimately to virtue. Franklin’s procedure presumes that it is futile to expect virtue from destitution—that human nature will not reliably hew to the path of virtue without a certain level of comfort. Besides, if virtue in its essence is the servant of human happiness, it cannot be estranged from economic gain. It is important to recognize, though, that economic gain is not for Franklin an end in itself. The virtues of economic gain are the beginning, not the end, of his moral teaching. The point is not to fill the sack but to allow it to stand upright.

In part II of the Autobiography, Franklin outlines a project that he once conceived to develop an “Art of Virtue.” Originally intended to be the subject of a separate publication, its purpose is to allow anyone to cultivate virtue—indeed, to achieve “moral Perfection” (1383). Its centerpiece is a list of thirteen virtues, with a brief gloss on each:

1. TEMPERANCE (Eat not to Dulness. Drink not to Elevation).
2. SILENCE (Speak not but what may benefit others or your self. Avoid trifling conversation).
3. ORDER (Let all your Things have their Places. Let each Part of your Business have its Time).
5. Frugality (Make no Expense but to do good to others or yourself: i.e. Waste nothing).
6. Industry (Lose no Time—Be always employ'd in something useful—Cut off all unnecessary Actions).
7. Sincerity (Use no hurtful Deceit. Think innocently and justly; and, if you speak, speak accordingly).
8. Justice (Wrong none, by doing Injuries or omitting the Benefits that are your Duty).
9. Moderation (Avoid Extremes. Forbear resenting Injuries so much as you think they deserve).
10. Cleanliness (Tolerate no Uncleanliness in Body, Cloaths or Habitation).
11. Tranquility (Be not disturbed at Trifles, or at Accidents common or unavoidable).
12. Chastity (Rarely use Venery but for Health or Offspring; Never to Dulness, Weakness, or the Injury of your own or another's Peace or Reputation).
13. Humility (Imitate Jesus and Socrates).

These are very basic virtues—the classical philosophers Aristotle and Cicero would scarcely acknowledge some of them as virtues—but they are the virtues that humble folk need to cultivate in order to gain a solid footing in life. They involve considerable discipline, which is why Poor Richard must harp on them constantly. But they impose no needless restraint on our actions or appetites (consider but the loopholes in the virtue of "Chastity"). The first step to a life of happiness involves the development of habits of self-control outlined in these virtues.

It is always necessary to bear in mind Franklin's audience when considering his moral teaching. Unlike most of his fellow Founders, and unlike most of his comrades in the modern philosophical movement, Franklin addressed himself forthrightly and deliberately to the common people. If Franklin has a distinctive contribution to make to the development of modern political thought, it is his reflections on the virtues that these people would need in the emerging liberal and egalitarian order of things. These virtues of self-reliance and self-advancement are as different from the old virtues as is the new order itself from its predecessors. We might even say that Franklin's homely virtues represent the true face of modern moral philosophy (or at least a part of it, for industry, frugality, and the other virtues listed above are not the whole of Franklin's moral teaching).

The primary difference between Franklin and other modern thinkers might therefore be said to be rhetorical. From the very beginning of his intellectual career, as a printer's apprentice to his brother in Boston, Franklin was writing essays aimed at shaping public morality—above all, the morality of common folk. The *noms de plume* alone convey his message. Silence Dogood, who appeared in 1722, was a Boston widow—"an Enemy to Vice, and a Friend to Vertue"—endowed with "a natural Inclination to observe and reprove the Faults of others" (8). Some years later, the "Busy-Body" debuted in Philadelphia, a self-proclaimed *Censor Morum* for the public good. Since "*what is every Body's Business is no Body's Business,*" this public servant proposed to make use of the delightful people take in the censure of others to expose those vices and delicts that lie beneath the notice of law, yet which are harmful to society (92, 104). While the modern understanding of liberty prevents government from policing morality per se, good mores are nonetheless vital to the health of society. As Tocqueville was later to argue at length, this means that modern democratic societies must police themselves. This is the task that Franklin took up with wit and gusto, using his bully pulpit to chide his fellow Americans into virtue.

Franklin was significantly older than most of the other American Founders, and he lived during a time when the liberal and egalitarian political dispensation was still gestating. Beginning with Silence Dogood, Franklin's writings evince a distinctive view of the requirements of social health within the parameters of the coming order. For the first time, human beings—particularly the common people—were free to govern themselves, both politically and privately. Colonial
America was the first real laboratory for this experiment. Though inheriting the culture of aristocratic and monarchical Europe, it was de facto an egalitarian society. Nominally ruled from abroad, it was allowed to rely largely on local self-government from the beginning. In a sense, it had to develop on its own the culture that would make the new order viable. Franklin’s essays—indeed, his oeuvre as a whole—reveal his intention to be the midwife of this emerging culture.

The new order, to a much greater extent than the old, would stand or fall by the virtues of the common man. While the common man now had unprecedented freedom, he would have to make proper use of it. The first virtues for free people who begin life with little are necessarily the virtues of economic self-reliance. As Franklin’s parable of the empty sack indicates, a measure of prosperity must be earned by such people before they can concern themselves with anything else. The situation in America was unusually hospitable to this project, as opportunity abounded, and industry and frugality were virtually certain to be rewarded. Even so (as numerous emerging nations have since learned), opportunity, even with the incentive of material advancement, is not enough in itself to guarantee individual or social prosperity. The virtues of honest gain are required as well, and these are the virtues that Franklin, and Poor Richard, concern themselves with first. They know that illicit or unearned gain, or even slothful poverty, are standing temptations. In some writings on the unintended consequences of poor laws, Franklin is remarkably harsh toward those who take advantage of the dole to cease working: “[I]f we provide encouragements for Laziness, and supports for Folly, may it not be found fighting against the order of God and Nature, which perhaps has appointed Want and Misery as the proper Punishments for, and Cautions against as well as necessary consequences of Idleness and Extravagancy” (469). Franklin was a great friend to the common man, but he had little patience for the vices into which he might fall, vices that needed constantly to be guarded against. As Poor Richard notes at the conclusion of “The Way to Wealth,” where his sayings on industry, frugality, and honest gain are strung into a single harangue: “the People heard it, and approved the Doctrine, and immediately practiced the contrary” (1302). Humble as they may be, virtues such as industry and frugality are not to be taken for granted. They are, in some sense, the founding virtues of the new social order.

III

To say that they are the founding virtues, however, is not to say they are the only virtues, and Franklin’s emphasis on them should not blind us to the rest of his moral teaching, nor to his fully developed view of a healthy social order. Economic self-reliance may be the indispensable first step toward a successful regime of individual freedom, but it is only a first step. There is a report that Franklin was asked as he departed the Constitutional Convention what form of government the Framers had devised for the nation. His reply: “A Republic, if you can keep it.” Free government can only be sustained by a people who have the habits and virtues appropriate to it—the mores of freedom, we might say—and the development of these was as a rule of greater concern to Franklin than institutions or laws. He aims to cultivate in Americans forms of self-reliance that go beyond the economic—forms of social if not political activism that make up good citizenship. In Franklin’s list of thirteen virtues, this is visible only as a muted emphasis on doing good to others. The lessons in citizenship become much more visible as we turn our attention to the Autobiography as a whole.

When we read the Autobiography with this concern in mind, we see that it is permeated with the spirit of public service. One of the principal reasons Franklin tells us he turned away from
the disputatiousness of his early youth was that it limits one’s power of doing good (1322). Among the readings of his youth that he did not regret, we recall, were Defoe’s Essay on Projects and Mather’s Essays to Do Good. These are works whose impress remained on Franklin throughout his life. The Franklin of the Autobiography is nothing if not a projector—rich in ideas for the improvement of the life of the community and tireless in the promotion of them. We see him organizing night watches, acting to improve street lights and street cleaning, putting together fire and civil defense brigades, and mustering support for the first public library, hospital, and school in Philadelphia. His purpose in narrating these undertakings is neither to glorify himself nor to promote any particular agenda of public improvement, but to insinuate a spirit of civic activism into his readers. Again anticipating Tocqueville, Franklin believes that the spirit of citizen initiative is essential to the success of the modern democratic polity. Franklin is not in principle against government taking over many of the functions just described, but like Tocqueville he sees a healthy egalitarian and democratic polity as one whose citizens are accustomed to taking thought for the common good and acting upon it. Having become self-reliant in economic matters, the citizens of such a polity must also become collectively self-reliant in tending to their common good.

It was always Franklin’s conviction that “one Man of tolerable Abilities may work great Changes, & accomplish great Affairs among Mankind” if he will simply form a plan and pursue it diligently (1397). The emphasis is not on exceptional talent but on devotion to the public good and diligence in pursuing it. These are qualities in which many might share, and Franklin desires to spread them as widely as possible. Still, there is a type of leadership involved here. To some degree, citizen initiative must take the place of traditional leadership if a democratic, egalitarian society is to remain healthy; but good citizenship in Franklin’s view includes an element of leadership. Projects of the type he undertakes in the Autobiography require the cooperation of many, and the public-spirited citizen must learn how to enlist such cooperation. Tocqueville later found in Americans a great talent for forming such cooperatives, which he called civil associations, but this talent does not arise spontaneously any more than does civic-mindedness itself. Franklin learned to become a master at this type of social organization—an impresario of public service, we might almost say—and the Autobiography shows us how to do the same. The first thing we must recognize, however, is that the egalitarian social milieu poses special challenges to leadership. Leadership is not a particular problem in aristocracies, where it is built into the regime, so to speak. In contrast, egalitarian culture creates a presumption against leadership, an obstacle that is inseparable from the very virtues of egalitarianism. Pride is no longer confined to the elite and in a sense forms the backbone of egalitarian society. This pride is jealous of its privileges and ever-vigilant against threats to liberty. As midwife to the new social order, Franklin is committed not only to accommodating this prickly republican pride but even to fostering it. It does, however, require him to find novel ways to exercise leadership.

Perhaps the principal obstacle to this type of leadership is the resentment it can create. Since Franklin was such an indefatigable projector, he was in danger of running up against this almost constantly. He tells us that he early became sensible of the resistance met by any proposer of a “useful Project that might be suppos’d to raise one’s Reputation in the smallest degree above that of one’s Neighbors” (1380). The problem is not only suspicion of “elitism” in the proposer but jealousy of any degree of prestige above the common. Egalitarians, it turns out, are exceedingly sensitive to differences in reputation, and anyone who would succeed even in doing them good must gracefully accept this fact. Franklin discovered that the most effective way around this was to propose each of his projects as “a Scheme of a Number of Friends,” even if the idea was wholly his (1381; cf. 1418). The appearance of collective initiative effectively disarmed jealousy. The similarity is evident with Franklin’s discovery that an affirmative and disputatious air raises
unnecessary obstacles to persuasion and to doing good. In this case, a beneficent deceit (cf. Franklin’s gloss on the virtue of “Sincerity”) disguised Franklin’s leadership and allowed him more effectively to serve the public good. He recommends the same expedient to us, and reassures us that our pride too will be satisfied by it in the long run, because such leadership does not remain truly unknown. If someone else claims the authorship of a project, he says, resentment itself will wrest from him the reputation and return it to its rightful recipient (1381). Indeed, despite the ruses he used to disguise his leadership, Franklin became so well known as a projector for the public good that the people of Philadelphia in time became reluctant to support any proposal unless it was known that Franklin too supported it.

Obviously, Franklin exercised leadership going well beyond the average; his self-concealment was to some degree disingenuous, as is his claim in the Autobiography to be nothing more than a model for everyman. Franklin’s teaching on citizenship and leadership might be said to be twofold. He desires to create a citizenry that is as public-spirited and activist as possible, providing a model for widespread imitation. But he is also aware that leadership of a more exalted character is necessary, and he provides a model for this as well, though in a more muted way. In effect, he simultaneously teaches the common man the need for active citizenship and its small exertions of leadership, while showing the uncommon man the way to more ambitious public service.

At the beginning of part III of the Autobiography, Franklin outlines a plan he once formed to organize a “Party for Virtue” (1395). This party, whose very existence would be secret at least to begin with, would include well-meaning men of all nations. By their collective exertions, Franklin argues, much good could be done that is presently thwarted. The party is conceived essentially as a conspiracy on behalf of the public good—indeed, the good of mankind as a whole. In Franklin’s plan, the members of this party would all subscribe to a religious creed of his devising and would all have undergone training in the thirteen virtues as outlined in his “Art of Virtue” (1396). In short, Franklin places himself in the central, if not ruling, position in this conspiracy for the public good. This plan was never executed, but one society Franklin actually did organize, the “Junto,” was remarkably similar. A society formed for “mutual Improvement,” the Junto debated issues of private and public concern, but it also became a way to exert the influence of its members for the public good (1361; 205–12). Proposals adopted by the Junto could be advanced by the exertion of the various members, magnifying the influence of each. Eventually, cognate groups were to be formed by each of the members, and proposals adopted by the Junto were on at least one occasion spread abroad through these groups, without anyone knowing their true source (1405). The conspiratorial nature of this undertaking is clear, but it takes this shape largely in response to democratic social conditions. Where egalitarianism creates resentment against extraordinary exercises of leadership, that leadership must to some extent go underground.

This does not mean that Franklin chafed at the limits imposed by egalitarianism. Despite his own exceptional character and the position he attained, Franklin remained a wholehearted believer in natural and political equality. He gracefully accepted the obstacles it placed before his, and others’, schemes for the public good. From the time of his first Silence Dogood essays, he displayed unwavering animosity toward pretensions to superiority and toward aristocracies of the type found in the Old World (cf. 12, 874, 977). When the Society of the Cincinnati was proposed as a quasi-aristocratic organization for America, Franklin had nothing but scorn (1084, 1108; cf. 49–50). In his view, uncommon men such as he do not and should not form an elite social class, much less a hereditary caste. Their hearts are to remain popular just as the goal of their action is to remain the common benefit, understood in a fundamentally democratic way. There is no hint in Franklin that men of talent, or lovers of honor or fame, constitute a separate
breed, as John Adams or Alexander Hamilton believed. In fact, he was more likely to regard the love of fame as a supremely dangerous thing. In Poor Richard’s Almanack for 1748, he inserted these lines:

Alas! that Heroes ever were made!
The Plague, and the Hero, are both of a Trade!
Yet the Plague spares our Goods which the Hero does not;
So a Plague take such Heroes and let their Names rot. (1248)

We might even say that one goal of Franklin’s writing is to lead uncommon men to a more egalitarian view of themselves and their role in society. Above all, they are not to regard themselves as aristocrats, and they are to accommodate the republican pride of their fellow-citizens. It is not that leading men should not be permitted to have their “vanity” flattered in ways appropriate to their services and their position. Franklin clearly relished the reputation he gained from his achievements, even announcing at the beginning of the Autobiography that vanity (including the vanity of writing an autobiography) is productive of some social good (1308). But this is a lesson he applies to the humble as well as the great. In the economy of egalitarian culture, reputation may be distributed differentially, but none are a breed apart, and pride is the province of all.

IV

Though Franklin was in general more concerned with the moral and cultural underpinnings of the Republic than with its political institutions, he was not completely silent on the institutional concerns that so preoccupied most of his fellow Founders. He had definite opinions on the best political arrangements, and he was a participant in the Constitutional Convention of 1787, though his contributions to it, as recorded by James Madison, were few.

When it came to fundamental political arrangements, Franklin was essentially in accord with his colleagues. He agreed that a constitution needed to support the rights and liberties that the English had originally developed and bequeathed to America. Franklin, whose political career began well before the breach between England and America, defended those rights originally as positive rights—the rights of Englishmen rather than natural rights. This was common for Americans of that period, but Franklin displayed a marked reluctance (though not refusal) to use the language of natural rights and de novo social contracts throughout his life. Such arguments might well have fallen under the ban against “metaphysical Reasonings” that he imposed upon himself early in life. If Franklin was not in accord with the most prominent of the Founders on this score, he was in accord with the antimetaphysical strain of modern philosophy. David Hume was a prominent critic of the philosophy of natural rights and the social contract, seeing them as needless abstractions. Hume thought that government could as effectively be brought into line with liberty and justice, and the obligations of citizens as effectively established, by tying them more simply to social utility in the way described earlier. Franklin’s political outlook may be described in similar terms. If “Truth, Sincerity & Integrity in Dealings between Man & Man” are the goals that determine what is moral and immoral in personal life, a similar set of goals can determine right and wrong in politics, without recourse to “metaphysical” abstractions.

As we have already seen, such a standard is empirical rather than metaphysical, a posteriori rather than a priori. It is teleological in the sense that it takes its bearings by the ends of political life rather than its beginnings. The argument can certainly be made that experience is the best
guide in determining what political arrangements most effectively secure the political goods on which Franklin and his more metaphysically minded colleagues agree. This is the thinking that underlies the one extended foray into political education proper to be found in Franklin’s writings. In 1749, he advanced a proposal for an English school in Philadelphia (on behalf of “some publick-spirited Gentlemen,” he says [323; cf. 1418]). This proposal included a detailed outline for the school’s curriculum, one explicit purpose of which is to produce citizens who understand the preconditions of liberty and who will be vigilant in its defense. History is almost exclusively the subject that Franklin uses to convey these lessons:

*History* will also give Occasion to expatiate on the Advantage of Civil Orders and Constitutions, how Men and their Properties are protected by joining in Societies and establishing Government; their Industry encouraged and rewarded, Arts invented, and Life made more comfortable: the Advantages of Liberty, Mischiefs of Licentiousness, Benefits arising from good Laws and a due Execution of Justice, &c. Thus may the first Principles of sound *Politics* be fix’d in the Minds of Youth. (337)

Franklin is in accord with thinkers such as Locke and Hume, as well as his fellow Founders, regarding the goods of political life and how they are to be secured. But he does not rely on natural rights and contract theory to ground them or to fix them in the minds of youth. He does refer obliquely to a social contract (men join in society and establish government), but the focus is on the ends of society rather than on its origins. Indeed, the original contract cannot be a subject of “history”; rather, history is appropriate to an empirical or experiential investigation of the most effective means of attaining the goods of society. It is striking that, in this curriculum, Franklin never has his pupils study contract theory or the contract theorists. He assigns Grotius and Pufendorf, both of whom discuss original contracts, but only to teach his pupils moral logic (337–38).

In the Constitutional Convention of 1787, Franklin’s limited participation revealed a similar preference for the lessons of experience over those of theory. He spoke on such issues as salaries for public officials (adding material incentives to those of ambition is dangerous, as the experience of England demonstrates), and the allotment of representatives (it should be done by population, though he was instrumental in fashioning the Great Compromise on the issue). Overall, his contributions reflect a somewhat more populist or egalitarian outlook than that of other participants. In fact, many proposals that he supported were rejected by the Convention. Though the Convention agreed with him in removing all restrictions on suffrage and property qualifications for office, proposals he supported for a multiple executive and (apparently) a single legislative house were rejected.

Given the views he expressed that summer, it almost seems that Franklin should have found the Anti-Federalist camp more hospitable than the Federalist. Yet, when the Convention’s work was done, it was Franklin who called for the delegates to support the final document unanimously, despite any flaws they found in it. Unanimity would enhance the prospects of adoption, he pointed out; and besides, all should reflect that human reason is fallible in such matters and that the precise form of government is less important than popular acceptance of it or how it is ultimately administered (1140–41). This reasoning is a perfect example of Franklin’s approach to politics. A priori reasoning is not capable of pronouncing definitively on the virtues or vices of a constitution; experience alone will tell. Or even more strongly, forms of government are less significant than how they are implemented in practice. Here, Franklin may have had in mind a favorite couplet from Alexander Pope’s *Essay on Man*: “For forms of government let fools contest; Whate’er is best administer’d is best” (III.303–4).
V

The succeeding couplet from Pope’s *Essay on Man* could serve as an epitome of Franklin’s religious thought: “For modes of faith let graceless zealots fight; His can’t be wrong whose life is in the right” (III.304–5). Franklin follows his forbears in the modern philosophical movement in devoting serious attention to questions of religion and religious toleration. This concern is reflected in the *Autobiography*. We recall the blame Franklin there placed on the dogmatic tracts of “polemic Divinity” for nurturing his unfortunate youthful taste for disputatiousness. We recall also that his own religious polemics led Bostonians to shun him and that his early Deism corrupted some of his own friends. Franklin knew from direct experience of the dangers of religion with which modern political philosophy was so preoccupied. Yet the religious creed that the mature Franklin ultimately endorsed was a form of Deism, and he went to some lengths to broadcast this creed among his fellow Americans. Indeed, there is probably no subject on which Franklin risks alienating his intended audience so much as religion. He does this in order to advance the cause of toleration.

The *Autobiography* pairs Franklin’s discovery of the true foundation of morality in truth, sincerity, and integrity, with a new attitude toward revelation:

> Revelation had indeed no weight with me as such; but I entertain’d an Opinion, that tho’ certain Actions might not be bad because they were forbidden by it, or good because it commanded them, yet probably those Actions might be forbidden because they were bad for us, or commanded because they were beneficial to us, in their own Natures, all the Circumstances of things considered. (1359–60)

This amounts to a qualified endorsement of Scripture—at least a part of its moral teaching is valid—but on the grounds of a kind of natural theology. Its teaching is valid because, and to the extent that, it serves the human good and not because it is the word of God. Franklin is careful to insist that the actions in question must be harmful or beneficial in themselves, for our lives (that is, without reference to an afterlife). This theology is very much in the spirit of John Locke and other modern thinkers. Like Franklin’s moral teaching in general, its beginning and end is a particular analysis of the human good—truth, sincerity, and integrity between man and man. It must also be noted that this theology, like Locke’s, supposes that man’s nature is not fallen and that his natural impulses are not intrinsically evil. A fair encapsulation of this view was seen in the speech of Miss Polly Baker, whose appeal to nature’s intent of procreation involved an appeal to divine will as well (307). As with Locke, nature, including our (rationally supervised) appetites, is the true guide to divine will. Franklin’s morality indulge every appetite not harmful to personal and social happiness; his God does the same.

Franklin’s mature theology is a form of Deism that includes particular Providence—individual rewards and punishments to support morality. He provides us with a list of its tenets in the *Autobiography*:

> That there is one God who made all things
> That he governs the World by his Providence.—
> That he ought to be worshipped by Adoration, Prayer & Thanksgiving.
> But that the most acceptable Service of God is doing Good to Man.
> That the Soul is immortal.
> And that God will certainly reward Virtue and punish Vice either here or hereafter. (1396)
Whether Franklin believed his creed to embody indubitable truth is questionable on the basis of his other public and private writings, but what cannot in his mind be doubted is the salutary effect this belief would have on human affairs. Franklin claims that when he formulated this creed he took it to contain "the Essentials of every known Religion, and [to be] free of every thing that might shock the Professors of any Religion." Whether a creed that regards such principles as the divinity of Jesus to be "non-essential" would be viewed so benignly by his fellow Americans is open to question. He did write to Ezra Stiles near the end of his life that he had doubts as to Jesus’ divinity, "though it is a question I do not dogmatize upon" (1179). What Franklin hopes to accomplish by promulgating his own creed so publicly, as part of his *Autobiography*, is to bring his readers to regard the controversial points of theology, over which Christians had shown an alarming willingness to kill each other, as nonessential, and to regard good works to our fellow man as the true core of religion. This is certainly Franklin’s view. In his mind, charity ranks above faith and hope in the hierarchy of religious virtue (756).

Though Franklin professes respect for virtually all sects, he judges their merits based on his own creed. He forswore attending the services of one minister when he concluded that the aim of his sermons was "rather to make us Presbyterians than good Citizens" (1383)—a reversal of the proper priority, in Franklin’s mind. He singles out the Dunkers for praise, a sect that declined to put its doctrines into writing since it was not sure that it was in possession of the final truth. "This Modesty in a Sect is perhaps a singular Instance in the History of Mankind," he comments, contrasting them to the Quakers in particular, whose pacifism rendered them unable to cope with the legitimate requirements of defense (1417). Still, he not only tolerated all the sects that he found in his native land but also generally supported them when they applied to him for it. He did not try to shake anyone’s religious beliefs and looked with disfavor on anyone who did so. After all, it is his claim that all sects incorporate his "essentials," though they typically add extraneous principles. They all perform the basic service of supporting morality. Franklin ranked religious sects depending upon the extent to which their doctrines placed the essentials at the center or distracted from them, but there were none that strayed completely from the proper office of religion.

VI

Despite his failure, or rather refusal, to write systematically on political philosophy, Benjamin Franklin had a firm set of political convictions grounded in serious reflection on the human condition and especially on the needs of the newly emerging liberal and democratic age. Given his supremely practical or empirical bent, Franklin’s reflections on the virtues that the new dispensation would require and the mores it would need to develop were unsurpassed. His oeuvre as a whole represents a carefully contrived attempt to cultivate those virtues and those mores in his readers.

Franklin’s thought and action in a way gather together all the strands of modernity. He reflected on the political institutions appropriate to modern liberty, and he had a hand in shaping those institutions for the United States. But he saw the mores that would underlie the institutions as even more important to their ultimate success and devoted himself primarily to cultivating those mores. He was keenly aware of the role of economic activity in the new order and the consequent need to cultivate virtues of honest acquisition among its citizens. He knew that religious doctrine had an important if somewhat concealed role to play in the unfolding of the new dispensation and that a refashioning of theology was required to bring it into line with the regime of liberty and prosperity. And the foundation of all was a new understanding of man’s
nature, his condition, and the morality appropriate to these. Rather than aspiring to a perfection beyond human nature, this morality took its bearings by man as he is and the happiness that is accessible to many in this life.

The result is a morality much less demanding than its predecessors, though requiring its own type of discipline. Self-reliance in the pursuit of one's own good is the beginning of this ethic, to which Franklin strives to add service to the interests of mankind at large. His own scientific work, in the spirit of modern science in general, is conceived of as a kind of service to mankind. Franklin's researches into electricity were doubtless motivated by the simple desire to know, but those researches—and numerous other scientific inquiries that his restless curiosity suggested to him—were always tied closely to useful applications, from his Pennsylvania Fireplace to the lightning rod. He founded the American Philosophical Society as a way of "promoting useful Knowledge" in the Americas. In reality, Franklin's scientific activity was but another expression of the principle that service to the interests of mankind is the essence of the moral good.

The modern project at large is open to the objection that by grounding morality in material comfort and self-interest, it leaves service to the common good insufﬁciently supported. As a result, it can be said that, given the liberal regime, all is willing to serve society when it does not serve their interests as well, placing society itself in jeopardy. Liberal morality may diminish the conflict between the public and private good by defining the common good as a mere aggregate of individual interests, but it by no means eliminates the conflict altogether. Franklin often proclaims, in response to this diﬃculty, some version of the precept that the individual's true or long-term utility is always in accord with the general good. But this is true only if virtue, and in particular service to others, brings a measure of happiness to the individual of its own right. In the spirit of Franklin himself, we might say that this is an empirical as much as a theoretical question. Certain it is that example will be more effective than any theoretical discourse for the purposes of persuading people of the truth of the proposition. A document like Franklin's Autobiography is better suited than any other to bear the burden of this persuasion. More effectively than any discourse, it shows us how a life lived in accordance with simple virtues of industry and frugality, as well as the more elevated virtues of public service, is also a supremely happy life. Franklin says at the beginning of the Autobiography that his purpose is to show the means by which he, starting from so humble a station, was able not only to rise so far but to enjoy such a "considerable Share of Felicity" in life. He also says that he would have no hesitation about living the same life over again (1307). After reading the work, few would deny that his was indeed an enviable life. And once we have seen that, we have seen how even the other-regarding virtues of modernity can amply repay their possessor.

Notes

1. Franklin, Writings (New York: Library of America, 1987), 1318–19. Citations from this volume will henceforth be inserted in the text.

2. From 1732 to 1757, Franklin published Poor Richard's Almanack, featuring the fictional character Richard Saunders. The almanac contained moral sayings, such as "early to bed and early to rise, makes a man healthy wealthy and wise" (from the 1735 Almanack [1198]).
he importance of Thomas Paine's (1737-1809) writings for us today could be indicated with reasonable precision by describing him as the American radical. In other words, it is as if Paine is attempting to demonstrate what sort of radicalism is consistent with American principles and even why what is really fundamental about America is radical.

One may, of course, object that each element of this description is so vague, and politically loaded, as to be useless. It must be granted that the term "radical" has been applied by or appropriated to all sorts of stances-sometimes to embarrass one's opponents, sometimes to insist on the integrity or uncompromisability of one's own views. Still, the term is owned most comfortably, and with the least element of contentiousness, by those who are also spoken of, again with some irremovable latitude, as being on the Left. The radicals of the 1960s were those who sought to axe the root of the contemporary American capitalist establishment as a necessary first step toward bringing about a more just-by which they meant a more egalitarian and democratic-society. Paine held a high status within this movement, and it remains the case that he is held in highest regard by those whose politics are of the Left. As for "American," Paine stipulates for himself the meaning of the term. It means the principles articulated in the Declaration of Independence: that all human beings are created equal; that they are endowed by their creator with inalienable rights which include the right to life, liberty, and the pursuit of happiness; and that to secure these rights human beings create government through their consent. Among the Founders, Paine is the one who attempts to derive from the basic principles of the Declaration of Independence the most democratic and egalitarian consequences. It is on this point, though, that the real question lies. Are Paine's derivations from the principles of the Declaration sound? The answer is, probably not; almost certainly they are not accepted as sound by anyone today-neither Paine's opponents nor his would-be friends or allies. Because of this, contemporary radicals are more inclined either to hold back from adulation of Americanism or purport to use the term as meaning something more, or quite different from, the Declaration.

Paine's American radicalism appears archaic today because contemporary radical thought derives from an original critique of Paine's, and the Declaration's, principles. The problem is that, read very strictly, the terms of the Declaration give no endorsement to any particular form of government or society. Consent is the complete ground of the legitimacy of all forms of authority, and legitimacy is the whole standard. Therefore, whatever constitutional arrangements people consent to are legitimate and proper-for them. A monarchy, or even what some might call a tyranny, can be legitimate by this criterion. The original progenitors of the principles articulated in the Declaration understood its neutralism and were quite explicit about it. John Locke asserts in his Second Treatise of Government that monarchy and oligarchy are among the possible legitimate forms of government. He also says, with equal explicitness, that very great differences in material well-being are sanctioned by an implicit consent that may be inferred just from the fact that people employ the convention of monetary currency. Additionally, the doctrine of legitimation by consent has the consequence of obliterating distinctions among the manner or motive from which one gives consent. A consent to someone's authority that is extracted by threat would have to be said to be as legitimating as consent given in a mood of cool deliberation, balancing less pressing good and evils. In other words, knuckling under to superior force would count as a mode of giving consent. Locke's Second Treatise is considerably subtler in its treatment of this latter point than it is of the former one; it is nevertheless clear enough if one considers carefully his discussion of "conquest" in chapter 16. The upshot of his argument is practically indistinguishable from what had been said earlier, more candidly, by Thomas Hobbes.
in connection with his doctrine of "government by acquisition." 4

The starkness of Locke's and Hobbes's political teaching was perceived and exposed clearly in the eighteenth century by Jean-Jacques Rousseau, who responds by altering their fundamental premises and thus sets modern political thought in a new direction. For Rousseau, the consent that legitimates government cannot be something that exists only "tacitly," or pro forma, so to speak. If government is to be legitimate, human beings must remain "as free as before" they submitted themselves. There must be no contradiction between their duty to society under law and their will and happiness. This situation is possible only where human beings abandon every last one of their natural rights as the condition of their membership in civil society. Only in this way do they each hold membership on equal terms with each of the others, and only in this way can each and all be free-to do their duty. Directly or indirectly, all later modern political thought derives from Rousseau's critique and fundamental reformulation of his predecessors. His influence is most direct among radicals of the Left. Rousseau's new understanding of liberty has equality as a necessary corollary, and equality here means not merely equal formal standing before the law, as Hobbes and Locke had required, but equal participation in social and political life. Liberty and equality in this sense obviously also involve a notion of fraternity-that third element of the slogan of the French Revolution which most sharply distinguishes its spirit and aim from, for example, England's Glorious Revolution or the American War of Independence.

Paine's radicalism owes nothing to Rousseau. He had read some of Rousseau's writings, but his references to him are few and spare. They show no indication of recognizing the fundamental importance of Rousseau's new teaching. Still, for that very reason, Paine bears a reexamination today. For one thing, there is always the possibility that Paine's radical thought might prove ultimately more acceptable than the latter-day, postmodern version of Rousseau's thought which is so dominant among us. A more modest but more likely effect of such a reexamination is that we would be helped to understand what it is about America and American thought that conditions our receptivity to the transformed version of modern thought. One may provide a useful outline of Paine's thinking in connection with three headings: his constitutional thought, his discussions of political economy, and his arguments concerning religion.

Constitutional Thought

Paine sets out his basic philosophy of nature and human society in the clearest and most forceful way in his 1776 pamphlet, Common Sense. 5 This pamphlet was critically important in galvanizing the passion and sentiment of the American colonists toward war with England. There was, however, much more to it than enthusiastic rhetoric. Until Paine's statement, the colonists were all foundering in an attempt to argue that Parliament had exceeded implicit limits on its authority over the colonies, limits that derived both from precedent and from the fundamental principle that the colonists' consent was necessary to legitimate Parliament's legislation over them. How far this principle applied (for example, whether only to tax legislation or to all legislation) and what sort of consent was required had been, though, a matter of dispute among the colonists themselves, at least since the Sugar and Stamp Acts of 1763 and 1764. The basic difficulty was that every attempt to qualify or limit Parliament's authority ran up against the consequences of Parliament's sovereignty as holding the legislative power in and for the empire. It was, therefore, ultimately a matter of parliamentary discretion whether certain powers of taxation and other legislation might be allowed the colonial governments, and it was up to Parliament to decide how far precedent was to be followed in any given instance. Paine cut through this heated and yet plodding debate by ignoring the whole issue of the limits of Parliament's traditional constitutional authority. Rather, for him, what was of decisive importance was the rottenness of the whole, much vaunted, English system of government. England was evil and America was good; but her goodness would not persist long if she remained united to the empire. The time for separation
was at hand. A generation earlier America was still too young and too weak economically and militarily to challenge England. Perhaps no more than a generation hence, and America would no longer be staunch enough to fight or pure enough for a war of independence to be worthwhile. The rot would have spread. Much of Common Sense, then, was a comparative assessment of America’s and England’s moral and physical resources, intended to convince Paine’s trepidatious countrymen that America could win the war. England was not as fearsome as she seemed; America would be more so. The moment was at hand for a new birth for human freedom on the American continent; and it was either now or perhaps never.

What made America good was that here the true and proper status of government as the servile instrument of naturally free human beings was widely understood and maintained with practical effect. In England this principle was given lip service at best and in many quarters denied. In his first few pages, Paine explains the origin and nature of civil society, which is implicit in the American common sense. Nature as such is good. It is the standard for whatever may be spoken of as good or right. All too often men lose their way at the outset by forgetting this simple point and thinking that government corrects against evils that are natural. Although Paine does not mention specifically in this connection Locke or Hobbes, one may observe that he is attempting to avoid a difficulty that does trouble Hobbes’s and Locke’s assertion that human beings were originally in a presocial state of nature. Most succinctly put, Hobbes’s and Locke’s account of human nature is such that human beings cannot be at home in their state of nature; or that for human beings the state of nature is unnatural. Paine parts company with Hobbes and Locke by asserting that society is human beings’ natural condition. Human society may not be coterminous with human being, but it is the case that human beings come into their own, so to speak, in society. The somewhat subtle but key distinctive point is that for Paine human beings do not form or enter civil society in order to protect their lives and their acquisitions from each other’s assaults. Rather, they do form or enter civil society in order to attain, through cooperative effort, things that they could not attain through their individual effort. Human beings are naturally cooperative. They imagine satisfactions that require cooperation; they imagine employing their own resources in cooperation; and they can, by nature, communicate what they imagine to each other so as to bring about the result.

In saying this, Paine does not go so far as to assert a premodern, Aristotelian notion of a common good. The aims for the sake of which human beings cooperate are, still, individual ones. Thus, for example, Paine does not say that cooperation, or society, are in themselves goods. Were he to move all the way over to the Aristotelian way of thinking about this matter, Paine would also have to say, as does Aristotle, that human beings are political as well as social beings. That is because if many were to share a genuine common good it would have to be as participants; and there would have to be some organic like structure to that participation for the good to be one, common good. Then, as Aristotle points out, there would be an element that ruled—that is, that defined the good and established the terms whereby others could participate. Paine rejects such a notion of a common good no less than any other modern thinker. Nevertheless, within the modern tradition, Paine, along with some others, had reached a point where it seemed necessary to qualify the natural individualism asserted by the progenitors of modern thought, Hobbes and Locke. Adam Smith, for example, with his famous observation of human beings’ natural disposition to "truck, barter, and exchange," and in a similar way David Hume had either amended or abandoned the original idea of a social contract through which human beings launched civil society.3 Paine does think that human society begins with the expression of agreements-contracts, if you will. The key distinctive point is that, for him, these agreements do not originally require a trustee to enforce them. Instead, they derive their strength from our own natural goodness.

While human goodness is adequate to support cooperation for the most part, still Paine does admit that it is not completely adequate. Occasionally, someone might try to get more than his share; and in such cases something like government is useful to bring the miscreant back into line. "Nothing but heaven is impregnable to vice," he acknowledges (CS 5). Therefore, although
society results directly from the expression of our natural capacities, or virtues, "government, like a dress, is the badge of lost innocence" (CS 4). Government thus understood is decidedly artificial; Paine is insistent about that. It is best if government be kept small and simple. Under all circumstances government ought to be limited as to scope and power. This is because it operates according to a charge, given by human beings already in society for the sake of maintaining civil society. Government ought to remain responsible to the human beings who created it by remaining within the limits of its charge, and its creators ought to remain mindful of that relationship. As for sovereignty, it resides with the human beings in society and, although it may be forgotten or confused, it cannot be transferred.

Much of the appeal of Paine's thinking can be appreciated by drawing a comparison and also a distinction between him and Henry David Thoreau. Both exhibit a sort of hyper-Americanism insofar as they both want to find in the Declaration a fundamental, morally substantive principle of right human life and right social order. Both make the primacy of the autonomous individual over government not only grounds for the legitimate assertion of political authority but also the aim that distinguishes good government and good society. Thoreau goes further in this direction than Paine, reaching an apotheosis of sorts, when he asserts that the truest and most mature meaning for American freedom would be achieved when government is seen to have no authority to command any individual to compromise the dictate of the individual's conscience. In other words, Thoreau recommends anarchy, but which he believes will be a civilized anarchy once the full implication of the American idea of freedom is reached. Thoreau goes further than Paine in this way because he has a different diagnosis of what stands in the way of human beings' recognition of themselves as autonomously free. Thoreau thinks that the problem is that in our immaturity as a human race, we have been all too easily beguiled into a false assessment of what we really need in order to be happy. We are all caught up in a false economics, wearing ourselves out in the pursuit of the means for happiness and never allowing ourselves the ease of its attainment. The solution requires more than merely being admonished to wake up and get hold of ourselves. What is needed is an experience of transcendence, attained through the sort of poetry of Walden. We need to be brought to understand that we do not belong to the natural realm, not entirely. We are but sojourners here. We may take from the earth a bounty such as is offered by a hospitable host but we should be liberated from the foolish, desperate hope to find the full satisfaction of our soul's longing in the acquisition of the earth's treasures. The mature soul's transcendence of the world allows it to live easy in the world-and in that way allows it to be free.

The contrast between Paine and Thoreau is indicated by the fact that poetry is not so critically important for Paine. The reason for this is that Paine does not think that human beings are cut off from a sense of their true selves and their true needs because they are too much in and of the world. For the same reason, Paine is not at all an opponent of industrial capitalism. Paine thinks that we do know ourselves and what we truly want and need pretty well, as a matter of common sense. The root evil by his account is, rather, the fantastic, nonsensical notion associated with monarchical systems that some human beings are more exalted than others-that according to some natural or divine ordinance some are born to command others for their own purposes. In fact, poetry, a certain form of poetry, has been part of the problem, obscuring the prosaic sense of the freedom that we are all entitled to by nature.

Paine would agree with the ancient proverb that men do not become tyrants for want of bread. There can be, of course, competition for material wherewithal, but this is not what tends to make human beings enemies of each other. Instead we are usually quite able and willing to calculate our gains and losses and cut a deal. It is true that one may be tempted to cheat, but this is not a crippling problem. The natural direction of our thinking, which first conceives the prospect of a deal, is to imagine and expect that the deal be kept by all parties. And we tend, again just naturally, to be impressed with the loss we would experience personally if, when someone entered an agreement, it was with the reservation that it might be broken unilaterally.
Crimes committed for the sake of material gain are an abnormality which can be corrected by way of restoring nature’s norm. If that were not so—if human beings were congenitally wicked—then all political theorists, all self-styled friends of humanity, might cease their labors. There could be no genuinely effective mitigation of evil. And yet no one, almost no one, is prepared to concede that. The really great evils from which we suffer, then, are rooted in something unnatural or monstrous, and that something is monarchy. The rewards that humans hope to enjoy from being the monarch, or even from being associated with the Crown and basking in its glow, are not such as can enter into a rational calculation of gain and loss. Belatedly, its advantages cannot be mutual. One is exalted in contrast to the others; one commands insofar as the others obey. The competition for that cannot be other than invidious. Whatever cooperation might exist among competitors for monarchical rule would be like that among petty thieves. It would be suspicious and destined to be violated at some point. In Common Sense, Paine drives this thought home by representing the history of the Jews from the Old Testament. The institution of monarchy was the true fall of man. The corruption of our minds and souls that followed from that are the wages of our original sin.

Given his hatred of monarchy, it follows that Paine is decidedly unimpressed with the defense of the peculiar features of the British monarchical system. The received opinion, associated with Montesquieu, was that the British system offered the greatest security to human liberty that ever existed in the world because of the way that it institutionalized the old conflict between the two great social classes. Lords and commons were each given a share of the fundamental power of legislation; neither could act alone, and a balance of power was continually being restored between them by the Crown. By creating new peerages, and through a myriad of lesser devices, the Crown could augment the power of the landed aristocracy vis-a-vis the common folk. The Crown might do this because, being hereditary, it was not responsible to or controlled by either class. Most Americans were deeply impressed with this argument and accorded “the celebrated Montesquieu” a rank among the greatest political theorists. They tended to view with regret that they lacked the materials, especially landed aristocracy, that might have enabled them to attain the advantages of the British model through direct imitation. If they accused Parliament of corruption, it was despite the features of the system of government, not because of them. In this respect, Paine parted company with the preponderant view of his countrymen. His hostility toward any form of monarchy displaced the favor in which Americans held the British system until practically the eve of the Revolution.

While holding back mention of his name, Paine responds in Common Sense to the thought of Montesquieu with arguments that are simple and quite forceful. The British system simply cannot work in the way its defenders say that it does, for by their account the British system amounts to “a house divided against itself” (CS 8). However complex the arrangements, there simply must be one agency that ultimately drives the whole.

[A]s all the wheels of a machine are put into motion by one, it remains to know which power in the constitution has the most weight, for that will govern; and though others, or a part of them, may clog or, as the phrase is, check the rapidity of its motion, yet so long as they cannot stop it, their endeavors will be ineffectual. The first moving power will at last have its way, and what it wants in speed is supplied by time. (CS 8)

In England, that one agency is the Crown. No one is so truly blind as not to see that. The vaunted system of checks and balances is but a set of semitransparent cloaks. In tearing away those cloaks, Paine intends to show that the Crown is in fact responsible for the existence of all the evils that the system's defenders think make it necessary. The corrupt ambition of her kings has embroiled England in foreign contests and war. The unjust force by which the royal house was established, as with all royalty, makes for a continued excuse for foreign powers to threaten. As for the most seemingly plausible argument that kings protect
against civil war, England's whole bloody history of rivalry between the houses of Lancaster and York "disowns the fact" (CS 15). Indeed, the defense of the complex monarchical system of eighteenth-century England did entail a recognition that simple, untrammeled monarchy was bad. Paine thought the time had finally come to draw the bold, clear conclusion from that recognition. Let monarchy be repudiated and swept away.

What frame of government, then, would meet with Paine's approval? Paine does address himself to this question but with a certain reluctance and disinterest. It is as if the issue would just take care of itself, so to speak, so long as it were approached in the right way—that is, so long as we understand that government is our servant rather than our master. Still, there have to be some positive indications. We have to be able to imagine, at least, a form of government that would not exhibit monarchy. So, toward the latter part of Common Sense, Paine does allow himself some rather truncated suggestions, "hints," regarding a constitutional frame that would be suitable for a new American nation. Let each new state be divided into some six to ten districts, each sending "a proper number of delegates to Congress" (CS 28). The size of Congress would be about 390 persons. Congress would elect its own president, first from all the delegations at large and then, sequentially, from all of the delegations excepting the ones from which an earlier selection had been made. There would be no separate or independent executive. For any legislation to be enacted it would have to be passed by a three-fifths majority of the Congress. Paine spends no time in regards to the delineation of the government's powers; and there is nothing on the judiciary. Rather, having settled to his own satisfaction what he thinks are the fundamental issues of constitutional form, Paine asserts that "[h]e will promote discord under a government so equally formed as this would have joined Lucifer in revolt" (CS 28).

There is an obvious parallel between Paine's recommendations for an American constitution in Common Sense and what would actually emerge as America's first constitution under the Articles of Confederation. The parallel extends, though not so exactly, to the new state constitutions that replaced the royal charters and compacts that had been held by the colonies. All of this new American exercise in constitution making was affected by the thought that republican government should be simple and representative, structured so as to reflect directly the people's own ready understanding of the limited practical requirements of their common good. Political union and strength would simply follow from the natural, social harmony among human beings once the sources of corruption had been cleared away. One overstates things only slightly in saying that American government under the Articles was an experiment in Paine's philosophy of nature and human nature. What, then, might Paine say of the evidence that this experiment was a profound failure? How might he have responded to the powerful divisive forces: sectional rivalries and, more important, the elusive nature of a practical notion of a common good among opposing economic interests such as debtors and creditors? When Alexander Hamilton attacks the presumptions of the supporters of loose confederation in The Federalist Papers, his remarks apply so precisely to Paine that it is as if he had Paine in mind. "Is it not time to awake from a deceitful dream of a golden age and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the empire of perfect wisdom and perfect virtue?" We have learned our lesson, in other words. Even though we have thrown off monarchy, we remain just as much in need of a government that is aggressive and one that guards against tyranny-popular tyranny-by a complex scheme of checks and balances among separate branches. For his part, Paine does not enter the debate over the ratification of America's second, more Montesqueuvian, Constitution. Instead, during this period his attentions were drawn toward Europe. In 1787, Paine returned to his native England and then, in 1790, accepted an invitation from Marquis de Lafayette and Condorcet to come to France. For the next few years he would be occupied with French politics, defining and defending the aims of the French Revolution in his book The Rights of Man (1791-1792).
Paine’s aim in *The Rights of Man* is to defend the French Revolution against the calumnies that had been published by Edmund Burke in his *Reflections on the French Revolution*. Burke’s central point had been that civilized society requires a respect for traditional structures and norms. Without a deference to authority that has become habitual, human life will be raw and savage. Burke pans the French revolutionaries as failing to appreciate civilization’s fundamental requirement. Paine responds to this with a disappointment that appears quite genuine. He is sorry to see that the old friend of liberty, when the American colonies were struggling to express their opposition to Parliament, should now place himself in the antirevolutionary camp. How could anyone not see that the cause of American freedom and the aim of the French Revolution are but one? Paine was sure that, to their credit, the people of England were not the enemies of France. Their instinct was already republican, and they might attain legitimate institutions without violence if people like Burke would employ his genius in their assistance rather than to persist in his vain attempt to support the unsupportable.

*The Rights of Man* contains no new teaching from Paine, nothing that should be surprising to any reasonably careful reader of *Common Sense*. Some of the problems that have already been indicated, though, become somewhat more obvious in the later book. His main burden is to defend the French Declaration of Rights. More particularly, the first three articles of the Declaration are defended as containing a full statement of the founding principles of a legitimate, constitutional order, and they entail all of what follows.

I. Men are born, and always continue, free, and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.

II. The end of all political associations, is, the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

III. The nation is essentially the source of all sovereignty; nor can any INDIVIDUAL, or ANYBODY OF MEN, be entitled to any authority which is not expressly derived from it.

These principles are the basis of true constitutionalism (R111314). That is, Paine explicates, they reflect what a constitution properly speaking is. The principles contain the recognition that the fundamental social contract that is at the root of all our obligations cannot be between individuals and their government. Rather, that contract is among individuals, arrived at deliberately and for the sake of their mutual advantage. It forms a social body. Government owes its legitimate existence to a second, subordinate act, performed by the social body. This is the enactment of a constitution, a sort of charter that arranges and defines government’s powers. Specific limitations on government’s powers are entirely in keeping with the nature of the constituting act.

The basic kinds of constitution are democracy, aristocracy, and monarchy. Originally, Paine speculates, all governments consisted of one of these basic forms. Beyond this categorization, however, it is necessary to distinguish governments that are republican. This word refers not to a form, but rather to a still more fundamental character. Government is republican when it aims at the *res publica*, the public things, as versus the things that belong distinctively to those who rule. In this attempt at careful language, Paine comes close to what had been said already by Aristotle, namely, that we may properly speak of apoliteia (constitution) only where government serves the common good. For where the rulers serve their own good at the expense of those they rule, there exists only a deceitful imitation of a constitution. The difference between Aristotle and Paine, though, is that Paine could never accept Aristotle’s idea that some few or even a single person might represent or even embody the common good to a greater degree of actuality than the aggregate whole.

All constitutional government, properly speaking, is republican. Democratic governments are republican automatically, insofar as the people rule themselves directly. This, Paine holds, is
how governments actually began. However, as civil societies grew in size and population, direct popular government became impossibly inconvenient. Governments became more aristocratical and then monarchical, and because there were insufficient guarantees that the rulers would continue to serve the common good, they ceased to be republican. Only in comparatively recent times have human beings discovered an antidote to this process, that being formal representative institutions. To this limited extent Paine does agree with Montesquieu and with the authors of *The Federalist Papers* that representative institutions are the great political invention of modern times.

With this as his foundation, Paine proceeds to turn the tables on Burke. The British system of government is, in reality, not a constitutional system at all. Its delicate complexities, which Burke defends, only obscure this fact. Two specific points are especially revealing in this connection. First, in England, the government permits itself the authority to alter its own structure and powers. What Paine has in mind are the important acts of Parliament and even courts that are said to amend by reinterpreting England's unwritten constitution. Paine insists that when government alters itself in this way it means that government is obscuring or ignoring the crucial fact that government is the creature of the people and, as such, can only be altered by them. Second, and relatedly, Paine objects that the people of England are denied the right of altering their mode of government. This, of course, is a point that Burke insists on as a necessary advantage. Burke fears that if a people may be presumed to be able to alter their system of government it would mean that the whole set of fundamental institutions and norms are put into suspension. And then, how could they *act* at all?” Therefore, we must conclude that a people are not free in this way. They are rather bound by the terms of a previous agreement of long standing—of a previous generation!

This is for Paine anathema. He insists it is inappropriate, indeed impossible, for one generation to bind another. The same authority one generation has to make or unmake an agreement must belong to any other. The deference to the tradition that Burke recommends and apologizes for involves selling out our *natural* liberty. Burke's argument is a sophistry that underlies monarchy, at least where monarchy is not so openly brutal as to be able to rely on open force rather than sophistry.

It might occur to some of Paine's readers to ask at this point whether such traditionary sophistries as Burke's are bad insofar as they are in the service of monarchy or whether English monarchy is bad insofar as it is based on sophistry. Doubtless Paine would have little patience with such a question. For him, these are but two sides of the same bad coin.

In the 1790s, and for some time thereafter, it seemed to many that Paine's *The Rights of Man* was a dangerously incendiary book. Paine expected that the American and the French Revolutions would prove to be the first two steps toward a worldwide movement; and there were many who feared that he might be right. One must question, though, whether Paine's basic thought is in truth as incendiary as both he and so many of his opponents took it to be. Has it not become obvious now, if it was not in Paine's time, that government of all sorts might deftly incorporate a reference to the notion of the legitimating consent of the governed while preserving, or re-constituting, forms and prerogatives that Paine opposed? Is this not precisely what has happened? The excuse for such a development is the doctrine of *tacit* consent. This, of course, is by no means a novelty. In his *Second Treatise of Government*, Locke had already asserted that what a people do not actively oppose they might be presumed to consent to tacitly and that such consent is legitimating. For his part, Paine cannot deny that; and from time to time he even recognizes that a presumption of a people's tacit consent is necessary to the legitimacy of any stable system of law. Thus, for example, in elaborating his quarrel with Burke, Paine prudently acknowledges:
It requires but a very small glance of thought to perceive, that although laws made in one generation often continue in force through succeeding generations, yet they continue to derive their force from the consent of the living. A law not repealed continues in force, not because it cannot be repealed; and the non-repealing passes for consent.

Still maintaining his argument against Burke, though, Paine goes on to insist:

But Mr. Burke's clauses have not even this qualification in their favor. They become null, by attempting to become immortal. The nature of them precludes consent. They destroy the right which they might have, by grounding it in a right which they cannot have. Immortal power is not a human right, and therefore cannot be a right of Parliament. (RM 254)

So Burke has made a mistake if he thinks that tradition can be somehow put beyond repeal. But what Paine concedes in this very context is the weightier point. Popular consent may be presumed to legitimate pretty much anything, even, for example, government's altering itself, so long as its actions are not actively repealed.

Even concerning the question of the form of government, Paine cannot consistently avoid an ambivalence that stems from his concession to the doctrine of tacit consent. This is apparent in the manner in which he defends various features of the constitution of the French Republic. For example, Paine supports the unicameral legislature. He obviously has no truck with the Montesquieuian idea that there ought to be a second legislative chamber in which only a privileged class or nobility is represented. As for the arguments in behalf of an upper house providing some sober second thought in the legislative process, Paine rejoins with suggestions whereby a single chamber might employ procedures that would accomplish the same result. Still, Paine does not and cannot say that a bicameral legislature is necessarily illegitimate. He would not raise such a charge against the American bicameral legislature, for instance. If the people consent, that is the whole answer to the question of legitimacy, and, as with any other form of law, their consent maybe presumed as given tacitly. What is true of the issue of the structure of the legislature, however, must ultimately be true for the issue of the structure of all the branches of government, and therefore even monarchy must be allowed a possible legitimacy. Considered carefully, Paine's brief remarks on the meaning of the basic forms of government and on the term "republic," mentioned above, imply this admission.

The only forms of government are, the democratical, the aristocratical, the monarchical, and what is called the representative. What is called a republic, is not any particular form of government. It is wholly characteristical of the purport, matter, or object for which government ought to be instituted, and on which it is to be employed, res-publica the public affairs, or the public good; or, literally translated, the public thing. (RM 369)

A republic is not any particular form of government; that also means that it is not necessarily exclusive of any particular form—not according to their definitions. There might be a republican monarchy. Monarchy, the evil that is the source of all evil, might not be evil.

**Political Economy**

When it comes to social legislation, Paine has considerably more substantive and detailed proposals to recommend than he has respecting constitutional matters. His proposals exhibit what in more contemporary language might be termed his "social conscience." Especially in this
connection one sees that Paine's hostility toward monarchy is not only an expression of ideologi-
cal ardor or jealousy. He thinks that monarchy's evils bear most painfully on the poor, and he has
unmistakable compassion for them. At the same time, however, Paine tries to prevent his reader
from thinking that his redistributive measures are recommended out of compassion per se. What
the poor would get from Paine's legislative proposals is due them by right. What is owed is not
charity but justice (AJ 612). Surely it is this bold claim that fixes our interest. Wherein lies the
justice of improving the condition of the poor? Can Paine show this while at the same time
resting squarely and exclusively on his fundamentally liberal, individualistic principles?

Paine's recommendations for social legislation are made in two places. A major section of
The Rights of Man (Part II, section 5) is devoted to the subject, and there is also a briefer work,
Agrarian Justice, published in 1796. This was Paine's last published book. The proposals in
these two works are similar but not identical. In The Rights of Man, most of what Paine has to
say concerns the excessive burden of taxes, made necessary by monarchy. Paine is almost
convinced that it is that burden that causes poverty (RM 424). He is certain that the huge tax
reductions that will be affordable when monarchy is eliminated will more than any other measure
improve the lot of the poor. In particular, if the English people follow the example of the French
and throw off their king, they will enjoy a tax savings that Paine tries to gauge by way of an
ingenious and very interesting argument. From 1066 until 1466, Paine shows that the revenues
drawn by taxes fell by a factor of four. Then, from 1466 until Paine's own time, there was a
precipitous rise, from 100,000 to 17 million pounds. This is attributable entirely to "the destructive
system of continental intrigues, and the rage of foreign wars and foreign dominion" in which the
monarchy has engulfed the nation, especially since the Hanover Succession (RM417). Paine
concludes from these figures that if that whole rotten system were shucked off, the actual revenue
requirements of a republican government for England would be not more than 1.5 million
pounds, leaving a savings of 15.5 million to be enjoyed by the general population, which at
the time numbered approximately 7 million persons (RM 424).

Paine's projected lowering of taxes, taken by itself, almost suffices to sustain his
confidence that the condition of the poor would be vastly improved under republican
government. Still, he does go somewhat further, recommending that out of the dividend a
program of what we now call "transfer payments" be made to those most in need. Again
with respect to England, he proposes that taxes on the poor, the so-called poor rates, be
abolished altogether and that in their place a remission be paid to the poor double the
current rate. This remission would finance public assistance for some 252,000 poor families,
and support for the education of more than 1 million children whose families cannot bear the
cost. He recommends provision for an estimated 140,000 aged persons. Government would
make a donation of 20 shillings to each of 20,000 marriages and each of 50,000 births.
Funeral expenses would be provided to the poor. The total cost of these programs Paine
estimates at roughly 4 million pounds, expended in the various ways over 1.4 million
persons, or about one-fifth the total population of the nation. With respect to those he calls
the "casual poor," Paine would have government guarantee "employment at all times" in
the great cities of Westminster and London. Finally, he recommends some compensation
to assist soldiers and sailors, who will of course not be needed in the new era. 12

Equally important, Paine proposes alterations in the structure of English taxes. He
outlines a program of progressive tax rates on the value of landed estates (RM 434-39).
The rates are moderately steep, though not so much that there would not remain very
considerable disparities among the population. It is his assertion of the justice of this
measure in particular that gives most pause.

Admitting that any annual sum, say for instance, one-hundred thousand pounds, is
necessary or sufficient for the support of a family, consequently the second thousand is
of the nature of a luxury, the third still more so, and by proceeding on, we shall at last arrive
at a sum that may not improperly be called a prohibitable luxury. It would be impolitic to
set bounds to property acquired by industry, and therefore it is right to place the
prohibition beyond the probable acquisition to which industry can extend; but there
ought to be a limit to property, or the accumulation of it, by bequest. (RM 434)

In other words, the rich do not need it and are unlikely to have earned it.

It is obvious that Paine cannot hold these assumptions without going beyond, that is
violating, his fundamentally individualistic, liberal principles. If, as the Declaration of
Independence says, all men have a right to the pursuit of their own happiness, it follows
that no one may rightfully impose a sacrifice on another's pursuit of the other's happiness
for the sake of his own. In the language of contemporary economists, there is no
"interpersonal comparison of utility"; that is, I cannot rightfully compare the value of
another's happiness with my own. This, however, is precisely the consequence of
individualistic liberalism that so frustrates contemporary egalitarians, for it undermines the
case for any sort of enforced transfer of "utility" from one person to another, irrespective of
their condition. One, then, might take an expression like "prohibitable luxury" to be a clear
indication of Paine's partial abandonment of his liberalism; and reflection shows that the
same is true for all of his positive social legislation prescribed in The Rights of Man.

However, since there is nowhere to be found in Paine's writing any general theory of
justice that contrasts with strict liberalism, it would seem that contradiction is inadvertent.

In Agrarian Justice, Paine offers a somewhat different plan for poor relief than he had in
The Rights of Man and, more to our interest, a more elaborate and ingenious defense of its
justice. It seems likely that in the interim since he published The Rights of Man, he realized
that a justification for poor relief was still needed. In the main, Paine's new proposal is to create
a national fund, from which every person would be paid 15 pounds upon attaining twenty-one
years of age. Beyond that, every person would be paid 10 pounds annual subsidy beginning at
age sixty and continuing for life (AJ 612-13). It is the poor who would mostly be benefited by
this plan but, as Paine is careful to note, the entitlement is universal. From what does this
entitlement derive? Here is his thought. "Nothing," Paine acknowledges, "could be more unjust
than agrarian law in a country improved by cultivation; for though every man, as an inhabitant of
the earth, is a joint proprietor of it in its natural state, it does not follow that he is a joint
proprietor of cultivated earth" (AJ 612). On the other hand, of the earth in its
"natural"-uncultivated-state mankind were the joint proprietors. In civil society, where land is
owned and cultivated, it is of course the case that the original joint proprietorship of the land in its
natural condition has been obliterated. Nevertheless, our right to the value of our original share
has not been, nor could it be, repealed. It remains as something owed to us as a sort of "ground
rent . . . for the land which [the legal proprietor] holds" (AJ 611). This much of the argument is
tempting; but the difficulty comes with setting the economic value in a contemporary society of
each of our share of land in its uncultivated state. To put the question in John Locke's language,
who in his Second Treatise considers the very same subject, "if we will rightly estimate things as
they come to our use and cast up the several expenses about them, what [we may ask] in them
is purely owing to nature, and what to labor[?]"13 Paine ventures as his answer to this question
that human cultivation "has given to the earth a tenfold value," so that the ground rent due all of
us would equal one-tenth of the total value of the real property in society (AJ 612). It is here,
obviously, where lies the heroic assumption. Why one-tenth? Paine offers not a word of
explanation-because there could be none to give. Had he been reading his John Locke, he might
have found that the ratio of one to ten is what Locke proposes in his first word describing the
comparison of the value of uncultivated to cultivated land. But had Paine in fact been reading
Locke with any care, he would have also seen that Locke later revises his estimate in favor of a
much more disparate ratio.14
Paine's attempt to estimate the value of mankind's natural proprietorship of the earth as the basis for his basic entitlement program is too speculative to settle anything, indeed too fantastic to be taken seriously. Perhaps the most charitable attitude toward that attempt would derive from observing what he says on this point and his thoughts about the natural sociality of human beings, described earlier. Paine's general sense of "the state of nature" is that it is, so to speak, more natural than it had been said to be by Thomas Hobbes or John Locke. We might have lived comfortably there.

Religion

As we have seen, Paine thinks that monarchy institutionalizes something unnatural—that is, a perverse desire for an exaltedness over others that contradicts the natural equality among human beings. This thought invites the following question: how came there to be such a thing as monarchy originally? Part of the answer that Paine advances is sheer brute force. All monarchies trace their origins to some act of force. The English monarchy, for example, was established by "[a] French bastard landing with an armed banditti and establishing himself king of England against the consent of the natives . . . [which is] plainly a very paltry, rascally origin" (CS 14). And yet, this answer, Paine knows, cannot be fully satisfactory. It runs afoul of what Paine has also said about the goodness of human nature and the naturalness of our sociality. Even if we might hold, without contradiction, that one or a very small number of people might be animated by a passion for dominion that could not be natural or normal, there remains the question of how such a one could induce anyone to take him seriously. To exercise force, he would have to have an army; and who would commit himself to his service? Granting that he might, somehow, command a few swords, why would not most people simply ignore his claims as soon as the sword point was withdrawn? Paine's fuller, but more implicit, answer to this question, then, is that men are not just brutally compelled to accept a king but also seduced into believing his claims. Despite their natural healthy goodness, human beings must be susceptible to the fantastic notion of an exaltation of some over others. The direct expression of this susceptibility is their religion. A belief in God appears to be a necessary corollary of monarchy. It is also clear that the sort of God who serves this purpose must be one who exercises monarchical prerogatives: favor and disfavor, reward and punishment.

Human beings' original vulnerability to monarchy and their vulnerability to religion are really the same. It is also quite understandable that we should have suffered this in the world's early stages, when human beings understood nothing of the natural causes of the beneficent or calamitous forces to which they were subject. We were corrupted, then, before we had the intellectual strength to resist. In his Common Sense, Paine leads us quite cleverly from this sense of despair to hope. In America, the life of the human race might begin anew. It is—not literally so—but as if part of the planet were held in reserve for human nature and human society to reestablish itself this time among mature human beings, in command of their faculties, with no demons or tyrant Gods to plague them.

Does Paine think that anything of religion will remain in the future ages of enlightenment? Or should it? The answer is yes, but it is a complicated yes. For one thing, belief in the Bible as the source of divine revelation is still very strong, and the sects that stem from that will be around for an indefinite future. For this reason, Paine has to at least make his peace with biblical religion. In Common Sense, he tries even to avail himself of biblical authority by showing that monarchy is in truth devoid of biblical support. A considerable section of the book is devoted to retelling Old Testament history. In Paine's hands, it appears that man's original bliss extended far past the Garden of Eden. He makes it seem that our true fall came with the coronation of Saul.
Paine concedes by his own practice that human beings will still have religious beliefs in the future. This means too, he knows, that we will be divided by our different beliefs. Paine does not think, however, that there is any necessity or likelihood that these differences will make us enemies. Part of the reason for this is that Paine is confident that religions in general, the genus religion, is benign (RM 292). It is only insofar as religions have been appropriated by political authorities that they have appeared to be divisive. This connection will be broken. In this respect, Paine defends as an especially key point the provision of the French Declaration of Rights that guarantees the universal right of conscience. He is very explicit that this right goes beyond the recognition of the value of religious "tolerance" that is sometimes defended in England, for example. We may be tolerant of what we recognize to be an evil, so long as it is not too threatening. Tolerance may be the better part of prudence, so to speak. The universal right of conscience, however, implies that all contents of religious conscience are equal-equal in substantive truth.

"But with respect to religion itself, without regard to names, and as directing itself from the universal family of mankind to the divine object of all adoration, it is Man bringing to his maker the fruits of his heart; and though these fruits may differ from each other like the fruits of the earth, the grateful tribute of everyone is accepted" (RM 292). Paine caps this sweet thought by saying that God himself must intend there to be a variety of religions. And yet, is there not an all too obvious contradiction in these very words? The universal right of conscience is grounded in his argument for the equal truth value of all religions; but that in turn appears to be grounded in his own distinctive theological assertions.

This sort of question cannot help but cause us to be suspicious regarding everything that Paine says about religion. It is obvious that what he says in Common Sense about the status of kingship according to the Bible is addressed to people whose faith is other than his own. Might not the same thing be true of all his religious statements? For most religious Americans during the eighteenth century, it was largely a commonplace that Paine was an atheist. Such a view is understandable, and may be correct. It is tempting to think that an absolute right of conscience entails a profound indifference to the truth claims of different religions and that that in turn entails a dismissal of all of them as bunk. Religions are not all equally true because God loves them all; rather, they are equally false. It is not that God has no preference, but that there is no God to have a preference.

Despite the widespread view of Paine as an atheist, though, his book The Age of Reason, published in 1794 and 1795, belies it. In it he sets forth his own "conscientious belief" in a religion that he terms "Deism." It is a simple religion, to which one may be guided speculatively by one’s own rational powers, and which gratifies and sustains those powers as well as other virtues that make us good neighbors and good citizens. Assuming a more candidly personal stance than he had in earlier books, his case for his deistic religion is put together with a polemic against the religions of the Bible; and that polemic forms the bulk of the book. Paine intends that Deism emerge from the rubble to which he attempts to reduce the Bible. To weigh the full force of Paine's polemic, it is necessary to read the book in its entirety and to engage the arguments at close quarters. Here it is possible only to give a brief outline.

Paine does not quarrel with the possibility of divine revelation. However, since for him and the rest of us biblical revelation is mediated by the human authors of the Bible, who, as prophets, claim to have received the revelation, Paine sets out to examine whether that human claim is credible. He finds it not so. In the first place, the Bible itself hints that the ancient Hebrews did not understand the term "prophecy" in this way. Rather, when King Saul, for example, speaks of his own prophetic powers it is in a way that suggests something more like what others call poetry. It is a sort of hyperactivity of the imagination that does not presume to be literal. As for the content of prophecy, Paine says that for his own part it is sufficient to observe that both the Old and the New Testaments are childish, brutal, and immoral in order to be certain of their falsehood. He acknowledges that others, however, might not be convinced by that sort of
evidence, and so he enters into a form of exegesis to show that the Bible is inconsistent on its own terms and that it could not have been written by those whose authority it claims.

As for the Old Testament, Paine is especially horrified with the account that God should have commanded the wholesale slaughter of an innocent people in order that His chosen people might make way for themselves in their promised land. Surely this is the morality of a crude, barbaric people who have not yet learned the virtue of humanity. Next, the Old Testament history is said to depend on the authority of the prophets, mainly Moses, Joshua, and Samuel. What evidence, though, is there that these prophets actually wrote the Bible? Nowhere does the Bible contain any direct claim by these persons, in their own name, that what we read is their word. The presumption that it is theirs might be charitable but it is impossible. This Paine attempts to demonstrate by drawing out many anachronisms that would follow from an original prophetic authorship. To cite just one example, Exodus is presumed to be a book of Moses; but the book not only speaks of him in the past tense but also contains an account of things that occurred after Moses’ death—in a few cases well after. Paine also cites many conflicting accounts of what appear to be the same events given in different books of the Old Testament. Sometimes sequences differ; sometimes important details are altered or omitted from one book to another. The largest scale example of this sort of thing is that many, or most, of the prophets who have books that bear their names as titles, such as Ezekiel or Daniel or Amos, do not even appear in the books of Kings or Chronicles, even though they are said to have lived during the period for which Kings and Chronicles claim to give the comprehensive historical record. In sum, this part of the Bible gives every evidence of having been compiled much later than the events of which it gives account, compiled somewhat clumsily and not too faithfully out of an earlier tradition that was incomplete, self-contradictory, and full of confusion.

Turning to the New Testament, it fares little better than the Old. It too is fundamentally immoral, although not in quite the same way. Paine does acknowledge that Jesus himself exemplified and taught genuine human virtues, of brotherly love and the like. The attitude that emerges from The Age of Reason toward Christianity is very similar to today’s Christian humanism, but with a sharper edge of hostility toward the more literalist tradition. The New Testament’s one great drama implies a horrid God. For Paine, it is a blasphemous obscenity. In the first place, there is no way that an innocent person can expiate someone else’s guilt merely by accepting the punishment due the guilty. In the administration of justice among human beings, such a thing is unthinkable; and it does not become thinkable by virtue of the mind numbing, cosmic magnitude of the sacrifice. Also, the specific character of that sacrifice bears no relation to its avowed meaning. That is, even if Jesus’ death was intended, somehow, to be the basis of our atonement, there is no necessity for that death to result from his having been falsely convicted and executed on a cross. Why would not death from sickness or accident, or just old age, serve as well? Most important, the whole notion that Jesus’ suffering and death might stand instead of our own implies that God has a desire for suffering and death. He enjoys the spectacle! To attribute such a character to the King of the Universe, Paine is sure, would be possible only for someone whose ideas about kingship are formed out of experience with those most perversely wicked prerogatives of kingship that the ancient world exhibited. Paine then adds to this criticism the evidence that the books of the New Testament were all written many years after the events; and that they contain several embarrassments of direct contradiction or suspicious omissions.

In what way, then, is the positive case for Paine’s own deistic religion connected to the foregoing polemic? Paine’s answer appears to be that if he can show that the whole Bible is not only an unlikely tale but also that its teaching is in fact ugly and despicable, he will deprive it of the awe in which it is held by the believers. In so doing, he thinks he will confirm our confidence in our own powers of reason and judgment, whereby the fact that the universe is divinely ordered will be self-evident. It appears that a thoroughgoing reductionism holds so little plausibility for
him as to require no response. His discursive argument proceeds from his observation that the world is in general a hospitable realm for human beings. The degree and varied manner of that hospitality is continually surprising to whoever opens his eyes and reflects. For one thing, the fruits of the earth are in fact abundant. This means that it is possible for human beings to acquire the wherewithal to satisfy their needs comfortably without spending all of their energies. The world makes it possible for us to attain some leisure, so that we might afford the exercise of our higher faculties. Not only that, but Paine also finds especially worth mentioning that the world appears to contain hints to human beings to help them figure out its true structure. For example, if there were no planets, whose wandering motions contrast with the revolution of the stars, it would have been much more difficult for Copernicus to have finally discovered the untruth of the Aristotelian/Ptolemaic cosmology. Such phenomena are like pointers that seem to have been put there by a God who wishes His order to become known. In this way, we may say that speculative reason supplies to itself a grounding in an idea of God's Providence. God has the virtue of humanity. He wishes us to see by our own lights and helps us to do so. If we are aware of this true character of God, we cannot help but be soothed and moved to imitate him. Our natural sociality and cooperative instincts, mentioned above, are in this way confirmed by what speculative reason concludes is right with God. It by no means follows from this that God punishes our sins or shortcomings, nor does he reward us. What could God gain from retribution? Our virtues, being natural, are their own reward, and our attainment of them must cause the Author of Nature to smile. Here, then, is a religion worthy of what Americans are and what the French aspire to be: equal, free and independent of mind and heart, and naturally good.

To conclude the account and assessment of Paine's thought, it is necessary to return to the question of the relationship between the arguments of *The Age of Reason* and his intense, radical endorsement of the "universal right of conscience." Is there not a problem? Those who are entirely satisfied by slogans such as "I hate your faith but would defend to the death your right to hold it" will of course deny that there could be a problem. But that is obtuse. Paine's partisan-ship, especially his attachment to the universal right of conscience is, in his mind, connected at a fundamental level with the "conscientious belief" that Deism is the truth. The alternative to the universal right of conscience is enforced hypocrisy; but God Himself prefers the doubter and the denier to the hypocrite. Paine can be generous toward unbelief because his heart is steeped in the belief in a humane God and he knows that. His hostility to the Bible also involves hostility to belief in the Bible. It is corrupting. He hopes it will disappear. For the time being, it might be well to give it official "tolerance," but this is to temporize with the evil. Freedom will not be secure in the world until Paine's religion conquers the field. Paine's Deism is such that it precludes the possibility of proscribable heresy. Still, if it is contentful at all, it is a basis from which error can and must be identified as such. If the error is necessarily corrupting, as Paine is certain it is, neither he nor God can be indifferent.

Finally, how compelling is the argument in *The Age of Reason*? Let us try to compress it to the briefest formula: the only God that could exist is not the biblical God but rather Paine's gently provident, humane God. But is this not arrogant presumption? Who are we, mortals, to set limits on the character of God? Why might God not be jealous and fearsome? Why might He not have a chosen people whose special mission could entail extraordinary and even inhumane deeds? Or why might not the peculiar character of divine justice somehow involve God's experiencing for Himself the penalty He imposes for human sin? As for the anachronism and contradictions within the text, should it be surprising that human language should founder among contradictions when it seeks to speak of God? Such questions, doubtless, could not trouble a person like Thomas Paine. But they are forceful for a soul deepened by loving submission and obedience to biblical authority. Paine does not plumb these depths. He cuts with brave and unrelenting energy—but not to the root.
Notes


4. Thomas Hobbes, *Leviathan*, ed. Michael Oakshott (New York: Crowell-Collier, 1962), pt. II, chap. 20. As for Locke, this is one of the instances of his notorious wiliness. Section 186 of *The Second Treatise* does deny that promises extorted by force are binding and thus denies the legitimacy of sovereignty established by conquest. Nevertheless, in section 193, Locke bows to practical necessity and grants that a conqueror, at least a just conqueror, has a right to the estates as well as power over the persons conquered. The ongoing consent of the conquered is then necessary and sufficient to legitimate the sovereign's authority. Later, in chapter 19 (sections 235-43), Locke undermines the grounds of his own distinction between just and unjust conquest so that his ultimate position is fully reconciled with that posited by Hobbes.


6. Quotations from and references to Paine's works will be from volume one of *The Complete Writings of Thomas Paine*, ed. Philip S. Foner, 2 vols. (New York: Citadel Press, 1945). Quotations and references will be cited in the text according to the following abbreviations: AJ = Agrarian Justice; CS = Common Sense; and RM = The Rights of Man.

7. See Adam Smith, *The Wealth of Nations* (New York: E. P. Dutton and Co., 1937), vol. I, bk. 1, chap. 2, 14, and David Hume *A Treatise of Human Nature*, ed. L. A. Selby-Brigge (London: Oxford University Press, 1965), bk. III, pt. 2, sec. 2, esp. 493. Rousseau's response to the problem referred to in this paragraph might be said to be the most extreme. He too begins by observing that man is cooperative by nature. As noted though, he goes so far as to hold that the societies men form can be good only if we abandon reference to our natural rights and needs. In other words, there is a common good; but, in contrast with Aristotle, it is not natural! We participate in the artificial good, society itself, since we have become, largely, artificial beings.

8. As an illustration, for example, consider how different is Thoreau's case for civil disobedience from that of Martin Luther King, Jr. In his "Letter from a Birmingham Jail," King insists that the practice of civil disobedience will tend to purify and hence strengthen the rule of law. Thoreau, in contrast, recommends civil disobedience as a principled tactic which, when it becomes widespread, will bring about the civilized anarchy toward which America is pointing. Cf. Thoreau, *Resistance to Civil Government*, in *Walden and Resistance to Civil Government*, ed. William Rossi, 2nd ed. (New York: W. W. Norton and Co., 1992), as well as the the second and tenth chapters of *Walden*.

9. Paine's silence as to the constitutional status of the judiciary in *Common Sense* is consonant with his argument in the later book, *The Rights of Man*, wherein he explains that the judiciary is not a separate branch but rather one department of all that should be called "administration" (RM 388). His view, in fact, anticipates that of Frank J. Goodnow, pioneer in the emerging study of public administration with his book *Politics and Administration: A Study in Government* (New York: Macmillan Company, 1914), with whom there exist many parallels.


11. Paine approves of the mode whereby the American Constitution was ratified as conforming to his notion that it was an extralegal, directly popular act. Surely, though, he finesse this matter and overlooks difficulties. The American Constitution was ratified in extraordinary conventions, to be sure, but these conventions were established in the states, by the legislatures
of the states. When nine states had acted in this way, the Constitution became effective. One
should also consider the role that governmental institutions exercise under the Constitution in
amending the Constitution. Rousseau speaks directly to this question, which is merely begged
by Paine, as to how a people can act beyond the institutions of government. The amusing
ingenuity of his solution in fact illustrates the impossibility of any genuine solution. Cf. chapter

12. *RM* 431 for the summary of these measures. The foregoing several pages explain them
in more detail.


I. CORRINTH. Chap. VII. Ver. 21.

Art thou called being a servant? Care not for it; but if thou mayest be made free, use it rather.

At first glance, it is certain, this text refers to a state of personal servitude, and extends to every instance of the same kind. It is also as clear that the Apostle exhorts the servant to prefer liberty. This proves that the inspired writer himself, preferred [sic] liberty to a state of servitude; for he would not exhort another to prefer what was not preferable in his own esteem. Now, if Paul esteemed personal liberty a valuable inheritance, he certainly esteemed the liberty of a community a far richer inheritance; for if one man's enjoyment of it was a good, the enjoyment of two must be a greater good, and so on through the whole community. From the same manner of reasoning, the slavery of a community appears to be a proportionally greater evil than the slavery of an individual. Hence, we may observe from the text, that CIVIL LIBERTY IS A GREAT GOOD.

This is the proposition to which I ask your present hour's attention, and if it should appear in the sequel to contain an important truth, you will not esteem it below the gospel preacher's duty to explain and support it in public, especially at such a time as this, a time, at the very prospect of which, our generous fore-fathers would have wept in bitterness of soul. If civil liberty is a great good, it ought to be deemed one of the blessings of Heaven; these it is the preacher's duty to illustrate, that we may feel the obligations they bring us under--that we may enquire whether we have improved them for the glory of the giver, and that we may know how to conduct toward them for the future. Be pleased then to give your candid, close, and serious attention, while I endeavour to explain the nature of civil liberty, and prove that it is a great good.

As it is much less difficult to point out the nature of true coin in general, than to determine whether any particular piece is genuine, or how far it differs from the perfect standard: So it is much easier to point out the general nature of civil liberty, than to say what degree of it enters into any particular civil constitution. It is therefore most natural to enquire, in the first place, concerning the general nature of liberty; and indeed it is as necessary as natural. For until we determine this question we have no rule by which we may estimate the quantity of liberty in any particular constitution: But when once we have found the standard, we shall be prepared to examine our own constitution, or any other, at pleasure, and to determine what part of the constitution should be supported, and what may be given up with safety. An enqui ry into the nature of liberty in general, is also needful on another account. Without it we cannot see the force of any evidence that may be brought to evince the value of liberty itself.

That the subject may be fairly elucidated, I will endeavour to remove some mistakes by which it has been obscured. In doing this, I observe, that liberty does not consist in persons thinking themselves free. The Jews could say we were never in bondage to any man though they wore the Roman yoke at the very same time. Again, though a certain constitution should be contended for and supported by a majority of voices; yet this would be no sure evidence that it is free: Because an hundred may as truly tyrannize over one, as one over an hundred; or otherwise, the majority may be in favour of licentiousness. What but love of licentiousness or tyranny, or both, can induce the heathen nations to approve of their several systems of government? What but these, could induce Saul and the men of Israel to persecute David and his handful? What but one or both of these drew down the fury of Sodom on Lot--of the Jews on the prophets--on Jesus Christ--on his Apostles and their followers. What but these ever raised any one of the many terrible persecutions under which the peaceable disciples of Jesus Christ have fallen from time to time? In all these instances the majority have been unfriendly to liberty.

Civil Liberty consists, not in any inclinations of the members of a community; but in the being and due administration of such a system of laws, as effectually tends to the greatest felicity of a state. Herein consists civil liberty, and to live under such a constitution, so administered, is to be the member of a free state; and he who is free from the censure of those laws, may fully enjoy all the pleasures of civil liberty, unless he is prevented by some defect, not in the constitution, but in himself.

If liberty consists in the being and administration of a civil constitution, different from such as one as has been mentioned, I must confess, my inference from the Apostle's exhortation is not just. For certain it is, that so far as a constitution doth not tend, in the highest degree, to the greatest felicity of the state, collectively considered; it is a comparative evil and not a good.

Where there is no system of laws, not liberty, but anarchy, takes place. Some degree of liberty may, indeed, exist where neither the constitution nor the administration of it is perfect. But in order to perfect freedom, the law must extend to every member of the community alike, both in its requisitions and prohibitions. Every one must be required to do all he can that tends to the highest good of the state: For the whole of this is due to the state, from the individuals of which it is composed. Every thing, however trifling, that tends, even in the lowest
degree, to disserve the interest of the state must also be forbidden.

Originally, there were no private interests. The world and all things in it, were the common interests of all the inhabitants, under God the great owner. Nothing is to be esteemed an interest any farther than it tends to good or is capable of being turned to the benefit of the possessor. But whatever has this tendency, or may be thus used, is properly termed an interest. According to this estimate, the term interest includes all those various offices and employments that are capable of being improved for the good of the community. There interests, being such as cannot be managed by the whole body collectively, are distributed among the individuals according as they appear in the eyes of the body politic, to be qualified to use them for the good of the whole. In this way every member becomes a servant to the state, and is a good or bad servant according to the manner in which he discharges the trust reposed in him. This is equally true of the King on the throne and the peasant in the field. The laws of a free state require each individual to use the public interests deposited in his hands, in every instance in that very manner that shall contribute more to the good of the community, without any particular reference to Governor or subject, rich or poor, high or low. While the laws require such a continual course of conduct in every member of the community, they as critically forbid every one to take from another that part of the public property which is committed to him; or to impede him in making the best use of it for the public, unless when the community see it best to deprive an individual of his place, and authorise another to do it in their name. In this manner the laws of a free state provide security for the particular properties of each individual member, or rather for the public interest deposited in the hands of individuals, by denouncing such penalties on every offender as are exactly adequate to his offence. There must be an exact proportion between the offence and the penalty. Where there is no such proportion, or equality, liberty is infringed, because the law is partial, as it will injure, either the public, by not giving it its due, or the offender, by inflicting a greater evil than he deserves. In this case there must be no distinctions, made by the law, between persons of different characters and stations, only as those different characters and stations may give the same criminal action different degrees of aggravation. A criminal action is more criminal in a person who fills an elevated place, than in one of a more humble condition; because it has a more detrimental aspect on the state. For this reason, the offences of the great should be punished with greater indignity and severity, than the crimes of persons in low life. In a perfectly free state, friendship to the community will be as carefully noticed as an offence. Punishment will not be more exactly allotted [sic] to the transgressor, than adequate rewards to the faithful subject. The farmer, the seaman, the mechanic, the merchant, and the practitioner of such of the learned professions as belong to the state, are directed by the community, in effect, to reward each other by an exchange of labour, or commodities. While those servants of the state, who are employed in managing the reins of government, are rewarded by a collection from the whole, an equality to which, is returned in the happy effects of legislation and executive justice. At the same time that the laws make due provision for an equal distribution of rewards among the faithful servants of the state both of higher and lower rank, they make as full provision for the infliction of penalties on every class alike. They tender it as easy to bring a royal offender to trial,--to procure an impartial sentence against him, and to inflict deserved punishment, as in the case of the meanest subject.

In such a state, the laws extend to all the members of the society alike, by making an impartial estimate of every offence, but as it is best in all communities, that some offenders should be pardoned, for special reasons, and that others should be punished; those same laws will lodge a power of determining the alternative with some one, whose capacity and integrity are equal to such a trust, so that the community may suffer no harm.

A good foundation for liberty is laid in such a constitution, but its whole worth lies in due administration. Perfect liberty takes place where such a constitution is fully administered: But where the administration is imperfect, liberty is likewise imperfect. In a perfectly free state, both the constitution, and the administration of it, are full of propriety, equality, and equilibrium.

These I take to be the out-lines of genuine liberty, which by a proper application, may assist us in our enquiries after the degree of liberty enjoyed by any particular state.

Indeed, the circumstances and occurrences, that attend human states are so numerous, extensive, and uncertain, that no one man, or body of men, can foresee and improve them all to the greatest advantage. Hence, it frequently happens, that we cannot ascertain the degree of liberty enjoyed by a community, by comparing the particular parts of a constitution, or the administration of it, with the abstract notion of liberty; for we see but a small part of the whole system. Our views are very partial. This is the case not only of individual subjects, but the body of government, itself, cannot, completely, comprehend the whole. Some degree of partial oppression is, therefore, to be expected in every human state, even, under the wisest administration. We may, however, determine, in some instances, whether liberty is unnecessarily infringed or not. When we see the body of a community plundered for the sake of indulging individuals in pride, luxury, idleness and debauchery,--when we see thousands rewarded with pensions, for having either devised, or attempted to execute some scheme for plundering a nation, and establishing despotism, we cannot be in doubt whether some horrid attack is not made on liberty.

We may reason thus in a few particular instances; but, in general, we must form our judgments by considering the various dispositions of mankind, and by noticing their various operations and effects, in various circumstances. We must turn our attention to the facts that have already taken place; and may reasonably conclude, that the same causes will always produce the same effects, unless something special prevents. One general inference from the whole will be, that liberty is much rather to be expected in a state where a majority, first, institutes, and then varies the constitution according as they apprehend circumstances require, than in any other.
Other things being equal, a majority has a more general and distinct knowledge of the circumstances, and exigencies of a state than a minority; and, of consequence, is more able to judge of what is best to be done. Add to this, that private interest is the great idol of the human mind; and, therefore, when a majority unite in any measures, it is to be supposed, they are such measures as are best calculated to secure the particular interests of the members of that majority; and, consequently, the general interests of the body are more effectually provided for, in this way, than by the security of the private interests of any minority whatever. And if the maxims adopted by the majority are general, both in their nature and extent, it is to be supposed, they will prove as salutary to the members of the minority as to those of the majority, and, consequently, to the whole body. Hence, though liberty is not necessarily, nor invariably connected with the voice of a majority; yet, it is much more likely to be found in connection with such a voice, than with that of a minority. Indeed, there is in general no reason to expect liberty where a majority is counteracted, and, on the contrary, we may hope for some good degree of it, where a majority governs.

It is only on these maxims, that the present British monarch can be exculpated from the several charges of rebellion, treachery, and usurpation, and on these, the glorious revolution in favour of the house of Hanover is perfectly justifiable.

Let us now attend a little, to a few particulars which may serve to excite in us some more adequate ideas of the worth of civil liberty. Indeed, none but an omniscient mind can fully comprehend, and exactly estimate the true worth of this blessing, in its various consequences, effects, and inseparable concomitants, as they take place on various occasions. Our views of this subject may, however, be greatly enlarged and rendered much more distinct than they generally are.

That civil liberty is of great worth, may be inferred [sic] from the conduct of God toward the Jewish nation. He promised them freedom from the oppression of their enemies as a testimony of his favour in case of their obedience; and as a chastisement for their disobedience, he threatened them with a state of servitude. From this it is certain that the omniscient God himself, esteems liberty a great blessing. The Israelites were taught by him to set their hearts much on liberty, and to avoid slavery with great caution, constancy and vigour. When we enjoy liberty, and are sure of its continuance, we feel that our persons and properties are safely guarded by her watchful eye, her impartial disposition and her powerful arm. This excites to industry, which tends to a competency of wealth. The vassal, on the other hand, having no security of his present possessions, or for those he might obtain, concludes so uncertain a prize is not worth the seeking, and therefore will do no more than barely serves to silence the clamours of necessity from day to day.

In such a situation, every bias of the human mind tends to idleness and poverty. Even generosity itself will sink into inactivity and indolence; because it loathes a connection between tyranny and wealth, and therefore refuses, will do nothing that might establish such a connection, by strengthening a tyrannical state. Liberty not only removes every obstruction out of the way of industry, frugality and wealth, but rouses even indolence to action, and gives honest, laborious industry a social, sprightly, cheerful air; but in a state of slavery, sloth hangs heavily on the heels of dumb, sullen, morose [sic] melancholy. Industry and frugality spring from the same source, and are spontaneously productive of temperance. The former moderates the appetites, while the latter forbids unnecessary expence. This triple alliance is the natural parent of decent conversation and courteous behaviour. They calm the passions and urge even pride and avarice to mimic humanity, and every generous sentiment. By these and such means, they, both enable and dispose us to fulfill our contracts with exactness, and to give us credit with our neighbours and lay a foundation for public confidence. In this manner liberty renders political virtue fashionable, and productive of temperance. The former moderates the appetites, while the latter forbids unnecessary expenditure. These united, will prove a bulwark against every assault of lawless power, whether foreign or domestic.

In such a state, a free people will enjoy composure of soul and their taste will become refined. The study of the fine arts will follow or be such a religion as is inconsistent with the good of the state. The first effects of liberty, on the human mind, are calmness, serenity and pleasing hope, and all the various fruits of liberty produce the same happy effects. Thus liberty, first divides itself, as it were, into various streams; which, at length, all meet together again in soothing sensations and sweet emotion of soul. The pleasure that springs from liberty is the life of every other enjoyment, and the importance of it in a single instance is vastly great, too great to be conceived of, unless on a sudden transition from a state of refined freedom, to that of the most abject slavery. How great then must be the collective happiness that a community derives from a state of perfect freedom? I confess liberty never has been enjoyed in perfection by any of the nations of the earth; but this by no means affects the foregoing estimate. For, from the small degree of liberty, with which we are acquainted, the consequences of perfect liberty may be justly inferred. Nor is the imperfection of liberty, as it hath taken place in the world, any discouragement to the pursuit of it. The more we can obtain, the greater will be our enjoyment. Each degree of liberty is a precious pearl.

When we would learn how much any thing tends to happiness, we must view it with reference to the taste of the person in whom the
entrust with every man, and it undoubtedly becomes all to be constantly, and thoroughly awake to a sense of their duty respecting it. We are too ready to fancy, that when once we have appointed legislators, and given them charge of this inestimable treasure, we need give ourselves If liberty is such a thing, and so great a blessing as it has been represented, it is, certainly, a rich talent that Heaven has been pleased to cast.

It is equally true, that every kind and degree of opposition made against good government is an ebullition of licentiousness. The man that rises up against good government is an enemy to liberty, a tyrant in heart, and they who are discontented and fretful under it are of the same condition. Not to government, appears to be very gross. Indeed one many may be a friend to tyranny and not to liberty, but then he is as truly an enemy to government. Another may be a friend to licentiousness and not to government; but then he is as truly an enemy to liberty; and both, for this plain reason, that good government in a state, and the liberty of that state, are one and the same thing. This suggests another idea, which is, that

The improperity of saying of a person, that he is a friend to government, but not to liberty; and of another, that he is a friend to liberty, but not to government, appears to be very gross. Indeed one many may be a friend to tyranny and not to liberty, but then he is as truly an enemy to government. Another may be a friend to licentiousness and not to government; but then he is as truly an enemy to liberty; and both, for this plain reason, that good government in a state, and the liberty of that state, are one and the same thing. This suggests another idea, which is, that

He who infringes on liberty rebels against good government, and ought to be treated as a rebel. It matters not what station he fills; he is a traitor; his treachery is, however, more or less aggravated in proportion to his state and condition. He that fills an elevated station is proportionably more criminal in the same rebellion, than those in a lower state; and where a man proves false to confidence reposed in him, his treachery is still more base and detestable. Because his exaltation puts it into his power to do greater injury to the state than could possibly be done by an inferior.

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If liberty is such a thing, and so great a blessing as it has been represented, it is, certainly, a rich talent that Heaven has been pleased to entrust with every man, and it undoubtedly becomes all to be constantly, and thoroughly awake to a sense of their duty respecting it. We are too ready to fancy, that when once we have appointed legislators, and given them charge of this inestimable treasure, we need give ourselves no farther concern about it. But this is not our whole duty. We are all stewards, to whom the God of nature has committed this talent. The
design of appointing a few individuals to government, is not to free the rest from their obligations but to assist them in the discharge of their duty, in the same manner that ministers of the gospel are to assist their hearers in those duties that respect the care of their souls. Communities ought therefore to keep an impartial and watchful eye on government. They are urged to do so, by a consideration of the avaricious, and aspiring dispositions of mankind in general, and the peculiar opportunities and temptations that Governors have to indulge them. In these latter ages of the world, after it has been found by several thousands years experience, that such as have been made the guardians of liberty, have in almost every instance, where it was thought practicable, endeavoured to make themselves masters, instead of continuing stewards of the community; in these days, I say, we are more distinctly, sensible, and frequently called on to watch the conduct of government. Liberty is not an absolute right of our own, if it were, we might support, and guard, or neglect it at pleasure. It is a loan of heaven, for which we must account with the great God. It is therefore, as unreasonable for us to place an unlimited confidence in any earthly ruler, as to place such a confidence in our spiritual ministers and depend wholly on them to settle our final account with the holy judge of the universe.

I do not mean that we should, as individuals, undertake to dictate to our rulers, or oppose them by force whenever we judge they act a wrong part. This would be utterly unreasonable, for surely we have at best, no better right to usurpation than they. What I mean is, that we should all endeavour to turn the attention of our fellow members of the community on the conduct of our rulers. We should notice and compare it with the standard of right and wrong ourselves; and excite others to do so likewise. We should endeavour on every alarming occasion, to collect the sentiments of the body, and vigorously pursue those measures that are thought the most salutary for the whole.

It becomes us, with united hearts, to make a firm stand against every attempt to wrest the jewel from us, either by force or fraud: --The present state of things is very alarming. In the view of the most simple common sense, we are now called on--men, women and children are called on to struggle for the preservation of those rights of mankind which are inexpressibly dear. Let us then rouse and exert ourselves to the utmost, on the present occasion. But you ask me. What shall we do? Shall we renounce the authority of our gracious sovereign? Shall we take up arms against his troops? What shall we do?

I answer, By no means. Do not suffer the thought of renouncing our king's authority, so much as to turn in your mind; rather, be ready to shed your blood in defence of your rightful sovereign and his high office. Never let us think of entering on a civil war, unless the Pretender, or some other usurper should attempt to dethrone the British parent of his people. But should this be the case, then let the world see that their king is dearer to the Americans than their blood.

Though the time has been when our countrymen, but an handful, wee obliged to defend themselves against thousands of the native savages; by dint of arms; yet, notwithstanding, a cloud, in some respects, much heavier than that, lowers over us at present; such is the kindness of our God, that, humanly speaking, it is in the power of America to save both herself and Great-Britain from total destruction, and that without a single hostile stroke. Nothing more than piety and economy are necessary, and in these, every age and character may unite. The pious supplications of the stammering child will as effectually reach the ear of our God, and be as acceptable to him as the most elegant address. A thousand things may intercept our petitions on their way to an earthly monarch; but a combination of all our enemies in earth and hell cannot prevent a pious wish in its flight to Heaven; and let us remember, that the effectual fervent prayers of the righteous avail much. We have sought in vain for relief from our parent state--from our king. And if salvation has not come from our gracious sovereign King George, we cannot expect it from the hills. We must look still higher. Instead of railing against man let us notice and imitate the example of Michael who railed not against the devil himself. David, said, of Shimel, let him curse for the Lord hath bidden him. He saw, he had deserved so illly at God's hand, that it was no wonder, he had brought such a punishment on him. He, therefore, accepted it willingly at the hand of God; and let us rouse ourselves to the utmost, on the present occasion. But you ask me. What shall we do? Shall we renounce the authority of our gracious sovereign? Shall we take up arms against his troops? What shall we do?

I answer, By no means. Do not suffer the thought of renouncing our king's authority, so much as to turn in your mind; rather, be ready to shed your blood in defence of your rightful sovereign and his high office. Never let us think of entering on a civil war, unless the Pretender, or some other usurper should attempt to dethrone the British parent of his people. But should this be the case, then let the world see that their king is dearer to the Americans than their blood.

Ages are composed of seconds, the earth of sands, and the sea of drops, too small to be seen by the naked eye. The smallest particles have their influence. Such is our state, that each individual has a proportion of influence on some neighbour at least; he, on another, and so on; as in a river, the following drop urges that which is before, and every one through the whole length of the stream has the like influence. We know not, what individuals may do. We are not at liberty to lie dormant until we can, at once, influence the whole. We must begin with the weight we have. Should the little springs neglect to flow till a general agreement should take place, the torrent that now bears down all before it, would never be formed. These mighty floods have their rise in single drops from the rocks, which, uniting, creep along till they meet with another combination so small that it might be absorbed by the travellers [sic] foot. These unite, proceed, enlarge, till mountains tremble at their sound. Let us receive instruction from the streams, and, without discouragement [sic], pursue a laudable plan. But, Is it not to be feared, that an appetite for the leeks and onions, is the source of our difficulty? The ungenerous language of the objector seems
to be, "I could wish to see my country happy, but if the fates have determined its destruction I will not forgo my share of the booty."

It is great, it is glorious, to espouse a good cause, and it is still more great and glorious in such a cause to stand alone. It is great and glorious to outweigh the reproach of the base. Should all our countrymen forsake us, perseverance would be an honour, and the honour will rise as the number of our adherents is diminished.

Let us therefore, vigorously pursue prudent measures in the present alarming state of things. Then, should it please the righteous disposer of all, to reduce us to the most abject slavery, we shall at least, have the consolation to think, that we are in no part chargeable with having riveted chains on our country, and the blessing of a clear conscience is incomparably better than the greatest temporal interest and worldly applause.

This has been a land of liberty. We have enjoyed that blessing in a great degree for a long time. It becomes us now to reflect on our ingratitude to the giver. When he has wrought salvation for us, on one occasion and another, how have we expressed our thankfulness? By bonfires, illuminations, revellings, gluttony and drunkenness. Would not a stranger have thought us worshipers of the whole race of the heathen deities, rather than of that God, who is a spirit, and who seeketh such to worship him, as do it in spirit and in truth?

We have boasted of our liberty and free spirit. A free spirit is no more inclined to enslave others than ourselves. If then it should be found upon examination that we have been of a tyrannical spirit in a free country, how base must our character appear! And how many thousands of thousands have been plunged into death and slavery by our means?

When the servant had nothing to pay, and his master had frankly forgiven him all, and he had gone and cast his fellow servant into prison, there to remain till he should pay the last farthing; the master justly punished his ingratitude and severity with the like imprisonment. Hath not our conduct very nearly resembled the conduct of that servant? God gave us liberty, and we have enslaved our fellow-men. May we not fear that the law of retaliation is about to be executed on us? What can we object against it? What excuse can we make for our conduct?

What reason can we urge why our oppression shall not be repaid in kind? Should the Africans see God Almighty subjecting us to all the evils we have brought on them, and should they cry to us, O daughter of America who are to be destroyed, happy shall he be that rewardeth thee as thou hast served us; happy shall he be that taketh and dasheth thy little ones against the stones; how could we object? How could we resent it? Would we enjoy liberty? Then we must grant it to others. For shame, let us either cease to enslave our fellow-men, or else let us cease to complain of those that would enslave us. Let us either wash our hands from blood, or never hope to escape the avenger.

To conclude, unless we adopt some prudent decisive measures in humble dependence on God; we have reason to fear some almost unparalleled calamity. If we do not exert ourselves: it would not be strange, should a military government be established, and popery triumph in our land. Then, perhaps, those, who now want fortitude to deny themselves some of the superfluities of life, may see their husbands and sons slain bin battle, their daughters ravished, their wives ripped up, their children dashed against the wall, and their pious parents put to the rack for the religion of Jesus. Now is the decisive moment. Gods sets before us life and death, good and evil, blessing and cursing, and bids us choose. Let us therefore choose the good and refuse the evil, that we may live and not die.

John Chapter VIII. Verse 36.

*If therefore the son shall make you free ye shall be free indeed*

The general nature of liberty is the same in all societies, though different circumstances give it different appearance. The same general principles that are the foundation of good government in a family are as truly so in the government of a nation. These maxims are applicable not only to earthly societies, but are equally so to the eternal kingdom of the great God. That government and that liberty which takes place in earthly communities is called domestic or civil, according to their extent. When these are spoken of as belonging to the kingdom of God, they are termed divine or spiritual. The propriety of the manner of expression made use of in our text, depends on the truth of these observations. In the thirty first verse of the context, we are told, that our Lord Jesus Christ said to those Jews which believed on him, If ye continue in my words ye are my disciples indeed; and ye shall know the truth and the truth shall make you free. It seems as though they did not apprehend he was speaking of spiritual liberty but of civil, and therefore answer, We be Abraham’s seed, and were never in bondage to any man. How sayest thou, ye shall be made free? Jesus then leads them to understand, that he spake of spiritual liberty, by saying, Whosoever committeth sin is the servant of sin; and then he adds, the servant abideth not in the house forever; but the son abideth ever, after which follows the text. It is observable that our Lord in this conversation uses that particular word to signify spiritual freedom, by which
they understood civil liberty, which would have been altogether improper, had not their general nature been the same. We may observe, that
it is Jesus Christ who makes those free that are so in a spiritual sense. It is he alone who introduces them as freemen into this state. If the
son shall make you free then shall ye be free indeed. He doth not way if ye be made free, or if ye make yourselves free, but, if the son shall
make you free.

The freedom here spoken of, is no doubt, the same that in another place is called the liberty of the sons of God. It is that liberty, which those
enjoy who are born of God, have his spirit and are adopted into the number of his children. The liberty is enjoyed in this world so far as
persons are sanctified; and shall hereafter be perfectly enjoyed in Heaven.

It is observable that Christ calls this liberty, freedom indeed. Ye shall be free indeed. This emphatical word was doubtless made use of to
Teach us, that spiritual freedom, or liberty is preferable to any other, and that it is perfect freedom, without any mixture or defect.

The principal thought in the text, and what I propose to dwell on at present is, that

The state of liberty into which Jesus Christ introduces his disciples is far preferable to any state of earthly liberty.

The subject to which we attended in the forenoon, is vastly important; but this is as much more important, as spiritual enjoyments are
Preferable to those that are temporal, eternity to time; and as all the final host of Heaven, which will be composed of God, Christ, Angels
and Saints, are preferable to the handful of dust and ashes that compose an earthly empire. It is a subject much more interesting to us, as
well as more important in itself. Let me then beg your most diligent, conscientious and unbiased attention, while I endeavour to illustrate
And improve the observation just now deduced from the text.

It was said in the former discourse that liberty consists in the being and due administration of such a set of laws, as tend to the highest good
Of the society. If this be so, it follows that liberty in a state is greater or less in exact proportion to the greater or less tendency of the
Constitution and its administration to the highest good of the community collectively considered. If therefore it appears on examination, that
The constitution of Christ’s kingdom and the administration of that constitution have a stronger tendency to the good or that kingdom, than
The constitution of any earthly kingdom, and the administration of that constitution, have to the highest good of that earthly kingdom, the
Proposition is illustrated and proved.

In a perfectly free state the laws forbid every crime against the community. Every action that would be in the least degree injurious to the
State is forbidden. In order to this, the legislature must have a perfect view of all the various circumstances and occurrences that may take
Place with respect to each individual of which the state is composed, at all the various periods of its existence. Actions that seem to us too
Minute to be regarded, have their consequences, which are oftentimes vastly important and interesting to the state. How often has a single
Word spoken in anger by some great personage, lain at the bottom of a nation’s overthrow? The tongue is a little member, but small as it is,
It seteth the course of nature on fire. Well might the Apostle say, How great a matter a little fire kindleth! But,

It is impossible for any finite mind or number of minds, to ascertain every particular word and gesture that may be detrimental in its
tendency to the state, and therefore, there cannot possibly be a system of human laws in which every political evil shall be forbidden.

The liberty of the most refined kingdoms of this world, is but like the lean, scanty gleanings of the vintage, while the liberty of the kingdom
Of Christ is like the full grown clusters of the first ripe fruits that load the generous vine. Such is the weakness of the human mind, and the
Perplexed state of earthly things, that neither any community nor its wisest delegates, could make sufficient provision against all political
Inconveniences, even though they were quite free from every sinister design, unless they were under the continual influence of miraculous
Inspiration from God. In order to such an effectual precaution they must foresee all the various mental exercises of every member of the
Community; and be able to judge, at the trial of every supposed offender, what the real motives of his conduct have been; because men are
Blame worthy or not, according to the meaning of their hearts. But we cannot obtain any certain knowledge of any one motive that actuates
The mind of another. No man knows the things of a man save the spirit of a man that is in him. Besides this there is another difficulty, for
Though we had the power of looking into another’s heart, we should still find ourselves incapable of tracing the heart through all its dark
And intricate labairths [sic]. Hence it appears that no political constitution on earth can extend its authority any further than to a few of the
Many external expressions either of friendship, or disaffection to the state. For this reason, the most compleat system of earthly government
Imaginable, falls immensely short of a finished scheme. This however is nothing, in comparison with another inconvenience, that arises
From the depravity of human nature, which leads every man in a greater or less degree, to look on his own things and not on the things of
Another; to seek their own private interest, without regarding the interests either of their fellow men, the angels, or the duty, any father
Than they may seem subservient to private interest. We have, indeed, reason to hope, that a few are possessed of some small degree of a different
Spirit: --a disinterested benevolent spirit. But there is reason to believe, that by far the greater part of these are to be found among the lower
Classes of mankind, and that a very small proportion of them are among the great. From these considerations we may conclude, that, though
It is the duty of Kings and all other rulers to seek the best good of the community, yet they too often act a part directly opposite. Instead of
Improving their power and interests for the good of the community, they made use of the common interests as means of aggrandizing
Themselves and their families. This sentiment is confirmed by the history of Kings, and other rulers in every age of the world. We must

http://www.skidmore.edu/%7Etkuroda/gh322/Niles.htm
therefore conclude that the highest degree of liberty that can reasonably be expected in earthly states is very low. At best, there are only some spicces of liberty scattered in earthly states, and yet these are more precious than we can conceive. But

In the kingdom of Jesus Christ, there is no reason to apprehend any such inconveniency or imperfection. For the constitution of his kingdom, and the administration of it, are the effects of the pleasure of him who searcheth the hearts, and tryeth the reins of all his subjects, and is at times perfectly acquainted with every design of all his rational creatures. It was, therefore, perfectly easy for him to form a constitution, which should never need the least alteration in order to the best good of the universe. He is as powerful as wise, and therefore, can administer this constitution with the utmost precision in every instance. Both his wisdom and power are all sufficient. This being granted, nothing can be wanting in order to bring about the highest good of the universe, except it be a disposition in Jesus Christ to employ his knowledge and power for that purpose. If he has such knowledge and power and a full, invariable, eternal inclination to employ his knowledge and power in the production of the highest good of the universe, the designs cannot possibly be frustrated. The united exertion of sufficient skill, power and inclination will forever obtain its end. Sufficient skill and power will in every instance, without exception, carry all ones designs into execution. Now, that Jesus Christ has such a disposition is evident from his being no respecter of persons.

For, we see, he has in fact done very many things, which, beyond all dispute, are the effects of design, and not of inadvertency. Now, if those things are done by design, and yet not from any partial respect to any person, what, but a regard to the whole could be the moving cause? And, if regard to the whole be the moving cause of all that Christ has done, is doing, and will do, must we not conclude, the highest good of the whole is his highest, and only ultimate end? We cannot suppose otherwise, without believing, that Christ is a being of mixed and jarring affections, which would imply great imperfection indeed. The division of one’s affections between two different objects, always creates a painful discord, in such a case, the passions of the mind are in a confused state of opposition, which is ever productive of painful sensations of soul-- We must, therefore, believe that Jesus Christ aims, with the utmost strength and uniformity of design, at the highest good of the whole or else, that he is an inconsistent, and consequently a miserable being.

Jesus Christ has in his mediatorial reason, given the highest possible evidence of the most disinterested attention to the highest good-- Since he is an omnipotent being, what reason can be given why he did not call down the innumerable hosts of mighty angels from heaven to destroy his persecutors, or why he did speak them unto hell, unless it be, that he is infinitely benevolent. Such was his regard for the highest good, that he held not his own life dear, and what is far more, he delivered himself into the hands of his most unrighteous, inveterate, malicious, and detestable enemies, to be treated according to the dictates of their accursed pride and malice. He clearly saw how much their haughtiness, and revenge would be gratified in his meek submission to the cross, and his bitter agonies on the tree. And yet, such was his regard to the general good, that he cheerfully gave them an opportunity to gratify their perverse inclination, and supported them in existence while they did it.

These considerations are enough to convince us, that there is as much, as pure liberty in the kingdom of Christ, as unlimited wisdom, power and goodness can possibly produce; and how inconceivably greater, and more excellent must this be, than nay thing of the kind that can take place under the direction of ignorant, impotent selfish men. The Lord of hosts hath proposed his kingdom to stain the pride of all glory, and to bring into contempt all the honourable of the earth. ....

How strangely inconsistent are we in treating that liberty, which is of infinite worth, with neglect and contempt, when it is most freely offered us, while, at the same time we are ready to sacrifice, not only our fortunes, but our very lives and friends to purchase and defend that which at best is but imperfect, uncertain and temporal? To struggle for the latter is laudable, but to neglect the former, is infinitely criminal., Surely none but a madman would neglect millions which he might have at pleasure, and yet barter his life for an uncertain penny. In the affair of civil liberty, the most spirited efforts may prove ineffectual; but that which is spiritual will certainly be the consequence of a single

Come then, my friends, let us embrace the glorious liberty of the sons of God. Every possible measure, whether of terror or allurement, is set before us. If we embrace this, we shall of necessity be genuine sons of liberty. We shall resolve that nothing but the wise superintendency of God shall ever make us submit to public oppression; for no man can be a christian and not a friend to civil liberty, in the strictest sense. To be freemen of Jesus Christ will exceedingly sweeten the enjoyment of civil liberty if we can obtain it, or soften the fetters of slavery if we shall be forced to wear them. Spiritual liberty opens up a pleasant prospect even in the midnight of political slavery. The most abject slave may look forward and say, "a few moments more will usher me into a state of everlasting Freedom." On the contrary, what will it profit us to gain the whole world, crowns and scepters, if at last we loose [sic] our own souls, and are dragged at the chariot wheels of Satan. This is our time to secure freedom and glory. Another hour may chain us down in eternal bondage.
God has given us rational minds. let us then act a rational part. Let us act a consistent part, and not dishonour our high birth. Consistency, reason, interest and duty all call on us to yield an immediate and unlimited submission to God. Heaven is set before to allure us. Hell flames behind. Satan is ready to seize us, and the eternal Jehovah stretches forth his hand and offers to save us. Let us do whatever true wisdom may direct with respect to civil liberty, but by all means let us do it so as that ours slavery to satan shall not increase with the increase of civil liberty. Let us act a part that shall be approved of at the last day, by our own consciences, by saints and angels, and by our holy judge. Then shall we rejoice at what we have done, but otherwise we must be ashamed forever. May God give us grace to do so for the sake of our Lord Jesus Christ.
Legitimate Government, Religion, and Education: The Political Philosophy of Thomas Jefferson

Aristide Tessitore

Of all the members of the Founding generation, Thomas Jefferson (1743-1826) has the most direct claim to status as a philosophic thinker. Notwithstanding this fact, anthologies of political philosophy typically exclude the "sage of Monticello" (and the Founders generally), perhaps in large part because he never elaborated a complete political theory. Indeed, Jefferson is the author of a single book, Notes on the State of Virginia (1787), and one is compelled to turn to a handful of important public documents and especially his voluminous private correspondence to encounter the vast majority of his written ideas. A second and related reason for Jefferson's exclusion from the canon of political philosophers is that his general views about politics emerge from direct engagement in a particular political project: namely, the Founding and shaping of the American experiment. If this second source of neglect points to a limit in Jefferson's status as a philosophic thinker, it simultaneously emphasizes his importance for understanding the intersection between political philosophy and actual political practice. While it is true that Jefferson's deep involvement in politics inhibited his development as a philosopher and that his susceptibility to philosophic ideas at times clouded his judgments about politics, it is also true that Jefferson's enduring legacy lies precisely in his ability to infuse the daily business of political life with philosophic principles.

Assessing Jefferson is complicated not only by the absence of any fully elaborated political theory but also by controversy both during his lifetime and at present, by discrepancies between espoused principle and tangible practice, and by the changes that characterized his thinking over a long life of reflection and active political involvement. Notwithstanding these complications, the best way to bring to light the guiding principles of Jefferson's political philosophy comes from the epitaph he designed for himself. He recorded there what he considered to be his three greatest accomplishments: the Declaration of Independence, the Bill for Establishing Religious Freedom, and the founding of the University of Virginia (epitaph, 1826). All three point to Jefferson's legacy as a Founder and involve him in the work of human liberation-political, religious, and intellectual. Moreover, each of these accomplishments is related to profound themes in the tradition of political philosophy: the nature and purpose of legitimate government, the relationship between religion and politics, and the long-standing preoccupation of philosophers with political education. Sustained consideration of each of these related themes constitutes the core of Jefferson's political philosophy and animates the legacy he has bequeathed to the American republic, one that, despite current controversies, deserves to endure.

The Nature and Purpose of Legitimate Government

Jefferson placed the Declaration of Independence at the head of his list of accomplishments, the act for which he most wanted to be remembered. As chief draftsman of the Declaration, Jefferson enjoyed growing renown and endured as well the inevitable jealousies that accompany fame. Against those who accused him of having essentially stolen the text from other sources, Jefferson maintained that such criticism was entirely off-point.

[T]he object of the Declaration was ... [n]ot to find out new principles, or new arguments, never before thought of, not merely to say things that had never been
said before; but to place before mankind the common sense of the subject. . . .
Neither aiming at originality of principle or sentiment, nor yet copied from any
particular and previous writing, it was intended to be an expression of the American
mind. (to Henry Lee, May 8, 1825)

By his own reckoning, Jefferson's greatest accomplishment was devoid of originality; rather,
its importance rests upon the extent to which he succeeded in capturing "the harmonizing
sentiments of the day" (to Lee, May 8, 1825). From the outset, the Declaration was intended
to be what in fact it became—an authoritative statement of the American political creed.
(There is, as we shall see, a certain symmetry in Jefferson's desire to be most remembered
for a document that best articulates the prevailing views of the American people as a whole.)
Notwithstanding Jefferson's modesty, the ability to put into words the political creed of a
fledgling nation, and to do so with an unrivaled degree of concision, eloquence, and dramatic
power is no small accomplishment. Still, it should be kept in mind that the Declaration does
not attempt to present Jefferson's own personal views so much as a consensus that could
command widespread assent. This is in no way to suggest that the Declaration fails to reflect
Jefferson's own views (in the 1790s, Jefferson formed the Republican party to recover the
principles expressed in the Declaration), but it is to caution against an overly facile
identification of Jefferson's attempt to speak on behalf of a nation with a fuller understanding
of his own political and philosophic principles.

The Declaration proceeds with admirable cogency to establish its claim that the political
bonds connecting the American colonies to Great Britain are and ought to be totally
dissolved. The principled basis for this argument is contained in the rightly famous second
paragraph, which provides a remarkably succinct teaching on the nature and purpose of
legitimate government. Lincoln aptly captures Jefferson's accomplishment when he praises
him for having "the coolness, forecast and capacity to introduce into a merely revolutionary
document, an abstract truth, applicable to all men and all times" (to H. L. Pierce and others,
April 6, 1859). On the basis of this "abstract truth," the Declaration submits facts in the form of
grievances to a candid world, all driving inexorably toward the conclusion that "these United
Colonies are, and of Right ought to be, Free and Independent States."

Nothing is more familiar or more controversial than the first "self-evident truth" of the
Declaration: "all men are created equal." To claim that something is self-evident does not
mean that it is apparent to all. Rather, a self-evident truth is one that follows necessarily
from its subject. As in geometry, a proper understanding of the nature of the subject under
investigation enables one to move through a series of logical steps to a conclusion that
follows of necessity from the thing itself. The key notion here is "nature," something that
points to a first difference between the writer of the Declaration and the views of those it
purports to harmonize. The self-evident truth of equality presupposes a proper
understanding of human nature, one from which the "evidentness" of human equality
immediately follows. This truth is so far from obvious that most people at most times have
believed the opposite, basing their regimes on the rule of the "better sort" of persons—that is,
on a principle of inequality. Indeed, as is all too apparent, even the nation espousing the
claim of equality was marred by the searing inequality of slavery. The self-evident truth of
equality was at odds with the obvious facts of human inequality.

Drawing especially but not exclusively on the political thought of John Locke—one of "the
three greatest men that have ever lived, without any exception" (to John Trumbull, February
15, 1789)—the Declaration offers a summary account of the natural state of human beings
and then goes on to draw the relevant consequences for understanding the purpose and
limits of government. The natural state for human beings is one bereft of rightful authority, a
negative truth that simultaneously provides the basis for a positive affirmation of equality.
Prior to the institution of legitimate authority, all men are equal in the sense that they are not subject to the authority of any other human being. Although Jefferson affirmed that human beings are by nature social animals (to Thomas Law, June 13, 1814), he effectively rejected the Aristotelian doctrine that man is by nature a zoon politikon; for Jefferson, the natural state of human beings preceded government. The Declaration teaches that government is an artifice, a product of human making. Since government arises neither from nature nor God, it is not sacrosanct and can be changed, indeed improved, in the measure that the science of politics is improved. Not only does the Declaration fail to specify any particular form of government, but its explicit and unprecedented affirmation of the right to revolution—"the right of the people to alter and to abolish" government—is at odds with the kind of reverence that time and prejudice typically bestow upon political institutions. Jefferson was willing to go much further than his contemporaries in drawing out the radical implications of this doctrine. He maintained that no society could justly make a perpetual constitution; each generation should decide this anew for themselves. James Madison firmly rejected this implication. In his view, a government frequently revised would "become too mutable to retain those prejudices in its favor which antiquity inspires," prejudices that furnish "a salutary aid" to even the most rational and enlightened of governments (to Madison, September 6, 1789, and from Madison, February 4, 1790).

Neither Jefferson nor the Declaration maintained that human beings were equal in every respect. Jefferson here followed Locke, who wrote: "Though I have said that all men by nature are equal, I cannot be supposed to understand all sorts of equality." He went on to cite age, virtue, merit, high birth, and benefits given or received as qualities that may distinguish one person from another. "Yet all this consists with the equality which all men are in, in respect of jurisdiction or dominion one over another, which was the equality I there spoke of" (Second Treatise of Government, sec. 54). Jefferson's affirmation of natural equality in the Declaration was perfectly consistent with his recognition of a "natural aristocracy of virtue and talent" to which he assigned a privileged political role. "[T]here is a natural aristocracy among men. The grounds of this are virtue and talents.. The natural aristocracy I consider as the most precious gift of nature for the instruction, the trusts, and government of society" (to John Adams, October 28, 1813). While recognizing the existence of natural inequalities, Jefferson insisted that such differences did not convey either a natural or God-given right to rule. The lack of rightful authority in our natural state and resulting condition of equality was the relevant truth upon which legitimate government should be erected. Something of the complexity of Jefferson's thought can be suggested in this way: The self-evident equality of the Declaration means that legitimate government is based on the consent of the governed and the will of the majority, even while it requires the talent and virtues of the "natural aristoi" to found and sustain itself.

The Declaration is unequivocal in its teaching about the purpose of government. Governments are instituted by human beings to secure their otherwise vulnerable natural rights and, in the absence of any natural standard of authority, legitimate government can only derive its powers from the consent of the governed. The source of these rights is said to be the "Creator," a being who is in other respects deliberately left unidentified. Jefferson drew upon the tradition of natural as opposed to revealed theology in the Declaration, referring in the introduction to "the laws of nature and of nature's God." The giver of natural rights is the God who can be known through a rational investigation of nature. Whereas governments are the work of human artifice, the Declaration simultaneously invokes a standard not of human making by which the variety of political artifices can be evaluated. Although he believed, at least in theory, that each generation had the right to change the laws and institutions of government to suit themselves, this belief derived from the one fixed point in Jefferson's political philosophy: "Nothing is unchangeable but the inherent and unalienable rights of man" (to Major John Cartwright, June 5, 1824).
We should note that the self-evidence of the inalienable rights to life, liberty, and pursuit of happiness affirmed in the Declaration would be apparent only to those who take their bearings from science or, more specifically, the moral and political principles uncovered by political philosophy. Commenting on the Declaration at the end of his life, Jefferson wrote that "[t]he general spread of the light of science" is responsible for the growing recognition of "the rights of man" (to Roger Weightman, June 24, 1826). For a majority lacking leisure, ability, or education to pursue such inquiries, the evidence for these rights is replaced with a kind of faith or belief; they are held to be "self-evident" within the political community dedicated to making them effective. Whereas the self-evident truths of equality and natural rights were the product of a long and controversial chain of philosophic reasoning, they were harmonized in the Declaration as the creedal starting point for political action and reasoning.

The continued viability of Jefferson's teaching on equality turns on whether "all men" includes both males and females as well as persons of all races. However one might assess Jefferson's compromises with respect to slavery, from the beginning to the end of his public life, Jefferson maintained its injustice on the basis of the natural rights doctrine expressed in the Declaration.² Although he hazarded some "conjectures" "with great diffidence" about the intellectual inferiority of the Negro race (Notes 191-93)-conjectures he tepidly claimed to withdraw later in life (to Benjamin Banneker, August 30, 1791; to Henri Gregoire, February 25, 1809)-Jefferson consistently maintained that intellectual superiority confers no right for one human being to rule another: "Because Sir Isaac Newton was superior to others in understanding, he was not therefore lord of the person or property of others" (to Gregoire, February 25, 1809). Although Jefferson tentatively suggested that nature may have been less bountiful to blacks "in the endowments of the head," he simultaneously asserted that "in those of the heart she will be found to have done them justice." He continued his reflection by taking issue with a pervasive stereotype: the disposition of slaves to theft "must be ascribed to their situation, and not to any depravity of the moral sense" (Notes 191).

For Jefferson, the heart was the locus of morality and seat of the natural moral sense (cf. to Maria Cosway, October 12, 1786). This doctrine was something he seems to have learned from his reading of the Scottish moral sense philosophers, especially Francis Hutcheson, Lord Kames, David Hume, and Adam Smith. The equality asserted in the Declaration is at root a moral quality grounded in the natural sociability of human beings. "[N]ature 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. . . . The Creator would indeed have been a bungling artist, had he intended man for a social animal, without planting in him social dispositions" (to Thomas Law, June 13, 1814). This does not mean that the moral capacities of human beings are equal in every respect, any more than are their intellectual capacities. Indeed, Jefferson acknowledged that only some of those who are deficient in moral sensibility can be improved through education. Still, he maintained that it would be wrong to mistake the exceptional case of someone completely lacking in benevolence for a general rule. The moral sense is a defining attribute of the human species in the same way that two hands are descriptive of the human body despite the existence of one-handed persons. For Jefferson, both an innate sense of duty toward others and the radically selfish concern for self-preservation are natural to the human heart. Indeed, it was the collision of these two natural sentiments that fueled America's traumatic attempts to deal with the juggernaut of slavery. As Jefferson famously writes: "[W]e have the wolf by the ears, and we can neither hold him, nor safely let him go. Justice is on one scale, and self-preservation in the other" (to John Holmes, April 22, 1820).

In Jefferson's estimation, the practice of slavery was inimical to a government based on the truth about human nature; slavery eroded in both blacks and whites the very qualities
most needed to sustain the natural liberty and equality upon which the American experiment purported to rest (Notes 214-15). Early in his career, Jefferson presented a plan for the emancipation and colonization of slaves, one that he continued to favor throughout his life. As a young man, Jefferson quickly learned that nothing was to be expected from the former generation, and he vested his hopes in the young, who would receive "their early impressions after the flame of liberty had been kindled in every breast, and had become as it were the vital spirit of every American." These early hopes were, however, eventually engulfed by "the general silence that prevails on this subject." Yet, notwithstanding "an apathy unfavorable to every hope" and Jefferson's own backward evolution on emancipation, he could still affirm-with a kind of inevitability he had in part engineered-that "the hour of emancipation is advancing, in the march of time" (to Edward Coles, August 25, 1814). Jefferson regarded the conflict between the theory of justice inserted into the Declaration and the practice of slavery to be unsustainable; the tension demanded resolution, and he feared it would be a violent one. In his only published book, he writes: "I tremble for my country when I reflect that God is just: that his justice cannot sleep forever. . . . The Almighty has no attribute which can take side with us in such a contest." Jefferson looked to a total emancipation of the slaves and hoped it would take place "with the consent of the masters, rather than by their extirpation" (Notes 215; cf. to Coles, August 25, 1814). Still, Jefferson seems never to have realized the extent to which his own involvement in scientific theories of race weakened the power of his principled argument regarding the injustice of slavery-a case in which his intermittent forays into the realm of natural philosophy may well have impinged upon the prudence requisite for statesmanship.'

Jefferson's own understanding of the Declaration's principled condemnation of slavery was clearly at odds with the views of many of those whose sentiments he sought to harmonize. It was, however, especially in matters of religion that the sharpest disparity between Jefferson's own philosophically informed understanding and the "American mind," whose creedal statement he authored, comes most into view. In his final letter, Jefferson described the Declaration as "an instrument pregnant with our own, and the fate of the world," and he expected that it would in time become to all peoples "a signal arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves" (to Weightman, June 24, 1826). In Jefferson's final and most mature assessment of the significance of the Declaration, he maintained that a certain understanding of revealed religion-not King George-constitutes the persistent obstacle to governments based on political equality. For Jefferson, the revolutionary character of political equality was inseparable from issues of religion; indeed, the radical character of rights grounded in "nature" and "nature's God" becomes most apparent when contrasted with those who claimed privileged rights on the authority of revelation-the "favored few booted and spurred, ready to ride them [the mass of mankind] legitimately, by the grace of God" (emphasis added). Jefferson's grand expectations were based on his belief that the teaching on "the rights of man" encapsulated in the Declaration derived from the authority of science and, as such, was accessible not merely to a chosen few but to all human beings at all times (at least in principle). For Jefferson, the Declaration's enduring significance lay in the fact that it articulated the principled basis for legitimate government. Legitimate government does not result from the arbitrary forces of geography, history, or religion; it is based on a true understanding of nature-an understanding discovered by the architects of modern political philosophy and now revealed for all to see in the "abstract truths" of America's Declaration of Independence.
Religion and Politics

Although the relationship between religion and politics had become thematic for political philosophy since the execution of Socrates for impiety, it became absolutely central in the early modern period. The cultural triumph of Christianity brought with it a political problem that became particularly acute with the subsequent fragmentation of Christianity in the sixteenth century. Rousseau stated the underlying issue with admirable brevity: "[T]his double power [church and prince] has given rise to a perpetual jurisdictional conflict ... and no one has ever been able to know whether it is the priest or the master whom one is obliged to obey" (Social Contract IV 8). It was especially the problem of competing authorities and the wars to which they had given rise that engaged the efforts of Hobbes, Locke, and Spinoza. If they can be said to have groped their way toward a solution on the level of principle, it fell to the American Founders to find a way to inject their ideas into the always-constrained possibilities of actual political practice. Jefferson is often regarded as uniquely authoritative-albeit controversial-in fashioning the American response to this issue. Drawing deeply from Enlightenment thinkers for his understanding of the religious problem, Jefferson was pivotal in shaping three related areas of this relationship as it developed in America: the disestablishment of religion, the effort to maintain the reasonableness of Christianity, and the separation of church and state.

Disestablishment and the Primacy of Religious Freedom

Whereas it was necessary to accommodate established religions in the states, Jefferson (and Madison) worked to bring this vestige of the old regime into line with the principled basis of American government articulated in the Declaration. For ten years (1776-1786) Jefferson fought to disestablish the Anglican Church in Virginia-a series of battles he later described as the "severest contests" in which he was ever involved. His efforts culminated in the passage of a modified version of his Bill for Establishing Religious Freedom, a celebrated manifesto of Enlightenment religion that made generous use of the ideas and arguments of Locke's A Letter Concerning Toleration.

Notwithstanding the fact that the revised statute began with the words "Whereas Almighty God hath created the mind free," the disestablishment of religion did not and could not rest on the foundation of religious authority. Since the meaning of Scripture was itself contested, disestablishment required a nonreligious source that could be considered authoritative by members of different and sometimes warring religious traditions. As we have seen, Jefferson's uniquely authoritative expression of the American mind-resting, as it did, on the scientific illumination of natural rights-provided precisely those principles by which to mount an assault. The natural rights teaching of the Declaration did not derive from revelation but from the discovery of the "state of nature" by Hobbes and Locke-a state deeply at odds with both the biblical account of human origins and the fundamental law of the New Testament.

Precisely because the political institutions of America were not built upon the revealed truths of religion, Jefferson could consistently claim that Americans cannot regard the profession of "twenty gods or no god" as an injury for which law is the proper remedy, since such a profession "neither picks my pocket nor breaks my leg" (Notes 210). The priority of free and equal individuals in the state of nature requires that individual freedom-not any form of organized religion-stand as the fundamental ground for religion in America. Indeed, the Bill for Establishing Religious Freedom asserted that religious liberty was one of the "natural rights" that governments are mandated to secure. Religious freedom necessarily includes the freedom to criticize and evaluate particular religious views.
according to the perceptions of individual opinion; each individual is not only free but is in some sense required to navigate among competing traditions with their rival claims to authority. Jefferson's bill effectively displaced the authority of religious orthodoxy with the authority of private conscience. The ultimate authority of private conscience in religious matters with which Locke's lengthy and carefully written *A Letter Concerning Toleration* concluded furnished the self-evident starting point for Jefferson's argument in the Virginia statute.

Jefferson's bill, however, stopped short of contemporary notions of freedom that affirm belief in an autonomous human will. To the contrary, Jefferson understood the will itself to be constrained by what it perceives. The unedited version of the Bill for Establishing Religious Freedom began: "Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds . . . " (emphasis added). Differences in ability and education lead different individuals to adhere to different beliefs, and they are not free to do otherwise. For Jefferson, it was precisely the absence of individual choice in matters of religion that brought to light the most compelling moral argument for establishing the priority of freedom; religious freedom becomes a fundamental moral necessity in a society where individuals are compelled by the internal evidence of their own minds to affirm different religious opinions. Freedom of religion is not grounded on an authoritative claim about religious truth but arises necessarily for a society uncertain of that truth and so committed to a plurality of religious traditions.

**The Reasonableness of Christianity**

More deeply and personally, Jefferson believed that the constraints imposed upon individual conscience arose not from the authority of religious tradition but from that of nature. In another section of the long introductory sentence that was edited out of the final version of the Virginia statute, Jefferson referred to "the plan of the holy author of our religion, who . . . chose . . . to extend [religion] . . . by its influence on reason alone." As a student of political philosophy, Jefferson sought to discover the natural ground for religion or, in language alluded to in the Declaration, the god of nature. Keenly aware of the differences separating his own views concerning religion from those of the majority of his countrymen, Jefferson reserved the candid expression of his ideas to private conversation and correspondence. In a famous letter to Benjamin Rush, he wrote: "To the corruptions of Christianity I am, indeed, opposed; but not to the genuine precepts of Jesus himself. I am a Christian, in the only sense in which he wished any one to be; sincerely attached to his doctrines, in preference to all others; ascribing to himself every human excellence; and believing he never claimed any other" (April 21, 1803, emphasis in original). Whereas Jefferson maintained that his views on Christianity were "the result of a lifetime of inquiry and reflection," he believed most of his countrymen to have been corrupted by the distorted version of Jesus' teaching preserved in the Bible. The core problem stems from the fact that, like Socrates, Jesus wrote nothing himself. Since he was rejected by the most enlightened citizens of his country, it fell to "unlettered and ignorant men" to record his life and doctrine, and to do so from memory long after the fact. The result of Jesus' premature death, before his reason had "attained the maximum of its energy," is that he bequeathed to posterity only a work in progress. Worse, his fragmentary teachings were further "disfigured by the corruptions of schimatizing followers" who perverted and mutilated his "simple doctrines" with "the mysticisms of a Grecian sophist" (namely, Plato). Notwithstanding these limitations, Jefferson considered Jesus' moral teachings, particularly with respect to universal philanthropy, to be "the most perfect and sublime that has ever been taught by man" ("Syllabus of an Estimate of the Merit of the Doctrines of Jesus, compared with those of
Jefferson’s rational approach to the moral truth of the Gospels also characterized his approach to the miraculous claims of the Bible. When he informed his seventeen-year-old nephew, Peter Carr, that he now possessed the requisite maturity to undertake such a study, Jefferson advised Can to read the Bible as he would Livy or Tacitus.

The facts which are within the ordinary course of nature you will believe on the authority of the writer, as you do those of the same kind in Livy and Tacitus. The testimony of the writer weighs in their favor in one scale, and their not being against the laws of nature does not weigh against them. But those facts in the Bible which contradict the laws of nature, must be examined with more care, and under a variety of faces. (August 10, 1787)

Jefferson explained that the pretension to divine inspiration deserves serious consideration because it is believed by so many. Yet this should be weighed against what science has revealed about the laws of nature, something that in turn compels one to examine evidence for the claim to divine inspiration itself. Jefferson exhorted his nephew to shake off both fears and prejudices and to “fix reason firmly in her seat, and call to her tribunal every fact, every opinion.” With respect to the New Testament, Jefferson invited his nephew to consider the opposing claims of those who allege that Jesus’ divine status enabled him to suspend and reverse the laws of nature at will and those who maintain that he was a man “of illegitimate birth, of a benevolent heart, enthusiastic mind, who set out without pretensions to divinity, ended in believing them, and was punished capitally for sedition.” He concluded by reaffirming his central counsel: “[L]ay aside all prejudice on both sides, and neither believe nor reject any thing because any other person, or description of persons have rejected or believed it. Your own reason is the only oracle given you by heaven, and you are answerable not for the rightness but the uprightness of the decision.”

Jefferson's advice to his nephew is revealing not only for the priority it assigns to religious freedom, but also for the light it sheds on his own approach to the miraculous claims of the Bible. The underlying issue is nothing less than the authority of revelation itself. As Locke had explained, miracles furnish “the basis on which divine mission is always established, and consequently that foundation on which the believers of any divine revelation must ultimately bottom their faith.” To investigate as an open question the veracity of miraculous claims is to call into question both the privileged status of the Bible as an inspired text as well as the divine mission and status of Jesus himself. In political terms, both freedom of religious expression and the elevation of the authority of reason in religious matters effectively weaken the secular authority of the clergy—an authority that Jefferson believed posed the gravest and most enduring threat to the Declaration’s teaching on natural equality.

Jefferson's candor on these questions was, however, limited to private conversation and correspondence; his temperamental distaste for controversy led him to take a very different tack in public. Jefferson's more politic public expressions of his ideas on religion aimed at a dual goal that stands in some tension to itself—he sought to perpetuate religion as a useful ground for moral convictions while simultaneously weakening its capacity to elicit an attachment that might rival that of citizens to the natural rights philosophy of the Declaration.

Separation: Perpetuating and Transforming Religion in America

To return to the celebrated Bill for Establishing Religious Freedom, Jefferson anticipated that practical effects would follow from an increasingly pervasive acceptance of religious freedom as the philosophic point of departure for religious matters in America.
Following Locke, he maintained that "our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry." Not only is there a "natural right" to freedom of religious expression, but the use of civic authority in religious matters tends "to corrupt the principles of that very religion it is meant to encourage." By providing political incentives for outward conformity to a religion in which one does not believe, established religions inadvertently foster a kind of hypocrisy and mean-spiritedness diametrically opposed to the teachings of the Gospel. Jefferson concluded that truth in religious matters would prevail only if religion was left to itself, free from all governmental coercion. In short, Jefferson's Bill for Establishing Religious Freedom as well as his famous letter referring to a "wall of separation" between church and state (to the Danbury Baptist Association, January 1, 1802) emphasized the ways in which the disengagement of religion from the powers of government was something emphatically good for religion. Religion ought to be consigned to the private sphere of individual conscience not because it was unimportant, but precisely because it was too important to entrust to any authority, no matter how seemingly benign.

It was also the case, however, that Jefferson's efforts to erect a wall of separation between church and state was part of a strategy to transform religion by encouraging a multiplicity of sects that would check and balance the excessive enthusiasms to which religion is prone. As he wrote in Notes on the State of Virginia: "Difference of opinion is advantageous in religion. The several sects perform the office of a Censor morum over each other" (212). Jefferson did not wish to encourage the sort of freedom that would enable a particular religious tradition to flourish but rather the kind of freedom that brought a multiplicity of religions under the same political roof. Referring to the then-novel experiments with disestablishment in Pennsylvania and New York, Jefferson wrote: "They flourish infinitely. Religion is well supported; of various kinds, indeed, but all good enough; all sufficient to preserve peace and order" (Notes 212). Jefferson was not primarily concerned that religion be "good enough" to attain salvation (something about which he appeared to entertain doubts) but that it should contribute to the political goods of "peace and order." Pennsylvania and New York had found a way to replace religious enthusiasm with "unbounded tolerance" and religious dissension with "unparalleled" harmony: "They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them" (Notes 213).

By endorsing no religion in particular, all religions are placed on an equal footing. In a way analogous to the situation of individuals in the "state of nature," the establishment of a fundamental equality among religions under the state precludes the possibility of dominance by any one; rather, it is in the interest of each to secure the conditions of its own liberty. The artifice of a "wall of separation" effectively transforms religion by directing those citizens who are religiously minded to embrace freedom of religion-not religion itself-as the primary condition for authentic religious practice. The elevation of individual conscience in religious matters to the status of a "natural right" helps to secure the attachment of citizens to a philosophy of natural rights as the almost invisible optic through which they view and scrutinize the claims of any particular religious tradition.

The desired result of diversity in religion was not only that a plurality of sects would check the eccentricities to which religious passion gives rise but also that a multiplicity of religions would throw into relief basic moral teachings held in common. For Jefferson, separation of church and state aimed primarily at the political goal of preserving peace and order. If religion was not philosophically necessary to institute a government based on nature and the sovereignty of the people, it would prove crucial—at least for the great majority of Americans—for its future preservation. It was for this reason that Jefferson publicly favored religion over irreligion, maintaining that the only secure basis for preserving liberty was "a conviction in the minds of the people that these liberties are of the
gift of God" (Notes 215). Religion rendered harmless to liberty by the very fact of its diversity was, for Jefferson, in the best interest of free government. By marshaling its considerable moral authority to extend natural rights to others even when not in the economic interest of its adherents to do so, religion fosters habits of mind and heart conducive to the "blessings and security of self-government."

It is important to note that Jefferson's assertion that religious conviction provides the "only firm basis" for preserving "the liberties of a nation" occurs within the context of his discussion of slavery. Although slavery was contrary to natural justice, Jefferson also explained that it was held in place by the powerful passions of greed and sloth: "For in a warm climate, no man will labor for himself who can make another labor for him" (Notes 215). The natural liberty affirmed in the Declaration was at odds with the powerful passions supporting economic self-interest. It was a contest that liberty could not win without the support of religious conviction-specifically, belief by a majority of the people that all liberties are a gift from God. Although Jefferson did not live to see it, it was precisely in this way that the glaring contradiction of slavery was eventually eradicated. It was through the activity of churches-not official channels of government-that the majority of Americans eventually came to put the natural rights of slaves over economic self-interest. If religion had done much to convict the institution of slavery, it also required the prudential statesmanship of Abraham Lincoln to press the "abstract truth" of the Declaration and, in so doing, enable Americans to draw "a new birth of freedom" from the ruins of civil war.

**Religious Tolerance and Political Orthodoxy: Jeffersonian Political Religion**

Jefferson's opposition to organized religion shares something in common with his anonymous authorship of the Kentucky Resolutions and inadvertent introduction of a system of parties into American politics. Both his volatile assertion that the Constitution should be understood as a "compact of states" in the Kentucky Resolutions and his passionate resistance to the Federalists (described as the "Anglican, monarchical, aristocratical party" in his letter to Phillip Mazzei, April 24, 1796) were directed against the consolidating tendencies of political power. For Jefferson, the universal cause of the loss of liberty and the rights of man was to be found in "generalizing and concentrating all cares and powers into one body." As a result, "the way to have good and safe government, is not to trust it all to one, but to divide it among the many" (to Joseph Cabell, February 2, 1816). These remarks about government can also be applied to religion. Dividing and subdividing power-whether in national government or in organized religion-was Jefferson's consistent strategy for dealing with the corrupting tendencies of unchecked power in all its forms.

For Jefferson, party (and, more generally, partisanship) arose from two kinds of sentiment that he believed to be rooted in nature: "The same political parties which now agitate the U.S. have existed thro' all time. . . . And in fact the terms of whig and tory belong to natural, as well as to civil history." The decisive difference between these natural parties was whether "the power of the people, or that of the aristoi should prevail" (to John Adams, June 27, 1813). Like Machiavelli, Jefferson considered the opposition between "the people" and "the great" (to use Machiavelli's terms) a permanent and ineradicable source of conflict in politics. Although Jefferson most often spoke of party conflict in terms of politics, his distinction extended to religion as well. Writing again to John Adams, Jefferson referred to the Virginia Bill for Establishing Religious Freedom as the "law for religious freedom" which "put down the aristocracy of the clergy" and "restored to the citizen the freedom of the mind" (October 28, 1813). Adams fully agreed with Jefferson that parties-a term he applied to
governments, religions, and even revolutionaries - have existed throughout all time, although he was more inclined to attribute this to the corrupting influence of power than to what Jefferson called "the temper and constitution of mind of different individuals": "Democrats, Rebells and Jacobins, when they possessed a momentary power, have shewn a disposition, both to destroy and to forge Records, as vandalical, as Priests and Despots. Such has been and such is the World We live in" (cf. to Jefferson, July 9, 1813, and to Adams, June 27, 1813). Despite their disagreements, both Jefferson and Adams regarded the deepest obstacles to scientific progress in both government and religion to be rooted in the natural disposition to partisanship. But for Jefferson, religious and political partisanship had come together in the Federalist party. In a letter that would subsequently strain his relationship with Adams, Jefferson intertemperately described to Joseph Priestley the party strife leading up to his successful presidential election in 1800:

What an effort . . . of bigotry in Politics and Religion have we gone through! The barbarians really flattered themselves they should be able to bring back the time of vandalism, when ignorance put everything into the hands of power and priestcraft. All advances in science were proscribed as innovations. . . . We were to look backwards, not forwards, for improvement. (March 21, 1801)

The degree of passion expressed in this letter points to the most profound difference distinguishing Jefferson's approach to politics from his approach to religion. Whereas he looked upon differences in religious opinion with serene disinterestedness, this was not true when it came to politics. The disengagement of religion from politics seems to have led Jefferson to embrace political orthodoxy with an almost religious zeal. Indeed, Tocqueville described Jefferson as "the most powerful apostle that democracy has ever had," and there was in fact an almost religious enthusiasm in Jefferson’s attachment to the principles of republican government. Jefferson’s defense of the French Revolution at times assumed the proportions of a true believer, something that finally led the sober John Adams to criticize his erstwhile friend as a dangerous dreamer. In a moment of revolutionary fervor, Jefferson dismissed critics of the mass executions in France: "My own affections have been deeply wounded by some of the martyrs to this cause, but rather than it should have failed, I would have seen half the earth desolated. Were there but an Adam and an Eve left in every country, and left free, it would be better than as it is now" (to William Short, January 3, 1793). As Tocqueville explained and Jefferson in some measure corroborated, the French Revolution aimed more at "the regeneration of the human race" than "the reform of France." As a result, it ignited passions more akin to a religious revolution than a political one; indeed, "it itself became a new kind of religion." If Jefferson believed that differences in religious opinion were advantageous for religion, this was emphatically not the case when it came to political opinions concerning the rights of man.

Although Jefferson regarded the self-evidence of the "rights of man" to have been disseminated by the "light of science" (to Weightman, June 24, 1826), he also knew that most citizens were not scientists. Given the almost irresistible tendency of those in power to consolidate it to their own advantage, Jefferson was keenly aware of the need to inculcate in citizens an attachment to the principles and practices of republican liberty. Orthodox attachment of citizens to the creedal truths of the Declaration was the aim not only of Jefferson's Republican party but also and especially of his thoughts on education.

**Education and Politics**

Like his lifelong friend and collaborator, James Madison, Jefferson found some initial
security for republican government in the new institutional arrangements arising from recent improvements in the science of politics, most notably the separation of powers and pervasive system of checks and balances. Jefferson, however, was cooler to the constitutional arrangement than Madison (who, at the Virginia Ratifying Convention, had to employ his considerable diplomatic skills to suppress rumors of Jefferson's lukewarm support). In his *Notes on Virginia*, Jefferson had already expressed the fundamental reason why institutional provisions, however ingenious, would necessarily prove insufficient. "In every government on earth is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate, and improve. Every government degenerates when trusted to the rulers of the people alone" (*Notes* 198). The best surety and, in Jefferson's mind, only effective safeguard against the universal tendency of government to slide toward tyranny was to be found in the people. Jefferson's belief in the necessity of a vigilant citizen body led him to think deeply and persistently about the relationship between education and politics and, more specifically, about the need for general education in order to sustain republican liberty. For Jefferson, the preservation of freedom would require a diffusion of knowledge among the people.

Whereas Jefferson's founding of the University of Virginia is well known, it is sometimes overlooked that this was only one part (albeit the crowning achievement) of a comprehensive vision for education in America. Notwithstanding the attention he lavished upon this project, Jefferson considered the primary stages of education to be more important than the development of a university. As he wrote to Joseph Cabell, "it is safer to have a whole people respectably enlightened, than a few in a high state of science, and the many in ignorance" (January 13, 1823). Although Jefferson was never successful in bringing the rest of his plan to fruition, his vision for education derived from the ideas about equality and inequality expressed and implied in the Declaration of Independence. His comprehensive vision for a system of public education aimed at discovering and cultivating a natural aristocracy of talent and virtue for positions of public leadership and, at the same time, at arming the general public with the intellectual and experiential resources necessary to keep their representatives responsive to the best interests of the people as a whole.

During the summer of 1776, in the full flush of revolutionary fervor, Jefferson headed a three-person committee charged with proposing revisions that would bring the laws and statutes of Virginia into line with the principles of the Declaration. Of the 126 bills reported for legislative consideration, Jefferson considered the most important to be a comprehensive three-stage scheme to reform state education (to George Wythe, August 13, 1786). This proposal eventually reached the floor as the 1779 Bill for the More General Diffusion of Knowledge. Although this reform was intended for Virginia, Jefferson hoped that Virginia would in this, as in much else, prove a model for the newly emerging nation.

The bill called for a division of each county into smaller units called "hundreds" and later called "wards." The size of each hundred was to be large enough to include a sufficient number of children to comprise a school and small enough to allow each child to attend on a daily basis. All free children, male and female, would have access to three years of education gratis and could continue thereafter as long as they wished at private expense. This first tier of Jefferson's educational system focused on reading, writing, and common arithmetic. Jefferson was so convinced of the crucial importance of literacy—not only for economic independence but especially for political participation—that his 1817 Act for Establishing Elementary Schools contained a provision disenfranchising future citizens who, after the age of fifteen, "cannot read readily in some tongue, native or acquired." He would have preferred a system of compulsory elementary education but thought it would pose too great a shock to prevailing sentiments. Consequently, he directed his energies to removing the most common barrier to procuring an education by proposing that it be made
available to all free of charge.

Jefferson was, however, willing to break with the traditional practice of using the Bible to teach children to read. Instead of putting the Bible into the hands of children "at an age when their judgments are not sufficiently matured for religious inquiries," Jefferson proposed a curriculum that was centered on "the most useful facts from Grecian, Roman, European and American history" together with a cultivation of "the first elements of morality" (Notes 197). Jefferson thought it important for young people to become acquainted with history and science before attempting to evaluate the miraculous claims of the Bible. The skills necessary to sift the authentic teachings of Jesus from the vehicle through which they have been transmitted far exceeded the capacity of a child and should, as a consequence, be postponed until a student was mentally and morally prepared for such an undertaking. But in the schools (and especially the primary schools) Jefferson considered it far more important that future citizens know the facts of political history: "[P]ossessed thereby of the experience of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt[ed] to exert their natural powers to defeat its purposes" (preamble to 1779 Bill for the More General Diffusion of Knowledge). For Jefferson, public education should have an explicitly political aim; it was not to be directed to salvation but to freedom and happiness in this world.

The intermediate stage of education would be furnished by regional grammar schools or, as they were sometimes called, "academies." Two or more of the most promising students from the primary schools would be subsidized, while the rest of the student body would be drawn from those who could afford to pay. The primary focus for this level of study was language, especially Greek and Latin. Despite the fact that the study of classics was going out of vogue in Europe, Jefferson believed that the study of classical languages was both developmentally appropriate (given the dependence of language on memory) and good preparation for the study of science. Jefferson's concern with useful knowledge led him to add several modern subjects to his initial proposal for the grammar schools. His 1779 bill included English grammar and his proposals of 1817 and 1818 added other modern languages as well as geography, surveying, and navigation.

The final stage in this scheme was the university, the only part of the plan that Jefferson was able to realize during his lifetime. Jefferson viewed the university as a training ground for future leaders; his recommendation to subsidize tuition for the most gifted was intended "to avail the state of those talents which nature has sown as liberally among the poor as the rich, but which perish without use, if not sought for and cultivated" (Notes 198). Here students were to apply themselves especially to the study of science, particularly those sciences most likely to prove useful to their fellowmen. Noticeably absent from the curriculum were the "foggy" disciplines of metaphysics and theology (Report to the Commissioners for the University of Virginia, August 4, 1818; cf. to Adams, July 5, 1814, and March 14, 1820). Jefferson maintained that the absence of a professor of divinity at the University of Virginia was called for by "the principles of our Constitution which placed all sects of religion on an equal footing." Moreover, he expected that the general principles common to all religious traditions would properly fall within the purview of the professor of ethics (Report of the Commissioners for the University of Virginia, August 4, 1818). When the university came under fire as an antireligious institution, it was decided that different religious denominations should be encouraged to establish their own professorships as long as they preserved their independence both from each other and the university. The anticipated result, Jefferson wrote to Dr. Thomas Cooper, was that "by bringing the sects together, and mixing them with the mass of other students, we shall soften their asperities, liberalize and neutralize their prejudices, and make the general religion a religion of peace, reason, and morality" (August 4, 1822).
One of the ironies of Jefferson's educational legacy is that his war against religious intolerance was accompanied by an attempt to impose a rigid political orthodoxy. This extended not only to the omission of metaphysics and theology but also included many authors within the camp of modern liberal democracy itself. For example, Jefferson considered Locke and Sydney well suited to impress upon the young the right to self-government and to inspire them with a love of free governments; but Hume and Montesquieu were deeply problematic as was "the honied Mansfieldism of Blackstone" (to William Duane, August 12, 1810; to Madison, February 17, 1826; to John Tyler, May 26, 1810). Students were of course free to read these and other excluded authors in private, but Jefferson insisted that if the "vestal flame" of republicanism were to be kept alive, it was necessary to be "rigorously attentive to . . . [the] political principles" of teachers, or, in the case of courses on government, to lay down the principles which are to be taught "by a previous prescription of the texts to be adopted" (to Madison, February 17, 1826, and February 1, 1825). Jefferson’s thinking about university education was characterized by a deep tension between his long-standing philosophic attachment to freedom of inquiry and expression and an urgent political concern to imbue future leaders with sound principles, which they in turn could go on to "spread anew over our own and the sister states" (to Madison, February 17, 1826).

It was especially after Jefferson left the presidency that his idea to divide counties into "hundreds" was gradually superseded by the notion of "wards." To his proposal for universal public education, he now added an ongoing civic education that would take place outside the classroom. The ward system of "little republics" was intentionally modeled on the New England townships which— notwithstanding and in part because of their effective resistance to his policies as president—Jefferson considered "the wisest invention ever devised by the wit of man for the perfect exercise of self-government, and for its preservation" (to Samuel Kercheval, July 12, 1816). By taking charge of those matters on which they were competent (for example, caring for the poor, building roads, running elections, selecting jurors, raising a militia, and attending to small cases of justice), the wards would become schools for the practice of self-government. Jefferson wrote to John Tyler that two great and related measures are necessary to sustain republican principles—general education and the establishment of "these little republics" (May 26, 1810).

The idea of wards became increasingly important for Jefferson as a means of bringing public affairs within the grasp of ordinary citizens and thus keeping alive the kind of civic spirit essential for republican government. In a letter to Samuel Kercheval, Jefferson asked where, in the American political system of government, the principle of republicanism was to be found. His answer made explicit the inchoate reservations about constitutional safeguards expressed thirty years earlier: "Not in our constitution certainly, but merely in the spirit of our people" (to Kercheval, July 12, 1816; cf. Notes 198). As he had explained a couple of years earlier with respect to the state of Virginia, "I have long contemplated a division of it into hundreds or wards, as the most fundamental measure for securing good government, and for instilling the principles and exercise of self-government into every fibre of every member of our commonwealth" (to Joseph Cabell, January 17, 1814). Jefferson's continuing reflection on the relationship between education and politics sharpened and, in some sense, radicalized his understanding of the nature and requirements of republican government itself.

Jefferson's postpresidential years were largely given over to the development and promulgation of that version of republicanism with which he has become most closely associated, namely, the direct political participation of the people in those decisions that fall within their competence. Criticizing his own earlier attempt to draft a republican constitution for Virginia, Jefferson attributed its inadequacy to a lack of experience. "In truth, the abuses of monarchy had so much filled all the space of political contemplation, that we imagined
everything republican which was not monarchy. We had not yet penetrated to the mother principle, that governments are republican only in proportion as they embody the will of their people, and execute it” (to Kercheval, July 12, 1816). In an attempt to dispel misunderstandings attached to the notion of a republic, Jefferson offered his most radical and succinct definition of republicanism.

Were I to assign to this term a precise and definite idea, I would say, purely and simply, it means a government by its citizens in mass, acting directly and personally, according to rules established by the majority; and that every other government is more or less republican, in proportion as it has in its composition more or less of this ingredient of the direct action of the citizens. (to John Taylor, May 28, 1816; cf. to Dupont de Nemours, April 24, 1816)

Jefferson recognized that this standard would not be practicable beyond the extent of a New England township or his proposed division of counties into wards. Nevertheless, he recommended it as a useful measure against which earlier constitutional arrangements could be judged and amended. It was on this basis that he criticized the initial arrangements of the Constitution, especially the Senate and judiciary, as being too far removed from the people.

The Constitution . . . is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please. It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law. (to Judge Spencer Roane, September 6, 1819)

Although willing to tolerate moderate imperfections, Jefferson insisted that "laws and institutions must go hand in hand with the progress of the human mind." Indeed, late in life he returned to the utopian maxim he had first floated with Madison in 1789 regarding the sovereignty of each generation, and he argued for an amendment to the Virginia Constitution that would require its revision every nineteen to twenty years as each new generation reached maturity (to Kercheval, July 12, 1816, and to Madison, September 6, 1789). Although the radical implications of Jefferson's views on republicanism were rejected by Madison for the opening they afforded to tyranny of the majority (consider Madison's famous argument in The Federalist no. 10) and for disregarding the anarchic consequences arising from frequent changes in the laws (Madison to Jefferson, February 4, 1790; cf. Adams to Jefferson, May 11, 1794), Jefferson's most extreme version of republican principles derived from long-standing fears about the dangers of consolidation. If the initial experience of a distant and unresponsive British government had precipitated a revolutionary war for independence in 1776, more recent experience with the growing powers of national government under the Federalist party had given rise to "the revolution of 1800." In his mind, the principles of the Declaration had been eclipsed during the Federalist administration by a consolidation of power-despite the institutional protections of the Constitution. In contrast to those who looked upon constitutions with "sanctimonious reverence," Jefferson's continuing attraction to Enlightenment ideas of progress and his forty years of experience had taught him that the "secret" of republican liberty "will be found to be in the making . . . [of each citizen] the depository of the powers respecting himself, so far as he is competent to them, and delegating only what is beyond his competence" (to Cabell, February 2, 1816; cf. to Kercheval, July 12, 1816).

If Jefferson's views on republican government and education evolved over time, there was nevertheless an underlying consistency that characterized his thoughts about education from beginning to end. Like Aristotle (although in a way different from him),
Jefferson insisted not only on the importance of education but also that it be "education relative to the regime" (Politics 1310a2-14).\(^9\) Jefferson was especially concerned to inculcate an orthodox attachment to the principles of the Declaration as the surest guarantor for the continuing success of the American experiment in self-government. Moreover, he anticipated Tocqueville with his insistence that institutional arrangements, however ingenious, were not by themselves sufficient to sustain self-government and that what was needed were habits and sentiments inspired by direct participation in local affairs. Jefferson's most mature thinking on education attempted to shape the mores of the American people so as to awaken and sustain the spirit of vigilance most apt to secure the blessings of liberty. His constant aim in proposing a combination of academic and practical education for the general public was that of "rendering the people safe" by giving them the wherewithal to become "guardians of their own liberty" (Notes 198). The success of liberal democracy could not be safe even in the hands of the "natural aristocracy of virtue and talent" with which Jefferson's scheme of education sought to displace the "pseudo-aristocracy of wealth and birth."

If once . . . [the people] become inattentive to the public affairs, you and I, and Congress, and Assemblies, judges and governors shall all become wolves. It seems to be the law of our general nature, in spite of individual exceptions; and experience declares that man is the only animal which devours his own kind. (to Edward Carrington, January 16, 1787)

Notwithstanding his awareness of the tendency of the people to be led astray, Jefferson consistently maintained that a sustained program of general education must, before all else, cultivate the good sense of the people as they alone constitute the "only safe depositories" of government (cf. to George Wythe, August 13, 1786, and Notes 198).

As noted at the beginning of this essay, Jefferson's status as a political philosopher is inextricably bound up with his stature as one of the Founders of the American experiment. Although he thought deeply about the nature and purpose of legitimate government, the relationship between religion and politics, and the importance of an educated and vigilant citizenry, the translation of his ideas into actual political practice was necessarily constrained by the fortuitous configurations of political circumstance. Moreover, in none of the three enterprises he considered most significant—the Declaration of Independence, the Bill for Establishing Religious Freedom, and the University of Virginia—was he acting on his own. In each case, Jefferson worked through the medium of a committee and was, as a consequence, dependent upon the skills and consent of others to bring his vision into effect. If the unavoidable compromises that accompany political success to some extent clouded the original vision that inspired it, the necessity of compromise should itself be understood as part of Jefferson's legacy. Jefferson's overriding political vision was directed to the possibility of self-government, and his work as a Founding legislator in politics, religion, and education consistently aimed at establishing conditions that would best enable a people to legislate for themselves.

Notes

I wish to thank the Earhart Foundation for their generous support in the summer of 2001, during which time I was able to write this chapter.

1. There is no satisfactory and complete critical edition of Jefferson's writings at present. The collection edited by Julian P. Boyd et al. will fill this lacunae should it ever be finished: The Papers of

2. Cf. Jefferson's expunged remarks on the slave trade in his final draft of the Declaration; Notes 215; to Edward Coles, August 25, 1814; and to John Holmes, April 22, 1820.

3. Jefferson's political condemnation of slavery was undercut by his philosophic speculations on "varieties in the race of man." On the one hand, Jefferson's statesmanlike opposition to slavery and outline of a plan for its eventual abolition was widely disseminated through the publication of Notes on the State of Virginia (esp. 214-15 and 185-86). On the other hand, these very arguments were embedded in disputations about natural philosophy that entailed Jefferson's philosophic speculations about the racial inferiority of blacks (esp. 78-79, 93-103, 186-93), speculations that could only work against the cause of emancipation.

4. Compare, for example, the fundamental natural law of self-preservation in the accounts of both Hobbes and Locke with Jesus' only commandments in the New Testament-to love God before all else and one's neighbor as oneself. As starting points for understanding how to live, these principles point to profoundly different ways of life.


7. In fairness to Jefferson, it should be noted that these remarks were made six months before the onset of the "reign of terror." Looking back upon these events in 1816, the original fervor expressed in Jefferson's 1793 letter to William Short is considerably muted, but not his hopes for the cause itself. In a series of exchanges with John Adams evaluating the eighteenth century as a whole, Jefferson observed that the moral world of Europe had been "thrown back again to the age of the Borgias, to the point from which it had departed 300 years before." He added, "I did not, in 89, believe . . . [the convulsions] would last so long, nor have cost so much blood. But altho' your prophecy has proved true so far, I hope it does not preclude a better final result" (to Adams, January 11, 1816).


9. The difference between Aristotle and Jefferson on this point is also instructive. Whereas Aristotle considered education of citizens in the spirit of the regime to be the best guarantor of stability, he also explained that this entails an education that fosters in citizens a capacity to resist the subtle but powerful pressure of regimes to imbue them with an uncritical and excessive attachment to its dominant principles. See Politics 1310a12-38.
George Washington (1732-1799) is less appreciated by his countrymen in the twenty-first century than during the first two centuries after his singular role in America's Founding. The declining status of a man hailed in his lifetime as the Father of his country stems in part from our admiration in modernity for theoretical innovation and abstract concepts over practical judgment, despite the latter's obvious importance for political action. Simply put, few of the teachers of his countrymen today—professors, writers, and other opinion shapers—find him an exemplar of American political thought worthy of serious study. Washington's best known writing is his Farewell Address (1796), declaring to "Friends, and Fellow-Citizens" his retirement from public life. For the second time in a long career, he relinquished near-absolute power when equally ambitious yet less principled men usually have grasped for more. Such deeds, and his statements of principle about them, led his countrymen to rank him with an ancient Roman renowned for twice relinquishing absolute power once the threat to his country passed: he was the American Cincinnatus. Washington used his Farewell not only to offer prayers to Heaven for continued blessings upon his country but also to "offer to your solemn contemplation, and to recommend to your frequent review" advice on union, constitution, republican government, and foreign policy. He sought a legacy in thoughts as well as deeds, so that "these counsels of an old and affectionate friend" would make a "strong and lasting impression" and yield "a wise People" (W 976, 970).

Subsequent ideas about politics now block this message, for after centuries of Machiavellian reason working its way in the world we deem it softheaded to think that anyone places principle or duty above interest. We also tend to dismiss Washington's political testament because, as everyone knows, James Madison and Alexander Hamilton really wrote it. Confident in our rational analyses of power and interest, we miss the central lesson of the Address about subordinating these drives to principles. Convinced that Washington cannot be genuine, we overlook his careful use of his bright advisers, managing them so as to always maintain his independent judgment. In the third century after Washington's principled deeds and practically wise thoughts, we review his advice less frequently than he, or the first several generations of his political children, would have hoped. Few anthologies of American political writings include even excerpts of the Farewell Address anymore. We associate Washington with deeds, not thoughts; many now discount even his deeds simply for their distance from our present concerns—and because he was a slave owner. It is not just that we overlook his eventual repudiation of slavery and emancipation of his slaves; more generally, our democratic, modern temperament has difficulty appreciating this remote father-figure and martial hero, the embodiment of gravity and propriety.

We should rediscover the serious political thought in Washington's writings from three decades as the leading citizen in a republic, stating his basic principles of liberty, constitutional order, and moderation. This last is the most difficult for modern and democratic minds to grasp. Contrary to the Enlightenment doctrines of mathematical clarity in all areas of thought and absolute equality of all rights-bearing individuals, moderation counsels that awareness of the complexity of reality must guide our theorizing and acting. Regarding practice, institutional complexity and space for prudent judgment in specific offices should balance the democratic principle. As to theory, it suggests that we best understand humans and politics by dialectically weighing the merits of not just one principle but several, seeking a sound balance among them to avoid extremes. This principle of moderation is most evident in the complexity and balance
characteristic of both separation of powers and federalism.' It also explains the alloy of views the American Framers achieved-drawing on Lockean liberalism and classical republicanism but also Whig opposition thought, English common law, and Protestant Christianity. Washington's political thought exemplifies, in fact, the distinctively American synthesis of schools that seem incompatible or contradictory to some theorists. He concluded his First Inaugural Address in 1789 on this note of moderation and balance, urging America's new representatives to strive for "the enlarged views" and "temperate consultations" indispensable for "the success of the Government" (W 734). Concern for liberty and individual rights must be balanced by commitment to the complex rule of law entrenched in the Constitution in order to distinguish liberty from license in domestic or foreign policy. Provision for special offices and talents in government must balance the commitment to equality and popular representation in order to keep the Republic on an even keel and steady course.

Washington saw these fundamental tenets of liberty, constitutionalism, and moderation as drawing upon and reinforcing his more specific principles, including the subordination of military to civil authority; a complex, federal Union; the need in republics for statesmanship, especially executive power; and realistic but just foreign policies. Less obvious to us today is his emphasis upon religious faith in republics, and upon civility and honor. Beyond his unrivaled deeds for America, his importance for shaping American political thought was as great as that of more recognized thinkers of the Founding era. This is not to deny his own concerns, as a surveyor, soldier, and farmer, that he was less educated than such advisers as George Mason, Thomas Jefferson, Madison, Hamilton, and John Jay. Nonetheless, he sought to refine his thoughts, not replace them, by consulting these minds; in the process, he often refined or moderated theirs. His earliest writings, from letters and journals to his copying of "Rules of Civility and Decent Behavior in Company and in Conversation," do not reveal theoretical genius. By the time, however, he was a colonial officer in the British army during the French and Indian War from 1752-1758, he wrote copiously and carefully copied each item. By the late 1760s, after serving several terms in the Virginia House of Burgesses, even his private letters suggest concern with a public audience and posterity; his ambition extends beyond fame and honor to justifying his opinions and deeds. Copying those 110 rules of civility, penned by French Jesuits in the sixteenth century to educate for private and political life, instilled both ethical principles and an intellectual trait of clarifying the ultimate principles to guide one in any stage of life (W 3-10). This explains why his library at Mount Vernon held over 900 books by his death, a collection that extends beyond military and agricultural topics. During the last decades of his life, at the peak of his authority, he advocated founding a national university and national military academy, and when thwarted he privately endowed schools and educational funds-Washington and Lee University is one instance of this commitment to learning. The intellectual confidence he had developed allowed him to consult with a range of learned advisers and to rely upon one over another according to his own judgment. As study of the Farewell Address shows, he revised every argument or draft provided to him and made it his own. Moreover, he never shifted his principles with the winds of public opinion. A perceptive analysis concludes that Washington was "a leader who sought explanations and explainers all his life, and who mastered both what he was told and those who told him." Washington's public statements of his principles are brief enough to be accessible to nearly any citizen or student, and the coherence of his thought easily permits supplementation with important letters. The scope and balance of his thinking reveal a mind not easily reduced to the Federalist, Anti-Federalist, or Democratic-Republican camp; he effectively was a moderate Federalist, but he deplored the partisanship that undermined sobriety and civility at the end of the Founding era. Hamilton was an important influence on him; but beyond the fact of his consultations with others is his emphasis upon moderation and compromise, principles not easily attributed to his brilliant but immoderate protege. That said, while Jefferson echoed Washington's spirit in stating "[w]e are all Republicans, we are all Federalists" after his election
in 1800, neither his zealous democratic theory nor his partisan practices really adhered to that standard. A just assessment concludes that "General and President Washington, all hagiography aside, was the linchpin that-to the extent one man could do so-held together a fragile Revolution and afterward a federal Union torn by domestic and foreign controversies in the 1790s." Upon his death, the resolutions in the House of Representatives declaring him "first in war, first in peace, first in the hearts of his countrymen" were moved by a Federalist, John Marshall, but drafted by a Federalist and a Democratic-Republican, Henry Lee and James Madison.

The Farewell Address is Washington's summation of his thoughts on liberty, constitutionalism, and moderation, drawing upon writings throughout his career. The most important of these include his 1783 speech at Newburgh, New York, to quell an officer rebellion against civil authority and his 1783 Circular to the States endorsing four "Pillars" for America's security and happiness—a strong union, strong national finances, a sound defense, and a "national Character" unifying all states and regions (W 516-19). After resigning in 1783 with an address affirming military obedience to civil authority, he supported Madison, Hamilton, and others trying to reform the weak federal government of the Articles of Confederation. Both sides in the ensuing debates thought his support for the new Constitution was essential to its eventual ratification. He further enunciated principles in two Inaugural Addresses and in Annual Messages (the name used for State of the Union Addresses). The lessons he bequeathed in his Farewell cap a career of pairing actions with reflection and justification; two decades earlier, his General Orders of July 9, 1776, ordered the Declaration of Independence read to the troops, so that they might understand "the grounds & reasons" of the war (W 228). Nonetheless, some find a Machiavellian cunning in the Farewell Address and his entire career—that Washington saw the need, in a democratic republic, to resign power or pretend not to want it so as to gain greater power or glory. However satisfying this view is to some, in reality each principle in the Address affirms earlier deeds and statements on the same point. Such consistent dedication to liberty, constitutionalism, and moderation bespeaks a practical wisdom serving higher principles in particular circumstances. Indeed, study of Washington challenges the Machiavellianism pervading much political analysis now, for his moderation and commitment to principle made him an extraordinarily effective statesman. Such study is also indispensable for educated citizens concerned with the statesmanship that translates constitutional principles into sound policies, both domestic and foreign.

The "liberty and justice for which we contend": Civil-Military Relations and Character

Washington served in Virginia's legislature from 1758, and after the tumultuous British-American politics of the 1760s, he chose to defend liberty and natural rights. Since "our lordly Masters in Great Britain will be satisfied with nothing less than the deprivation of American freedom, it seems highly necessary that something shou'd be done to avert the stroke and maintain that liberty which we have derived from our Ancestors." Indeed, "no man shou'd scruple, or hesitate a moment to use a--ms in defense of so valuable a blessing, on which all the good and evil of life depends." Still, he tempered his zeal for liberty; if petitions about American "rights & privileges" failed, then a trade embargo should be tried before resorting to arms (W 130). Washington has been called a constitutional or conservative revolutionary for such moderation; however, he grounded the American cause not only in abstract rights but also in the tradition of Anglo-American common law. As early as 1765, he argued that laws enacted without the consent of the colonists' elected representatives were an "unconstitutional method of Taxation" and "a direful attack upon their Liberties."

By 1774, Washington put his prestige behind the cause of liberty; as the former commander of all Virginian colonial forces in the French and Indian War, he already was known throughout
the colonies. He voted for a congress of all the colonies; he presided over the drafting of the
Fairfax County resolutions advocating the right to colonial self-government and a trade boycott
against Britain; and he was a delegate to the First Continental Congress. He justified these
actions by reflecting that "an Innate Spirit of freedom first told me" that the acts of the British
administration "are repugnant to every principle of natural justice." Indeed, they are "not only
repugnant to natural Right, but Subversive of the Laws & Constitution of Great Britain itself"; the
king's ministers were "trampling upon the Valuable Rights of American's, confirmed to them by
Charter, & the Constitution they themselves boast of" (W 157). When the Second Continental
Congress appointed him general and commander in chief of the Continental army, his address
balanced humility and pride: he was grateful for the "high Honour" being done him yet fearful for
his "reputation," since his abilities and experience "may not be equal to the extensive &
important Trust"; he also refused any pay, asking only reimbursement for official expenses (W
167). He already had linked sacrifice and virtue in justifying America's actions: "the once happy
and peaceful plains of America are either to be drenched with Blood, or Inhabited by Slaves. Sad
alternative! But can a virtuous Man hesitate in his choice?" (W 164).

General Washington's military tactics and grand strategy of matching geopolitical alliances
and tactics deserve study, but two of his political-military principles overlooked today are
civil-military relations and virtuous character.12 Around the world, liberty mostly either never arises
or is short-lived because military despots squash any genuine politics or rule of law. America and
the world owe to Washington the principle that a professional military is necessary to protect
liberty and can be safe for it through subordination to laws and civil authority. This accorded with
his political moderation: real liberty is ordered liberty, securing self-government and political
decency under law. John Marshall, the great chief justice of the United States who was a young
officer under Washington, further concluded that without his distinctive character, formed in part
through earlier military experience, the American cause likely would have failed. He marveled at
the moral toughness of a commander who kept his outmanned, undersupplied, ill-equipped army
in the war until victorious. In one dark hour, the winter of 1776-1777, this character permitted
Washington to conceive counterattacks at Trenton and Princeton: "Among the many valuable
traits in the character of Washington, was that unyielding firmness which supported him under
these accumulated circumstances of depression. . . . To this unconquerable firmness-to this
perfect self-possession under the most desperate of circumstances, is America, in a great
degree, indebted for her independence" (LGW 75). A larger lesson here is that the
American judiciary and rule of law are indebted to Washington for instilling such character
in one who became a chief justice: in the early 1800s, the Supreme Court was nearly
irrelevant and would have been fully so if not for Marshall's perseverance amid adversity.
Today, one wonders how the American republic, which no longer requires service in
organizations that instill these traits, thinks it nonetheless provides for such experiences,
principles, and character-or, whether it considers these unnecessary, even backward.

America and the cause of liberty in the world are also fortunate that Washington was not
tempted by absolute power when the war prospects brightened. After the victory at
Yorktown, an American colonel suggested that he should be king, an offer that might tempt a
general deeply admired by his army and-like a Caesar, Cromwell, Napoleon, or Benedict
Arnold-also ambitious himself. The temptation might strengthen given how disorganized
Congress was during the war, how often Washington had proposed executive offices to
remedy this, and how he witnessed the daily wants in supplies, equipment, and pay for the
men to whom he was devoted. Colonel Lewis Nicola exploited these points, proposing that
disorganization in Congress and suffering in the army proved to all "the weakness of
republicks, & the exertions the army has been able to make by being under a proper head";
hence, many in the army would support him if he chose to be king (W 1106 at note 468.31).
Washington replied immediately, expressing "abhorrence," "astonishment," and "painful
sensations" upon learning of "such ideas existing in the Army." To be sure, "no Man
possesses a more sincere wish to see ample justice done to the Army," but he would pursue this only "as far as my powers and influence, in a constitutional way extend." He used Nicola's regard for him against such a plan, again connecting principles to the character needed to animate them: "Let me conjure you then, if you have any regard for your Country, concern for yourself or posterity, or respect for me, to banish these thoughts from your Mind" (W 468-69).

Washington already had supported military discipline and civil authority during two troop mutinies early in 1781 over lack of pay and supplies. He dealt moderately with the first but severely with the second. To Marshall, these events "threatened the American cause with total ruin," and he contrasts the "miserably defective" organization of Congress that caused such problems with the good fortune that America's one effective executive restored order and then pressed, yet again, for reform measures (LGW 245-48). Trouble arose again in 1783, with a peace process under way that might disband the army before being paid its due. Officers at Washington's headquarters in Newburgh, New York, thought he might finally support a threat of mutiny against Congress; the states would not pay their requisitioned funds, Congress could not compel them, and the army suffered. An anonymous letter summoned all the officers to a meeting and suggested they seek the support of their "Illustrious Leader" for this plot (W 1107-9 at note 490.13-14). Washington denounced that meeting but called for an official one at which "mature deliberation" should develop "rational measures" for Congress to consider (W490). He implied he would not attend; the element of surprise was his when, in the officers' meeting house-called the Temple of Virtue-he strode in. His speech contrasted the "unmilitary" character and "blackest designs" of the plot with the "rules of propriety" and "order and discipline" more fitting to "your own honor, and the dignity of the Army." Ultimately, "the calm light of reason" and "moderation" must control "feelings and passions," for "sowing the seeds of discord and separation between the Civil and Military powers" would undermine "that liberty, and . . . that justice for which we contend." To support these principles, he invoked their long-standing affection for him, since no one had been more "a faithful friend to the Army" (W 495-500).

Washington also defended Congress as an "Honorable Body" that should not be distrusted just because "like all other Bodies, where there is a variety of different Interests to reconcile, their deliberations are slow." His final appeal was to both reason and emotion: "let me conjure you, in the name of our common Country, as you value your own sacred honor, as you respect the rights of humanity, and as you regard the Military and National character of America," to reject this plot to "overturn the liberties of our Country" through civil war. This would prove them models of "unexampled patriotism and patient virtue" and "afford occasion for Posterity to say . . . `had this day been wanting, the World had never seen the last stage of perfection to which human nature is capable of attaining' (W498-500). Washington sealed his efforts with another dramatic gesture, again using the army's devotion to him not for his own advantage but for law and liberty. He began to read a letter from a congressman and then stopped: "Gentlemen, you will permit me to put on my spectacles, for I have not only grown gray, but almost blind, in the service of my country" (W 1109 at note 496.12). Some of the officers, no longer rebellious, were in tears. After he left, they unanimously repudiated the plot and reaffirmed their allegiance to civil authority.

Washington's influence was not only immediate but lasting. Indeed, the main doctrinal statement of the U.S. Army today opens by recounting "Washington at Newburgh: Establishing the Role of the Military in a Democracy," finding in these deeds and words "the fundamental tenet of our professional ethos." Principled to the end, Washington disbanded the army once the peace treaty was official. After a last Circular Address to the states recommending policies for the future, and final orders to the army giving further political advice, he resigned his commission before Congress in December 1783. He professed "honor" at being present to "surrender into
their hands the trust committed to me" and asked "the indulgence of retiring from the Service of my Country." With repeated recognition of "the interposition of Providence" which had secured America's independence, and gratitude for the support of his countrymen and trusted aides, he bade farewell: "Having now finished the work assigned me, I retire from the great theatre of Action; and bidding an Affectionate farewell to this August body under whose orders I have so long acted, I here offer my Commission, and take my leave of all the employments of public life" (W 547-48). Jefferson soon wrote to him: "the moderation & virtue of a single character has probably prevented this revolution from being closed as most others have been, by a subversion of that liberty it was intended to establish."  

The "Great Constitutional Charter": Constitutionalism, Union, and the Aims of Republicanism

Washington's judgment that liberty and constitutionalism require a principle of civil-military relations fits well with other principles central to America's political tradition that he was among the first to enunciate. He stated ideas about union, constitutionalism, and statesmanship years before Madison, Hamilton, or others elaborated them. Indeed, more scholarly minds could expound notions of constitutional reform in part because his statements paved the way; Hamilton is not the only leading mind at the Founding who could have said that Washington had been an "Aegis," a shield, "very essential" to him. Washington was a leader in the constitutional reform movement from 1783 to 1789, both in his own voice and by quietly encouraging others. Many who became Federalists, arguing for balance between union and states, looked to him as a defender of liberty and the Revolution who also had published a plea for rescuing liberty from anarchy. His 1783 Circular to the States proposes a more perfect union by rebalancing state sovereignty with the common good and America's "National Character." He then risked his reputation on a program of constitutional reform, ending his retirement to support it. Indeed, the reflection on ultimate principles in the Circular, combined with advocacy of specific policies, informs the two major statements of his later career, the First Inaugural and Farewell Address.

By 1783, Washington had supported efforts by Hamilton, Madison, and others in Congress to augment national powers on taxation, finances, and trade. Having nearly lost the prize of liberty due to excessive fear of governmental authority, he feared America might squander the peace in economic and political chaos. In early 1783, Congress proposed to the states that it assume all the state war debts and enact a national tax to pay for this; it also finally resolved to pay the officers. Throughout the war, Washington used circular addresses to send a uniform message to the state governors and legislatures, since he was often the only executive coordinating America's military, diplomatic, and financial policies. He used his final Circular not only to congratulate the states on the success of the war and to announce his retirement from public life but also to urge support for the recent congressional measures; indeed, he proposed the constitutionalist principles America must develop to secure and perpetuate liberty. He noted that a general should refrain from political activity, but he knew of his extraordinary stature in America and decided to use it a final time for the common good. Indeed, it was "a duty incumbent upon me" to address these issues since, in "the present Crisis" of affairs, "silence in me would be a crime" (W 516-18).

The Circular opens and closes with gratitude for Providence, given the great "prize" at issue in the war, success despite long odds, and the "natural," "political," and "moral" blessings Americans now enjoy (W516-17). The "Citizens of America" should note the providential fact that "our Republic" came to freedom in an era of history providing "a fairer opportunity for political happiness" than any other: "The foundation of our Empire was not
laid in the gloomy age of Ignorance and Superstition, but at an Epocha when the rights of mankind were better understood and more clearly defined, than at any former period." However, America must work to secure these achievements of the Western tradition:

the researches of the human mind, after social happiness, have been carried to a great extent[,] the Treasures of knowledge, acquired by the labours of Philosophers, Sages, and Legislatures, through a long succession of years, are laid open for our use, and their collected wisdom may be happily applied in the Establishment of our forms of Government; the free cultivation of letters, the unbounded extension of Commerce, the progressive refinement of Manners, the growing liberality of sentiment, and above all, the pure and benign light of Revelation, have had a meliorating influence on mankind and increased the blessings of Society. (W 517)

This might seem to resemble the liberal doctrine of a Locke or Voltaire, but the emphases on duty, decency, and Providence suggest otherwise. Indeed, the Circular evokes an Aristotelian and Tocquevillean blend of virtue and interest, warning that without prudent judgment and virtuous effort Americans will squander their blessings: if the "Citizens should not be completely free and happy, the fault will be intirely their own" (W 517).

The current crisis in domestic and foreign affairs was America's "political probation"; it will be either "respectable and prosperous, or contemptuous and miserable as a Nation." Only if it established a "national Character" and stopped "relaxing the powers of the Union, annihilating the cement of the Confederation," could America be independent; separate states would be "the sport of European politics," manipulated by great powers. Now is "the favorable moment to give such a tone to our Federal Government, as will enable it to answer the ends of its institution": at stake was not only whether "the Revolution" was "a blessing or a curse" for Americans and "the present age" but more-"for with our fate will the destiny of unborn Millions be involved" (W 517-18). To establish a "wise and liberal government," Washington proposed four "Pillars" to support "the glorious Fabric of our Independency and National Character"; while "Liberty is the Basis," these would protect that foundation from disintegrating. The principles necessary for "the well being" and even "the existence of the United States" were:

1st. An indissoluble Union of the States under one Federal Head. 2dly. A Sacred regard to Public Justice. 3dly. The adoption of a proper Peace Establishment, and 4thly. The prevalence of that pacific and friendly Disposition, among the People of the United States, which will induce them to forget their local prejudices and policies, to make those mutual concessions which are requisite to the general prosperity, and in some instances, to sacrifice their individual advantages to the interest of the Community. (W518-19)

Washington claims to leave national comity to "the good sense and serious consideration of those immediately concerned," but his arguments for the first three pillars in fact promote American fraternity and national spirit as the fitting fruit of the Revolution. This echoes the Aristotelian and Christian view that friendship, both utilitarian and charitable, is as important to humane politics as the right institutions. As to the first pillar, it was his "duty" and that of "every true Patriot" to observe that, beyond the "great question" of whether the states should "delegate a larger portion of Power to Congress or not," Congress must be allowed to exercise powers it is "undoubtedly invested with by the Constitution." Every state thus should support "the late proposals and demands of Congress." Beyond specific policies, Washington's prescient concern was "the Constitution" and new ideas of constitutionalism and federalism. Knowing that
fixed battle with a powerful opponent is not always wise, he obliquely undermined state-centered republicanism to bolster America's fundamental law and federal structure. At stake were "the fruits of the Revolution," "our Independence," "our Credit" among nations; without a constitutionalism informed by "entire conformity to the Spirit of the Union," America would descend to "a state of Nature," left with "the ruins of Liberty abused to licentiousness" (W 518-20).

Washington's description of financial obligations as "Public Justice" might suggest a fixation with property and prosperity; in fact, his complex thought echoes Montesquieu's tempering of Lockean individualism and materialism. He was indeed concerned with his success as a farmer and landowner and with America's prosperity. Still, he tempered these interests with devotion to honorable and just conduct, charitable and Christian aims, and political fraternity; his broader motives for promoting internal navigation and commerce—and for emancipating his slaves—exemplify this complexity. He invokes the "honor," "honesty," "justice," and "feelings of humanity" that require repayment of both creditors and of "the bravery, and the blood" of soldiers (W 520-24). This moderation informs his third pillar, "placing the Militia of the Union upon a regular and respectable footing." Experience and the common good counsel sacrifices of money and local autonomy; state militias at least must have "absolutely uniform" organization, equipment, and training (W 524). The Circular closes by invoking "the immutable rules of Justice" and the civic duty to leave a "Legacy" that will be "useful to his Country." As with his later addresses, the Circular balances liberalism and republicanism, liberty and fraternity, human agency and belief in the transcendent. Washington bids "adieu" to "public life"; the soldier-statesman's last act is to elevate the gaze of his fellow citizens:

I now make it my earnest prayer, that God would have you and the State over which you preside, in his holy protection, that he would incline the hearts of the Citizens to cultivate a spirit of subordination and obedience to Government, to entertain a brotherly affection and love for one another, for their fellow Citizens of the United States at large, and particularly for their brethren who have served in the Field, and finally, that he would most graciously be pleased to dispose us all, to do Justice, to love mercy, and to demean ourselves with that Charity, humility and pacific temper of mind, which were the Characteristicks of the Divine Author of our blessed Religion, and without an humble imitation of whose example in these things, we can never hope to be a happy Nation. (W 524-26)"

Washington's deeds and thoughts during the last phases of his career, as Constitution-maker and Constitution-enactor, flow from the character he established by 1783. The principles of his Circular guide his efforts to reform and then replace the Articles for the sake of ordered liberty and an American character. Indeed, his first reentry into public affairs led directly to his work for constitutional reform. By 1784, he advocated public development of a waterway linking the Potomac River and the West, a project he had promoted as a colonial legislator. As owner of many thousands of acres in the Ohio Territory, he would benefit from its economic development; but even concern about accusations of seeking public funding for private gain did not deter him. Washington had long argued that virtue and interest must be joined if human nature could be expected to pursue just conduct. He had used this rationale in pressing Congress on pay and terms of enlistment, and in refusing to seize supplies from civilians outside a governmental system; a war effort needed practical motivations for its supporters and as few disgruntled opponents as possible. Such moderate realism did not make him a strictly modern thinker beholden to Machiavelli or Locke, for Aristotle recognized the necessity of co-opting interest to achieve higher aims." Thus, his proposal to the governor of Virginia for a waterway emphasized national political development. It would bolster American independence, since a people "possessed of the spirit of Commerce" will "pursue their advantages" and "may achieve almost
anything." Moreover, such commerce would strengthen the Union, a good and necessary thing: "the flanks & rear of the United States are possessed by other powers—& formidable ones, too ... how necessary it is to apply the cement of interest to bind all parts of the Union together by indissoluble bonds" (W 561-62).

Washington's leadership on commercial cooperation led to the 1785 Alexandria Conference between Virginia and Maryland on trade and tax policies; indeed, the delegates began their meetings in Alexandria but concluded them at Mount Vernon. The Virginians then proposed that all the states send representatives to a national convention on commerce the next year. Only five states attended the 1786 Annapolis Convention, but they proposed to Congress and the states that a national convention be held in 1787 to discuss all the defects of the Articles. Madison pushed the convention in the Virginia legislature and nominated Washington as a delegate; after lobbying by Madison, Governor Edmund Randolph, and others across the nation, he reluctantly accepted. He then expended his unrivaled national prestige for the Convention's success. Recognizing Madison's ability to conceptualize reforms he had long promoted, Washington endorsed bold measures to the man whose efforts would earn him the title Father of the Constitution: "a thorough reform of the present system is indispensable"; the government "wants energy and that secrecy and dispatch . . . which is characteristick of good Government." The precise measures for a new federalism "indeed will require thought," but he gave Madison his aegis: "my wish is, that the Convention may adopt no temporising expedient, but probe the defects of the Constitution to the bottom, and provide radical cures; whether they are agreed to or not. A conduct like this, will stamp wisdom and dignity on the proceedings, and be looked to as a luminary, which sooner or later will shed its influence" (W 647-48). In fact, Madison had been studying republican forms and already had proposed the outlines of a new constitution to Jefferson. Still, a comparison of Washington and Madison as constitutionalists and chief executives would find Madison the more learned and the more timid. Washington's endorsement of Madison's nascent plans must have emboldened him to further develop a specific strategy for achieving reform in Philadelphia.

Washington sustained this drive for a newly ordered liberty in the crucial years ahead. His public statements or speeches at the Convention do not reveal his full role in the birthing of a new order. His prudent use of overt and subtle support for a constitutional revolution was indispensable, such that Madison might be asked to share the honor of fathering the Constitution. Tocqueville's analysis of the Convention praises the delegates as including "the finest minds and noblest characters that had ever appeared in the New World," and he lists "Washington, Madison, Hamilton, the two Mortises" as attending; still, he emphasizes one above all: "George Washington presided over it."19 The larger political context reveals the importance of this largely hidden hand guiding the Constitution to life. By 1786, discontent with America's affairs was growing, and the armed conflict in Massachusetts called Shays's Rebellion had sparked momentum for reform. Congress was helpless in restoring order or redressing the financial and commercial policies, or lack thereof, which led to such crises. Still, even after these events, Washington faced the view that the Philadelphia Convention was illegal without approval by Congress. Once that was gained, Rhode Island's refusal to participate meant that the amendment provision of the Articles, requiring approval of all the states, would not sanction any product of the Convention. Washington's imprimatur was crucial, and he let it be known that he would attend nonetheless. He arrived weeks before a quorum formed and worked with his delegation to refine the opening salvo for reform, the Virginia Plan. Only one other delegate could legitimize the Convention so much; yet, it was Benjamin Franklin who spoke of the propriety and necessity of electing Washington to preside. Both in symbolic and practical ways, he then kept the Convention and reform on track by attending every session for four months and voting on all motions, by enforcing the secrecy rule that permitted—as Madison's notes reveal—extraordinarily candid deliberations, and, finally, by signing the Constitution and the letter transmitting it to Congress.
Washington also must be credited for restraint at the Convention, since refraining from certain actions bolstered the viability of its product. He occasionally voted against Madison's political science of efficient national sovereignty in the Virginia Plan to accommodate concerns of nascent Anti-Federalists. He could have used his prestige to enact his pet ideas, especially on the single executive for which, it is widely recognized, he was the delegates' model; instead, he moderated his role so as not to abuse his authority. When he rose on the last day for a rare intervention, Madison notes that he addressed this first: "his situation" as presiding officer "had hitherto restrained him from offering his sentiments on questions depending in the House, and it might be thought, ought now to impose silence on him." Nonetheless, in a spirit of compromise, he backed a motion to enlarge the House of Representatives: "it was much to be desired that the objections to the plan recommended might be made as few as possible," and this motion was "of so much consequence that it would give him much satisfaction to see it adopted." This idea had been debated and defeated regularly in the final weeks; now it was approved unanimously, without debate. A less principled man might have used such influence quite differently.

In the ratification debates as well Washington told associates to use his name; yet, knowing that he might be the first president, he did not campaign himself. He did arrange publication in Virginia of The Federalist, the New York essays of his associates Hamilton, Jay, and Madison. He wrote to Hamilton that, having read many Federalist and Anti-Federalist efforts, none was better designed to "produce conviction." Indeed, his verdict on The Federalist is remarkably perceptive: "When the transient circumstances & fugitive performances which attended this crisis shall have disappeared, that work will merit the notice of Posterity; because in it are candidly and ably discussed the principles of freedom & the topics of government, which will always be interesting to mankind so long as they shall be connected in Civil Society" (W 691-92). Both sides thought his public support tipped the scales toward the Constitution's narrow victory; for Marshall, "had the influence of character been removed, the intrinsic merits of the instrument would not have secured its adoption" (LGW 325). James Monroe wrote to Jefferson that "his influence carried this government."

Although pledged to perfecting the Union through constitutional reform, Washington reluctantly assumed the office of president. His First Inaugural Address, to "Fellow Citizens" of the Senate and House, opens by noting his "anxieties." Having been "summoned by my Country," he surrendered what had been an "immutable decision" to retire (W 730). He expressed concern, as he had twice before, that his countrymen overestimated him, and he asked forgiveness for any errors arising from his "deficiencies" as to "civil administration." Given his still more reluctant acceptance of a second term in 1792, his decisions to serve stem not only from civic duty but also from two principles he had long advocated: the executive statesmanship needed in republics and deference to popular consent. Washington knew from the war that effective statesmanship and popular opinion did not always harmonize; during his presidency he would hazard his happiness and reputation in balancing them as he judged best for American constitutionalism. He was a strong but moderate and faithfully constitutional executive, justifying decisions with stated principles. He sought to quell the partisanship gripping America by calling his countrymen to the enduring interests and higher ends that united them. His letters before his inauguration predict how difficult the unprecedented task of chief executive would be and how contentious the politics might become.

His Inaugural Address dropped the constitutional and policy discourses he had drafted in order to emphasize instead the principles of American republicanism. It was fitting to offer "fervent supplications to that Almighty Being who rules over the Universe" that "his benediction may consecrate to the liberties and happiness of the People of the United States, a Government instituted by themselves for these essential purposes" (W 731). "No People can be bound to acknowledge and adore the invisible hand, which conducts the Affairs of men" more than Americans; in the recent "revolution," the "tranquil deliberations, and voluntary consent of so
many distinct communities" contrasted with the way "most Governments have been established," suggesting a "providential agency." He quoted "the Great Constitutional Charter" for the terms by which he should relate to Congress, and he urged Congress, too, to consult the Constitution for its powers and agenda. He praised the "talents, the rectitude, and the patriotism which adorn the characters" of those elected, since such "honorable qualifications" should ensure that "no local prejudices" or "party animosities, will misdirect the comprehensive and equal eye which ought to watch over this great Assemblage of communities and interests." Thus, "the foundations of our national policy, will be laid in the pure and immutable principles of private morality," and such "pre-eminence" would win for free government "the respect of the world." Since "the preservation of the sacred fire of liberty, and the destiny of the Republican model of Government, are justly considered as deeply, perhaps as finally staked, on the experiment entrusted" to America, the government must abide by "the eternal rules of order and right, which Heaven itself has ordained." For "there is no truth more thoroughly established, than that there exists in the ceconomy and course of nature, an indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy, and the solid rewards of public prosperity and felicity" (W 731-33).

After endorsing the moderate, Madisonian strategy for constitutional amendments only regarding "the characteristic rights of freemen," and again requesting reimbursement for expenses in lieu of any salary, Washington closed by reiterating the humility, civility, and moderation fitting for American politics. Just as "the benign Parent of the human race" had again favored America's "happiness" by promoting tranquil deliberations and reform toward greater security for the Union, so Washington hoped "this divine blessing may be equally conspicuous in the enlarged views-the temperate consultations, and the wise measures on which the success of this Government must depend" (W 732-34). He abided by this principled moderation during the tumultuous years ahead, even though he may have been tempted to drop it in self-defense amid ferocious partisanship and popular outrage. His deeds proved his view that liberty and constitutionalism require a balanced, complex kind of prudential judgment that avoids the theoretical and practical extremes to which human politics can tend; the American experiment might not have survived if not for his moderation.

"As our interest guided by our justice shall Counsel":
Statesmanship and Moderation in Domestic and Foreign Affairs

Washington's Farewell Address, announcing his withdrawal from consideration for a third term and his retirement from public life, offers parting advice to his country while affirming the principles that guided him in office. It is indispensable reading for studies of American politics and history, and of republicanism and statesmanship more broadly. The issue of how much the ideas are Washington's, or Madison's or Hamilton's, evaporates upon examining his control through-out the drafting process and the clear lineage of ideas and phrases from his earlier writings." More important is his direction to Hamilton that the address retain Madison's 1792 draft of a farewell; he had wanted to retire then, but pleas from all sides persuaded him to remain as the obvious choice for president again. Washington wanted these rival figures involved with his final statement to symbolize the balanced views and shared principles overlooked by the partisanship of the 1790s. This in itself confirmed a practical wisdom and moderate sense of justice surpassing that of any of his proteges, amid dilemmas dwarfing those faced by any successor save Lincoln. Indeed, Jefferson and Madison deemed the Farewell Address so important for American political thought that they placed it and his First Inaugural on the reading list for the University of Virginia, with the Declaration of Independence and The Federalist. Also included was the 1799 Virginia Resolution against the Alien and Sedition Acts, perhaps to meet Democratic-Republican concerns about the views of executive power and foreign policy in the Address. Tocqueville was
warmer to Washington's principles, describing this "admirable letter addressed to his fellow citizens, which forms the political testament of that great man," as the basic charter of American foreign policy."

The great, related themes of Washington's presidency were that executive power was safe for republicanism, and that constitutional government, not populism or parties, should guide the way through domestic and foreign trials. These principles animated his speeches and deeds, including his statement that a republic's chief executive should not hold office for life. The Constitution provided a strong keel and rudder, but the final phase of his career proves how crucial his practical wisdom and adherence to constitutionalism was in guiding the ship of state past storms and siren songs. His commitment to making the Constitution work by fleshing out the powers sketched in Article II and throughout still shapes our politics today, beyond his efforts to protect the Republic from European powers and visionary creeds. Ideas of presidential power and of statesmanship or leadership have changed in two centuries, but Washington's principles remain a benchmark for evaluating whether these are improvements. To him we owe not only the republican principle limiting a president to two terms, deviated from only by Franklin Roosevelt and then entrenched in constitutional amendment. He also established that presidents should recruit the best talents and characters for offices, from a range of political and regional viewpoints, unaffected by patronage: his cabinet included Hamilton and Jefferson, and he nominated to the Supreme Court such leading jurists as John Jay and James Wilson. His adherence to separation of powers dictated respect for the legislative dominance of Congress; instead of pushing an extensive program, the president should recommend a few measures, mostly concerning core Article II powers of foreign and security policy. Similarly, the executive should use the veto power with care, on constitutional and not policy grounds; his qualification to this was a veto over a core presidential power, the size of the army. The executive and Senate should collaborate on treaties while maintaining separate roles and judgments; however, he insisted that the House play no role, given "the plain letter of the Constitution" and his direct knowledge from the 1787 Convention of "the principles on which the Constitution was formed" (W 930-32). The executive and legislature, not just the courts, should weigh the constitutional merits of controversial measures, as he did in canvassing Hamilton and Jefferson on the National Bank. Perhaps dearest to him was the principle that the president represents all the American citizenry, its various regions and states, its common principles and highest ideals, and not merely one party or set of policies. Similarly, he balanced republican dignity and republican simplicity in the presidency, as exemplified in the simple but formal ceremony of his inaugurations—to include supplementing the constitutional oath of office with "so help me God," sworn upon the Bible.

Washington's conduct amid the partisanship that rocked his presidency offers lessons of prudence and moderation worth pondering. The two great domestic disputes concerned national finances: first, opposition to the National Bank and other parts of the economic plan devised by Treasury Secretary Hamilton; second, the protest in western Pennsylvania against the tax on distilled spirits. The two great foreign policy disputes involved the upheaval of the French Revolution and the radically egalitarian, antimonarchical theory France sought to impress upon the world, and especially America. Washington's two measures to protect America from such turbulence—his 1793 Neutrality Proclamation and 1795 treaty with Britain (the Jay Treaty)—occasioned bitter partisan attacks. His policies on this range of domestic and foreign issues were remarkably consistent, informed by his view that liberty is best secured by a complex constitutionalism balancing popular consent with competent offices, and by moderation regarding the theoretical and practical temptations always haunting politics. In domestic policy, his annual messages praise Congress for enacting his administration's funding and financial plans, and he reports their evident benefits for America's public credit, private commercial activity, and prosperity. He commends sober deliberation among separated powers for discerning sound policies for the Republic, unaffected by short-term concerns over creeds, personalities, class
conflict, or reelection. The basic outlines of Washington's financial system remain today, grounded in the principles he directed Hamilton to develop into a detailed plan. Without dismissing criticisms raised concerning national administrative power, commercialism, and in-equality, it has helped to produce more liberty, prosperity, and equality than perhaps any regime in history can boast.26

The same complex, Montesquieuan conception of liberty informed Washington's response to protests against federal taxation and his policy of neutrality toward France and Britain. In Pennsylvania, opposition to the so-called whiskey tax exploded from 1791 to 1794 into a grass-roots movement against the authority of the national government, peaking in armed resistance to collecting the tax or enforcing any federal laws. From his Third Annual Message in 1791, he proposed "wise moderation" in addressing the reasonable concerns of the Pennsylvanians; but as the revolutionary fervor and violence of the opposition grew, so did his determination that the rule of law must not yield to popular sentiments or partisan creeds. He issued proclamations in 1792 and 1794 on his constitutional duty to enforce duly enacted laws and the duty of citizens to comply with them, and he explained his policy in his Fourth, Sixth, and Seventh Annual Message. He ultimately readied militias from four states to suppress an armed resistance that was "subversive equally of the just authority of Government and of the rights of individuals"; when this mobilization and final efforts at conciliation failed to persuade the "insurgents," he sent an overwhelming force of 15,000 troops-an "army of the constitution"-to restore order. The Whiskey Rebellion was dispersed, and the leaders arrested and tried in the courts; Washington ultimately pardoned, however, those convicted of treason and sentenced to death. At stake had been "the fundamental principle of our constitution, which enjoins that the will of the majority should prevail." The lesson for citizens was to "persevere in their affectionate vigilance over that precious depository of American happiness, the constitution of the United States," and to ask continued protection from "the Supreme Ruler of nations" over a government dedicated to securing "human rights" (W 789, 829, 870-73, 882-84, 887-93, 922).

A similarly partisan, popular resistance arose to Washington's neutrality policy and to the treaty with Britain that prevented war with that great power-at the risk of offending the revolutionary French republic and its zealous supporters in America. He withstood charges of monarchism and of groveling to Britain, defending the policy as the best way to maintain both America's true independence and a just peace. In his Seventh Annual Message and his letter to the House rejecting their request for the Jay Treaty documents, he defended the Framers' principle that foreign policy should not bow to current popular sentiments or abstract creeds but should be debated and formulated by the branches somewhat insulated from popular opinion, the indirectly elected Senate and indirectly elected executive. Indeed, despite his reservations about the treaty, he pressed to ratify it in part to quell partisan and popular disorder from the same sorts of local clubs that had stoked the violence of the French Revolution and the Whiskey Rebellion. The "prudence and moderation" which had obtained and ratified the treaty sought an honorable peace as the foundation for America's future prosperity and strength. These "genuine principles of rational liberty" would prove essential to "national happiness"; having been "ff[}faithful to ourselves, we have violated no obligation to others" (W920-22, 930-32). Tocqueville extolled this achievement in 1835:

The sympathies of the people in favor of France were . . . declared with so much violence that nothing less than the inflexible character of Washington and the immense popularity that he enjoyed were needed to prevent war from being declared on England. And still, the efforts that the austere reason of this great man made to struggle against the generous but unreflective passions of his fellow citizens almost took from him the sole recompense that he had ever reserved for himself, the love of his country. The majority pronounced against his policy; now the
entire people approves it. If the Constitution and public favor had not given the
direction of the external affairs of the state to Washington, it is certain that the nation
would have done then precisely what it condemns today. 27

The Farewell Address encapsulates and elevates the principles Washington had stood for
during his presidency and entire career. True to his concern about demagoguery, he published
the text in a newspaper, foregoing a ceremonious speech. True to his republicanism, it had no
grand title, only "United States, September 19, 1796," to "Friends, and Fellow-Citizens"; another
newspaper later termed it his Farewell Address. The harmony with earlier writings is striking:
the Address opens by invoking republican virtue and civic duty; patriotic devotion to the common
good; gratitude to Heaven for the country's blessings and prayers for continued Providence; and
the need for prudence and moderation to sustain such goods. He pledged "unceasing vows" that
America and the world would enjoy five further blessings:

that Heaven may continue to you the choicest tokens of its beneficence; that your
Union and brotherly affection may be perpetual; that the free constitution, which is the
work of your hands, may be sacredly maintained; that its Administration in every
department may be stamped with wisdom and Virtue; that, in fine, the happiness of
the people of these States, under the auspices of liberty, may be made complete,
by so careful a preservation and so prudent a use of this blessing as will acquire to
them the glory of recommending it to the applause, the affection, and adoption of
every nation which is yet a stranger to it. (W 963-64)

He then cites his 1783 Circular as a precedent for offering advice as well as prayers, and he
proceeds to propound several lessons for the "solemn contemplation" and "frequent review" of the
citizenry. The first lesson concerns liberty: that Americans are so deeply attached to it he need
say no more. This subtly implies an imbalance needing redress; the advice to follow concerns
ordering and sustaining liberty. Indeed, the next two lessons reinforce two of his prayers:
America must strengthen the Union and cherish the Constitution if it truly prizes liberty. These two
aims were the central concerns of Washington's public service and writings from 1783, and they
garner the bulk of the Address. Brief advice follows on three principles supporting these ends:
adherence to separation of powers and the rule of law over populism and passion; the need for
religion, morality, and education in republics; and responsible public finances. The final counsel,
nealy as long as those on union and constitution, concerns America's independence and
capacity for justice in foreign affairs (W 964-72).

Washington's maxim "to steer clear of permanent Alliances" is among the best-known points
of the Address, along with his call to inculcate religion and morality in a self-governing citizenry
(W975). That said, many accounts of his foreign policy mistakenly cite Jefferson's later maxim
about "entangling alliances," and they mischaracterize the Address as launching a doctrine of
isolationism. In fact, Washington criticized the French Revolution and its effects in America for
imposing visions and doctrines when knowledge of human nature and practical realities
sup-ported more moderate views. Such prudence also suggests, however, that he would
question any use of his advice today as an abstract rule book for the problems of our very
different context. This is not to say that he defined prudence merely as self-interested calculation
to rationalize expedient deeds. His main principle was that a secure, independent nation must
surrender to neither low interest nor abstract justice, but must balance the two. In this prudential
spirit, he cites the specific circumstance of the 1790s that suggests America should be a "slave"
neither to hatred of Britain nor to adoration of France: "a predominant motive has been to
endeavor to gain time to our country to settle and mature its yet recent institutions, and to
progress without interruption, to that degree of strength and consistency, which is necessary to
give it, humanly speaking, command of its own fortunes" (W 973, 977).

America now is a lone superpower. Washington's prudential counsels still are relevant, but they do not fit our international relations doctrines, whether isolationism or internationalism, unilateralism or multilateralism, realism or liberal idealism. His main concern was that a nation be independent enough to act wisely and justly; the fundamental principle was to be able to "choose peace or war, as our interest guided by our justice shall Counsel" (W 975). He had long argued that interest requires provision for "the national security"; Theodore Roosevelt praised his maxim that "[t]o be prepared for war is one of the most effectual means of preserving peace" (W749, 791-92, 848). However, the Address also called America to "[o]bserve good faith and justice to all Nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it?" He cited the utilitarian maxim that "honesty is always the best policy," but he exhorted America to "give to mankind the magnanimous and too novel example of a People always guided by an exalted justice and benevolence" (W 972, 975). These balanced principles lie within the just war tradition of classical philosophy, Christianity, and modern natural law and international law, which developed guidelines for informing, not replacing, the prudence of statesmen. Our challenges may be different given our immense power, but the aim is still Washington's, to benefit both mankind and ourselves by respecting "the obligation[s] which justice and humanity impose on every Nation." America seeks justice, and government by and for the citizenry, while being a global hegemon. The ancient Romans, of course, lost their republic to empire; the modern British gave up their empire to preserve the republicanism of a constitutional monarchy. Such challenges, on top of the more particular ones of the twenty-first century world, call out for recurrence to Washington's counsels and principled prudence (W 977).

The exhortations in the Address to instill religious faith as well as moral and intellectual virtue also defy today's doctrinal categories. Washington endorses neither a secularist wall of separation between religion and government nor a sectarian view that America is a Christian nation; similarly, a republic should neither ignore the mutual influence between governmental and private morality nor use nocturnal tribunals to review the morals of citizens. Throughout his career, he balanced respect for Christian churches with liberal, enlightened forbearance from any coercion of belief. His Thanksgiving Proclamation of 1789 is an extraordinary exhortation to the citizenry, invoking piety, republicanism, religious liberty, and liberal enlightenment. His letters to two minority religions in America, Jews and Roman Catholics, are meditations on the harmony between biblical faith and the "natural rights" of peaceful citizens to pursue their own piety. A just government "gives to bigotry no sanction, to persecution no assistance" and thus transcends mere "toleration," but it should exhort citizens to "the cultivation of manners, morals, and piety. As with all his major addresses, his Farewell opens and closes by invoking Providence in a manner inclusive of all believers in a transcendent deity without threatening those of other views. He balances the utility of piety and morals with genuine appreciation for them: "Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports"; "A volume could not trace all their connections with private and public felicity"; just policies are "recommended by every sentiment which ennobles human Nature" ( W 971, 972-73). Indeed, as he had done since his First Annual Message, he endorsed liberal learning and institutions "for the general diffusion of knowledge," it being "essential that public opinion should be enlightened" (W 972, 750). The guiding spirit of the Address is moderation, that prudence should guide domestic and foreign affairs, private and public life; he hoped these "counsels of an old and affectionate friend" would "controul the usual current of the passions" and "moderate the fury of party spirit" (W976; see also 832, 851, 924). An element of Christian Aristotelianism tempers his enlightened liberalism and classical republicanism, the mark of the "Rules of Civility" he imbibed as a youth-the last of which states: "Labour to keep alive in your Breast that Little Spark of Celestial fire Called Conscience" (W 10). Well-intentioned judgments about Washington's complicity in slavery often prevent us from
appreciating his thought and character today. In fact, his thoughts and deeds on slavery are a model for any struggle to rise above historical circumstance and self-interest to do the right thing, a model always needed in politics. For the last three decades of his life, he stated that slavery was unjust—at first ambiguously, complaining that the British sought to "make us as tame, & abject Slaves, as the Blacks we Rule over with such arbitrary Sway," but then with moral clarity, expressing "regret" at being a slave master and hoping it would not be "displeasing to the justice of the Creator" if he made his adult slaves "comfortable" while laying "a foundation to prepare the rising generation for a destiny different from that in which they were born" (W 158, 701-2). From the early 1770s he never sold slaves, a costly policy: their number at Mount Vernon doubled, and while he shifted from tobacco to wheat and other crops to escape a slavery plantation economy, he had more slaves than was profitable. After decades of deliberation with Lafayette and others, and various proposed schemes for emancipation, and even discretely freeing some, he finally resolved in his Last Will and Testament to emancipate all of them upon Martha's death. Legal protections for widows prevented him from freeing those she brought to the marriage, and since he had encouraged marriage and families on the plantation he could not free his slaves but not hers without causing "insuperable difficulties" and "painful sensations" for them. He also wanted to complete the preparations he had made for the slaves' education and skills so as to give them some reasonable chance in the world. The aged and orphans among them not wishing or able to be freed were to be cared for, educated, and trained in skills by his estate. He emphasized that these directions be "religious fulfilled" by his heirs "without evasion, neglect or delay"; the estate spent money on pensioners until 1833 (W 1023-24). Like Lincoln, he was neither slavery apologist nor abolitionist, judging this moderate plan more humane and also a model to fellow gentry that an estate need not be destroyed by emancipation. He may also have feared that more conspicuous statements or actions on his part would fan civil discord between North and South more than it would have helped the slaves. He admitted that he had redressed the evil later than he should have, but we should consider that no other slaveholding president freed all his slaves. We should also reflect upon the more lax, comfortable moral state of America today before condemning a man who inherited an evil practice and strove to help eradicate it through his example of prudence and principle.

Marshall's biography concludes by emphasizing the bond between a statesman's moral and intellectual virtue, and that all "candidates for political fame" should study Washington's "sound judgment," his "incorruptible" integrity, and "the texture" of a mind that balanced "modesty" with "dignity" and "an unvarying sense of moral right" with prudence about the possible (LGW 465-69). Democratic republics always will look for leaders to ascend from campaigning to governing, from popularity to statesmanship. In domestic and foreign affairs, we would do well to study Washington's thought and example. As a political father, he committed himself to freedom for his children; we would not use it wisely if we ignored him now.

Notes

This chapter does not represent the views of the U.S. Air Force Academy or the U.S. government. I am grateful to my colleagues Jeff Anderson and Lance Robinson for comments on earlier drafts of this chapter.


4. For the conception of moderation that most influenced the American Founders, see Montesquieu, The Spirit of the Laws, trans. Anne Cohler, Basia Miller, and Harold Stone (Cambridge: Cambridge University Press, [1748] 1989), preface and bk. 29, chap. 1; see also bk. 9, chaps. 1-3, and bk. 11, chaps. 5, 6, 8, 20.


10. Marshall, Life of Washington: Special Edition, 463. Subsequent references to this one-volume edition of his larger work, completed by Marshall just before his death, are cited in the text as LGW.


16. See Aristotle, *Nicomachean Ethics*, 8.1, 8.9-11 (1155a22-28, 1159b25-1161b10); Thomas Aquinas, *Summa Theologiae*, I-II, q. 105, a. 5; II-II, q. 23, aa. 7, 8; q. 25, aa. 8, 9; q. 26, a. 8.


18. Aristotle, *Politics*, 3.11 (1281b21-30), teaches superior statesmen to incorporate the masses into governance to some degree in order to avoid having a city "full of enemies"; see also 2.2 (1261a22-31), 2.9 (1270b17-27), 3.4 (1276b35-1277a11), and 7.14 (1332b16-31).


22. This is not the discarded First Inaugural, a longer address he prepared with his secretary David Humphreys but then decided not to use. On this interesting text and surviving fragments, see *Washington: A Collection*, 440-42, 445-59, and W702-16, 1116-17.


John Adams and the Republic of Laws

Richard Samuelson

John Adams (1735-1826) was born in Braintree, Massachusetts. Though his parents were not wealthy, they saved enough money to send John, their eldest son, to Harvard College, from which he graduated in 1755. After some hesitation, Adams chose law as his profession, and he rose rapidly through the colony's legal ranks. By the late 1760s, he was among the top lawyers in the colony. As the imperial crisis waxed, Adams took up his pen to help make the colonial case against British taxation, and he helped organize the colonial resistance. In 1774 and 1775, Massachusetts put Adams in its delegation to the Continental Congress. By the late spring and early summer of 1776, Adams was the leader of the proindependence forces in Congress. The fledgling Union sent Adams to Europe, first to help Benjamin Franklin and others negotiate a treaty of alliance with the French, and then to lead the American negotiations with Britain to end the war. After the Peace of Paris of 1783, Adams remained in Europe as a diplomat. Returning from Europe not long before the federal Constitution came into effect, Adams was elected vice president in 1788 and was returned to that office in 1792. In 1796, Adams defeated Jefferson in the race to succeed George Washington; in 1800, Jefferson turned Adams out of office. Adams retired from politics in 1801 and spent the rest of his life on and around his farm, reading his books and writing letters to friends. He died on July 4, 1826.1

The rule of law was the main focus of Adams's political thought. In the influential pamphlet of the spring of 1776, "Thoughts on Government," Adams wrote that "there is no good government but what is republican" and that "the very definition of a republic is 'an empire of laws and not of men'" (WJA 4:194).2 An understanding of the law and the nature of its rule is therefore fundamental to understanding his thought. Adams highlighted two means of securing the rule of law: consent, and checks and balances. As we discuss his thoughts about the rule of law, we should keep in mind that Adams denied that theory was separable from practice. Hence, we will at times find it necessary to discuss concrete examples to elaborate upon his political thought.

Adams held that having known and fixed laws was a necessary but not sufficient condition of good government. "No man will contend that a nation can be free that is not governed by fixed laws. All other government than that of permanent known laws, is the government of mere will and pleasure, whether it be exercised by one, a few, or many" (WJA 4:403; cf. 4:401, 526). At the same time, Adams did not think all laws were created equal. Rightly understood, law was more than force backed by authority. In an 1811 essay on "A Government of Laws and Not of
Men," Adams commented that "it is very true there can be no good government, without laws: but," he added, "those laws must be good, must be equal, must be wisely made."3

How could some laws be contrary to rule of law? During the imperial crisis of the 1760s and 1770s, Adams found that most of the lawyers who had taken up their pens in the dispute had missed that paradoxical truth.

Some have defined it [the British Constitution] to [be] the practice of parliament; others, the judgements and precedents of the King's courts; but either of these definitions would make it a constitution of wind and weather, because the parliaments have sometimes voted the King absolute and the judges have sometimes adjudg'd him to be so. Some have call'd it custom, but this is as fluxuating and variable as the other. (PJA 1:165)

Truly to be fixed, the law had to be above the control of the men who held offices under it. The law could not render the king or Parliament absolute without contradicting its very nature. Similarly, custom was not an adequate anchor for the law because customs change. All efforts to reason exclusively with human precedents contained all the inconsistency and mutability of the human race. Law had to be tethered to something beyond the inventions of the human mind. While arguing against Parliament's right to legislate for the colonies without their consent, Adams quoted Hugo Grotius, the seventeenth-century Dutch authority on law: "Whatever is originally in its Nature wrong, can never be sanctified or made right by Repetition and Use" (BAR 61). In its profound sense, law had to do with right and justice. Adams quoted one of his favorite authors, Cicero, who wrote that laws, "as they are founded on eternal morals, are emanations of the Divine mind" (WJA 6:56). The laws could be said to govern when a people submitted to the authority not of some imperfect human legislator but of the eternal Legislator of the universe.

Adams chose a seemingly impossible standard for the rule of law, but he also thought it was the only reasonable one. If the rule of law entailed only the submission to the commands of some authority, then all men except the commanders would be slaves, submitting to the will of the rulers rather than to a law which bound all equally. Moreover, unless the sovereign was wise and virtuous, that would mean submission to the passions and errors of one, few, or many. The laws could be said to govern only where the laws were organized around some principle of justice. Adams believed that the law of justice was the law of liberty. God did not make men to be slaves, for "man has certainly an exalted soul" (PJA 1:111). Adams realized that man had passions and instincts, but he did not conclude from that reality that man was a beast who followed them blindly. Man had reason, which allowed him to contemplate means and ends, including ends beyond himself. Man could pursue justice. In 1811, Adams grew frustrated with the abuse to which the idea of the rule of law had been put. "Suppose we should say, a government of the Virtues and not of Men: a government of Wisdom and not of Men: a government of Religion natural or revealed, and not of Men: a government of Morality and not of Men: a government of policy and not of Men: would not any of these propositions be as intelligible, as true, and as important, as our motto?"4 Properly understood, law was bound up with the virtues, wisdom, religion, morality, and policy. Law was right reason in practice.

Adams believed God had made men for liberty. God was not cruel, creating man with free will but leaving him helpless to determine what he should do with that freedom. Rather, God gave man reason:

Philosophy which is the result of Reason, is the first, the original Revelation of The Creator to his Creature, Man. When this Revelation is clear and certain, by Intuition or necessary Induction, no subsequent Revelation supported by Prophecies or Miracles can supercede it. Phylosophy is
not only the love of Wisdom, but the Science of the Universe and its Cause. There
is, there was and there will be but one Master of Phylosophy in the Universe.
Portions of it, in different degrees are revealed to Creatures. (AJL 412)

Men were born ignorant and in need of education to determine what they were to do with
themselves in life. That was why God had given man reason. By discovering itself, reason
discovered free will. Man had the ability to choose his course in life (within certain limits of
circumstance). At the same time, human reason was neither all-powerful nor all-knowing.
Rather than finding that reality disappointing, Adams found it another cause for wonder at
God's gift of freedom to man. Were human reason always able to determine with ease and
with certainty what man should do, man would hardly be free; God would dictate to man
through the instrument of reason.' The limits of reason were reflected in the limits of
legitimate government. The diversity of human life and circumstances guaranteed that the
law could not accommodate every case. "Society can be governed only by general rules.
Government cannot accommodate itself to every particular case as it happens, nor the
circumstances of particular persons" (WJA 9:378). Those who wrote the laws should have a
certain humility about their work.

Adams was of that ancient school which held that human knowledge was possible only
after one accepted certain things on faith. As he told Jefferson, "I hold there can be no
Phylosophy without Religion" (AJL 358). All study of the empirical world accepted that the
data gathered by the senses were accurate. Yet the order which is apparent to the sense
may or may not be real, and the way one chooses to think about the sensible world is itself
a moral choice. From his reflection upon that problem, and upon the moral universe more
generally, Adams concluded that ethical monotheism was the best faith.

The Hebrew unity of Jehovah, the prohibition of all similitude, appears to me the
greatest wonder of antiquity. How could that nation preserve its creed among the
monstrous theologies of all the other nations of the earth? Revelation, you will say,
and especial Providence; and I will not contradict you, for I cannot say . . . that a
revelation is impossible or improbable. (WJA 10:235)

Human knowledge did not penetrate far enough into the mysteries of the universe to reject
the possibility of direct revelation outright, even though the first revelation of God to man
was reason. By accepting on faith that there was one God who created and ordered the
world, and by admitting that he was doing so, Adams brought a certain humility to his
thought. Humans used words like "matter" and "spirit" and had some sense of what they
meant by them, but men did not really know whether the meaning reflected anything final
because "we know nothing of Essences." Adams was emphatic on the point: "I insist upon it
that the Saint has as good a right to groan at the Philosopher for asserting that there is
nothing but matter in the Universe, As the Philosopher has to laugh at the Saint for saying
that there are both Matter and Spirit" (AJL 564). Ultimately, Adams's beliefs that men were
free and had reason were inextricably linked to ethical monotheism. Adams was convinced
that "some Essence does exist, which causes our minds with all their ideas, and this visible
World with all its wonders. I am certain that this Cause is Wise, Benevolent and powerful,
beyond all conception; I cannot doubt, but what it is, I cannot conjecture" (AJL 563-64). The
order men perceive in the universe allowed men to function and to enjoy liberty so long as
men did not claim to know too much about that order.

By observing nature with the instrument of reason, man learned about his obligations.
Finding himself sharing the world with other people, each individual had to determine what,
if anything, he owed himself and others. "I must judge for myself," Adams wrote, "but how
can I judge, how can any man judge, unless his mind has been opened and enlarged by
Education was a duty. At the same time, possession of that duty implied the right to pursue it. Duty and right were linked symbiotically.

Man's duty to judge for himself the proper course in life was not absolute but rather was limited by the principle itself. These limits involved oneself and others. Regarding oneself, one did not have the right to choose to be a slave, blindly and unreflectingly submitting to the will or thoughts of another. On the other side, one did not have the right to treat others as instruments of one's own will. Adams upheld the golden rule, one of the ethical commands in both Testaments, as the model: "I would define liberty as the power to do as we would be done by. The definition of liberty to be the power of doing whatever the laws permit, meaning the civil laws, does not appear to be satisfactory" (WJA 10:377). Understood in its most profound sense, liberty was the ability to choose to treat others justly. It was the ability to educate oneself in one's duties and obligations to oneself and others, coupled with the ability to act on the conclusions one reached. At the same time, one's rights extended so far, and no further, than the rights of others to educate themselves and to act upon their informed judgment. The golden rule itself grew from the obligation to pursue justice. Submission to the law of justice was the rule of law. In this sense, law was not the antithesis of freedom. Law was liberty.

What did all that reasoning have to do with the law as most people knew it? How did it help one judge any specific law or system of laws? Adams wrestled with this problem throughout his life. Given the limits of human reason, the best that men could do was to think seriously about the laws of their society and seek to keep them tethered to the golden rule of liberty. Adams found two means to that end: consent, and checks and balances. Governments gained the right to coerce men because men gave governments the right to use force to enforce the laws. It was "consent alone that makes any human Laws binding" (BAR 140). While consent was necessary, it was not sufficient. The right to consent to laws did not make whatever laws they consented to right. Adams was particularly worried that voters would abdicate their duties. From his observation of political man, Adams concluded that "human nature itself from indolence, modesty, humanity or fear, has always too much reluctance to a manly assertion of rights" (PJA 1:123). By itself, consent was inadequate to secure liberty because most men were too lazy to pay close attention to the management of their affairs. Self-government required a commitment of time and energy. The solution to that problem was checks and balances. To ensure liberty in a large democratic republic, "orders of men, watching and balancing each other, are the only security; power must be opposed to power, and interest to interest" (WJA 4:557). A well-ordered constitution would check the ambitious few to serve the public good and cajole the lazy many to remain vigilant in defending their liberty.'

Before the modern era, men had given more thought to the quality of the laws than to who made them. Why did Adams think differently? Why did he think that consent was essential to the creation of good laws? Adams reasoned that because each man had the duty to judge for himself, properly constructed societies respected the right of individuals to think, speak, and act. Men with a just appreciation for their obligations to themselves and to others would only submit to laws by mutual agreement. No man had the right to rule another without his consent. "The idea of a man born a magistrate, law-giver, or judge, is absurd and unnatural" (PJA 8:239). Men should participate not only in the process whereby governments were created but they should also consent to new laws as they are made.
The question of taxation without representation, which was of critical importance before 1776, was the principle of consent applied to a particularly important case. Taking it for granted that men could not live together without private property, Adams held that no one had the right, in ordinary circumstances, to appropriate another's property for his own ends.

Property is surely a right of mankind as really as liberty. The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. If “THOU SHALT NOT COVET,” and “THOU SHALT NOT STEAL,” were not commandments of Heaven, they must be made inviolable precepts in every society, before it can be civilized or made free. (WJA 6:8-9)

The right of property included the right to the fruits of one's labor. As Adams wrote in the controversy over the Stamp Act, "a great Part of the Public Money is Toil and labour of the People" (PJA 1:135). All members of a society had an obligation to consider the common goods to which their property would be put, and, outside the narrow confines of a town, representation was the best means of obtaining such consent.

For both principled and practical reasons, Adams and the other men of 1776 believed that the right to alter or abolish the government was fundamental to the idea of consent. In principle, the people had the right to change their government if they wanted; in practice, consent helped to keep the government in line. If one lost the right to resist authority after assenting to a government, what was one to do if that government acted contrary to its mandate? One of Adams's opponents in the 1770s complained that it was a recipe for anarchy to say "that all men are by nature equal; that kings are but the ministers of the people; that their authority is delegated to them by the people for their good, and they have a right to resume it ... whenever it is made use of to oppress them." Adams found this argument laughable. At least since the Revolution of 1688, the English constitution itself was established on the idea of consent. "These are what are called revolution-principles.... The principles of nature and eternal reason. The principles on which the whole government over us, now stands." No British subject could defend the constitution without defending the principles which justified the Glorious Revolution. Adams's opponent claimed that Adams's principles, "adopted in private life ... would introduce perpetual discord." Adams disagreed. "I think it plain, that there never was an happy private family where they were not adopted" (PJA 2:230). All principles had limits. The duty of children to honor and obey their parents was limited by the duty of parents to look after the good of their children. Mutual obligations, managed by reason, were the essence of good society and hence the essence of good law. To think properly about constitutions, Adams found, men had to think about why they had governments in the first place (cf. WJA 4:554).

That men had the right to resist unjust or illegitimate authority did not mean it was always wise and proper to do so. The challenge in the years before 1776 was to determine when the violations by the government became both fundamental and irrevocable. Adams found that the analogy to marriage was apt. No marriage was without tensions and strife; only when the violations of the marriage were fundamental to the nature of marriage itself was divorce called for-so too with the divorce of Anglo-America from Britain (PJA 2:230). When the argument between America and Britain reached a fundamental and unnegotiable impasse, Adams concluded that independence was the prudent course. The Declaratory Act of 1766 (6, George III, cap. 12) claimed for Parliament the right to legislate for the colonies in "all cases whatsoever." As the years passed, Parliament began to show that it actually believed it could dictate law to the colonies, and it was determined to force the Americans to submit to its will. Hence, it was necessary to
quit the empire.

In the decision for independence, thought and action were unified in the exercise of prudence. Adams gave prudence a central place in politics. In a letter to Adams, Benjamin Rush quoted Charles Lee's dismissal of prudence as a "rascally virtue." Adams replied that "his meaning was good. He meant the spirit which evades danger when duty requires us to face it. This is cowardice, not prudence." That, however, what not what Adams meant by prudence.

By prudence I mean that deliberation and caution which aims at no ends but good ones, and good ones by none but fair means, and then carefully adjusts and proportions its good means to its good ends. Without this virtue there can be no other. Justice itself cannot exist without it. A disposition to render to everyone his right is of no use without prudence to judge of what is his right and skill to perform it. (SF 99)

Political decisions could not be made with mathematical certainty, but they had to be made. A prudent man proceeded responsibly—reading, thinking, talking, and reflecting at the level of attention the seriousness of the question merited. That was how Adams made the decision for independence in 1775 and 1776, and why some of his contemporaries called him the "Atlas of American Independence" (WJA 3:56n).

III

The "principles of liberty" and law were much easier to put into practice when breaking away from an established authority than they were in establishing a new one (WJA 6:412). This work was of fundamental importance, for "there is nothing on this side of Jerusalem of equal importance to mankind" as "a free constitution of civil government." Revolution principles could lead to anarchy were they improperly understood or applied, and Adams feared that could happen. After reading Thomas Paine's Common Sense, the sensation of 1776, Adams wrote that the English firebrand "has a better hand in pulling down than in building [up]. To embolden Americans to support independence in 1776, polemics were necessary. Yet polemical discourse was far more effective against than in support of authority.

However risky, independence was also an opportunity. Men seldom had the chance to create free governments. "You and I, my dear friend," Adams wrote in the spring of 1776, "have been sent into life at a time when the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government, more than of air, soil, or climate, for themselves or their children!" (WJA 4:200). By beginning well, America could demonstrate how to create legitimate governments based upon the consent of the governed and that such governments could work in practice. Throughout history, every republic had failed. It was surely folly for America's Founders to think they could create a republic that remained free when Solon, Plato, Lycurgus, and others had failed. By making a new experiment in republican self-government, Adams and his peers took a great responsibility upon themselves. If the American republic collapsed or grew tyrannical, it would only strengthen that conventional wisdom, rendering it that much harder to defend the holy causes of liberty and self-government in the future. "The people of America have now the best opportunity and the greatest trust in their hands, that Providence ever committed to so small a number, since the transgression of the first pair; if they betray their trust, their guilt will merit even greater punishment than other nations have suffered, and the indignation of heaven" (WJA 4:290). Should the Americans succeed, they would vindicate
the honor of man before the court of history.

In 1776, Americans transformed their constitution. However liberal it was, the British constitution retained feudal elements (cf. BAR 127). In practice, the feudal remnant did not survive the voyage across the Atlantic, for "the truth is, that the people have ever governed in America" (WJA 4:360). With independence, the Americans made their political principles explicitly reflect that reality. Many years after the Revolution, Adams reflected, "the revolution was effected before the war commenced. The Revolution was in the minds and hearts of the people; a change in their religious sentiments of their duties and obligations." Adams indicated what he meant by this strange phrase in his next few sentences:

While the king, and all in authority under him, were believed to govern in justice and mercy, according to the laws and constitution derived to them from the God of nature and transmitted to them by their ancestors, they thought themselves bound to pray for the king and queen and all the royal family, and all in authority under them, as ministers ordained of God for their good; but when they saw those powers renouncing all the principles of authority, and bent upon the destruction of all the securities of their lives, liberties, and properties, they thought it their duty to pray for the continental congress and all the thirteen State congresses, &c. (WJA 10:282)

All governments had a certain principle at their core from which all else emanated. In the American Revolution, the people of the thirteen colonies not only resisted the efforts of foreigners to govern them but they also emphatically endorsed the notion that men were citizens, not subjects. The Americans chose liberty rather than accepting it as a heritage. In so doing, they embraced the notion that all legitimate governments were based on compacts which had great ends. The principle of self-government, which made 1776 both necessary and possible, reminded men of their duties to themselves, to others, and to God. Good government helped them to practice the virtues because it was not "possible, humanly speaking, that men should ever be greatly improved in knowledge or benevolence, without assistance from the principles and system of government" (WJA 6:415). By making liberty the foundational principle of American government, both as the necessary premise of declaring independence from Britain and as the explicit object of the new constitutions, the Americans made a good start in that direction. Their government would help them to pursue happiness. Adams held that:

Upon this point all speculative politicians will agree, that the happiness of society is the end of government, as all divines and moral philosophers will agree that the happiness of the individual is the end of man. . . . All sober inquirers after truth, ancient and modern, pagan and Christian, have declared that the happiness of man, as well as his dignity, consists in virtue. (WJA 4:193)

Having declared independence, the men of 1776 faced two great problems: to discover a means of establishing (or reestablishing) governments and to determine the proper form those governments should take. Adams spent more time and energy on the latter than the former problem, but we should consider both cases. Adams held that the proper means of establishing new governments grew from the principles which justified the Revolution. The principles involved in declaring independence were not particularly original. With the rest of the committee charged with drafting the Declaration of Independence, and the other men of 1776, Adams held that all men are created equal, with the rights to life, liberty, and the pursuit of happiness, and that men created governments to secure those rights. The task was to create a process based on that principle.

Massachusetts deserves much of the credit for discovering the process by which American constitutions are created and ratified. When Congress met after the battles of Lexington and
Concord in the spring of 1775, Massachusetts was effectively without a legitimate government. Adams advised his fellow congressmen that:

"We must realize the Theories of the Wisest Writers and invite the People, to erect the whole Building with their own hands upon the broadest foundation. That this could be done only by Conventions of Representatives chosen by the People.... Congress ought now to recommend to the People of every Colony to call such Conventions immediately and set up Governments of their own, under their own Authority: for the People were the Source of all Authority and the Original of all Power."

In 1776, an unknown citizen of Concord improved upon Adams's idea by suggesting that a constitution is not legitimate until the people vote on it. When Massachusetts finally wrote and ratified its constitution in 1779 and 1780, it established the norm that we now take as a given: it called a constitutional convention, the convention drafted a constitution, and the people ratified it (cf. PJA 8:237).

If the people had the right to approve their governments, the question arose of whether there were limits to that principle. Could a people choose to submit to a dictator? Either response yielded a contradiction. If yes, the people may choose slavery; if no, then the people would have laws forced upon them. In short, "there can be no way of compelling nations to be more free than they choose to be" (WJA 4:402). As a practical matter, Adams yielded to the wishes of the people. "The right of the people to establish such a government as they please, will ever be defended by me, whether they choose wisely or foolishly" (WJA 9:430). Explicitly to limit the right of the people to chose their form of government threatened liberty.

Adams confronted the question of the limits of original authority in the context of religious liberty. Adams was a firm believer in the liberty of conscience and opposed the establishment of religion. The individual's right to believe and practice as he chose so long as it did not harm another was of a piece with the individual's right to choose the government under which he would live. When he drafted the Massachusetts Constitution in 1779, these beliefs presented Adams with a problem. The people expected the state to require public support for churches, yet Adams thought such an establishment was wrong in principle. Faced with the issue, Adams finessed it. He wrote Article II of the State Declaration of Rights, which guaranteed to all people the right to worship God after their own fashion and to discuss their religious opinions in public, so long as it did not impinge upon the same in others. He let others write the guarantee of public support for religion. As Adams believed that it was of fundamental importance to allow the people to create a government of their own choosing, to have forced disestablishment on the people would have taught them to obey leaders rather than to think through issues for themselves. It was far better to have a state, for the first time in history, formally approve its constitution through a regular process than it was to make sure all the details were right. Over time, the system itself would teach the citizens of Massachusetts the injustice of a religious establishment. To Adams's chagrin, it did not occur within his lifetime. When Massachusetts rewrote its constitution in 1820, Adams gave the convention a lecture on religious liberty. Again, he failed to bring a majority to his opinion. In 1832, the people of Massachusetts finally consented.

IV

After the principle of consent, the most important element of Adams's constitutional thought and practice had to do with checks and balances. From well before 1776 through the end of his life, Adams upheld a constitution with two sets of checks and balances as the only kind
for a free nation because they were the only means of securing the rule of law. The first set of checks is more conventionally labeled the separation of powers among the legislative, executive, and judicial branches. The second is within the legislative power, divided between two houses and coupled with an executive with a veto. Adams made this model of constitution popular in Massachusetts, and the U.S. Constitution followed that model. Americans sometimes forget that a great debate raged in America and Europe in the late eighteenth and early nineteenth centuries over how to construct a government. Adams was the preeminent defender of bicameralism and the executive veto in his day. As we consider Adams’s political thought, we should remember that he believed that no two societies were alike in all particulars, and for that reason no single form of constitution was suited to all societies. The challenge a constitution writer faced was to reconcile such general principles as existed with each particular case. The best constitution writers

adopted the method of a wise architect. . . . They determined to consult Vitruvius, Palladio, and all other writers of reputation in the art; to examine the most celebrated buildings ... to compare these with the principles of writers; and to inquire how far both the theories and models were founded in nature, or created by fancy; and when this was done, so far as circumstances would allow, to adopt the advantages and reject the inconveniences of all. (WJA 4:293)

To say that Adams was a student and practitioner of constitutional architecture was to say that he was a political scientist (cf. WJA 4:483-84). Adams feared that few of his contemporaries truly understood what political science was. It was an ancient science. Conceptually, Adams’s political science was poised between the medieval sciences, of which theology was the queen, and the modern sciences that we have today, in which chemistry is paradigmatic. In other words, it would sit between art and science, as we now use these terms. Adams was surprised to find that in the centuries before his own, man had made great advances in astronomy, chemistry, and other sciences, but not in politics. "Is it not unaccountable that the knowledge of the principles and construction of free governments, in which the happiness of life, and even the further progress and improvement in education and society, in knowledge and virtue, are so deeply interested, should have remained at a full stand for two or three thousand years?" (WJA 4:283-84). His work was an effort to remedy that situation. Adams understood political science to be empirical, in that it involved studying political phenomenon and drawing rules and conclusions from that study, and he praised Francis Bacon for lighting the way of science. At the same time, Adams denounced "political empiricism," by which he meant the manipulation of political facts without any consideration of greater or lesser goods (WJA 6:159). All science, Adams held, had moral implications. The decision of what to study and how to study it could not be morally neutral. Perhaps for that reason he took morals to be the supreme science." The trouble was that there could never be a true and certain science of morals. Politics would always involve prudential judgments on questions of consequence, and such judgments could be made only with great difficulty. This difficulty led him to focus on checks and balances.

The principle of checks and balances grew from the rule that no one should be both judge and party to the same case. This principle was most obvious regarding the separation of powers: the legislature wrote laws, the executive enacted them, and the courts judged under them. Were the legislative and executive power combined, there would be little incentive to make fixed and known laws; in such a case, the legislative/executive would give itself power en masse to achieve whatever ends suited it on any given day. Were the executive power combined with the judicial, the executive/judicial would have no incentive to carry out the laws as they were written. Were the legislative and judicial powers combined,
the legislature would hardly have any reason to write laws or to follow those it did write. To describe checks and balances in action, Adams turned to a metaphor that the seventeenth-century English political thinker James Harrington made famous, describing two young girls with a cake that they were to share: one cut it and the other chose which half she would eat, ensuring that each had an interest in a fair division (WJA 4:390). By forcing men to keep vigilant watch over each other's actions, a good constitution would compel them to find mutual interests. The separations of power Adams created in the Massachusetts Constitution were not absolute: by giving all three branches overlapping powers, each branch had the ability to defend its prerogatives.

By the 1780s, few of Adams's contemporaries criticized the separation of power among the branches, but many supported unicameral government. Why did Adams disagree? If consent made laws binding, why limit and restrain consent with checks and balances? The French minister and philosophe Jacques Turgot spoke for many of Adams's contemporaries in Europe and America when he complained that:

I observe that by most of them [American state constitutions] the customs of England are imitated, without any particular motive. Instead of collecting all authority into one center, that of the nation, they have established different bodies; a body of representatives, a council, and a Governor, because there is in England a House of Commons, a House of Lords, and a King.18

Adams disagreed. While all good government consulted the people through their representatives, the ritual of democracy could not sustain liberty under law on its own. A unicameral government would not remain a free government for long.

Adams found three defects in unicameral government: the majority would make unreasonable and oppressive demands of the minority, nothing would restrain the people's chosen representatives from usurping power, and the people would abdicate their rights. The first problem usually goes by the name of majority tyranny. There was no guarantee that 50 percent plus one would do right by the rest of society, nor was there any guarantee that they would not ignore the limits upon their own power enshrined in the constitutional compact. The need for restraints on the democratic power grew from the reality that the will of the majority at any moment in time (or even of the people in general) was not necessarily the true interest of the society or even of the majority (see WJA 4:402, 585). Second, beyond majority tyranny, Adams worried about the people's representatives. What was to keep them within the constitutionally prescribed limits on power? The people elected to office men they trusted to represent them; but, what guarantee would there be that they would not betray that trust (WJA 4:400)? Third, the people could turn against liberty and demand that the government take care of them. A majority may establish uniformity in religion; it may restrain trade; it may confine the personal liberty of all equally, and against the judgment of many, even of the best and wisest, without reasonable motives, use, or benefit. We may go farther, and say that a nation may be unanimous in consenting to a law restraining its natural liberty, property, and commerce, and its moral and religious liberties too, to a degree that may be prejudicial to the nation and to every individual in it. (WJA 4:195)

In sum, a single group of men acting in concert resembled an individual. Any given assembly could act reasonably and responsibly some of the time, but only a fool would expect it to do so enough of the time. "A single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd judgments" (WJA 4:195). unicameral government could hardly be reconciled with the rule of law.
To help him think through and find a solution for the defects in unicameral government and unrestrained democracy, Adams studied human nature. A well-formed government worked with human nature and not against it, accepting man as he is, in order to move men in the direction of what they ought to be. To that end, Adams reflected upon his own firsthand experience and upon the past experience recorded in history. This observed nature was not essential and absolute; human knowledge did not go so far. Rather, it was merely a description of patterns which Adams found in all societies in all places at all times.19

From his observation, Adams discovered the inevitability of human contention. This contention would sometimes be over grand objects and sometimes over petty objects, but it would endure. Because men could only aspire to imperfect knowledge, and because all men tended to exaggerate their own claims, they inevitably would clash as each individual tried to live according to his imperfect notion of the good life. Adams learned the political implications of this reality in his youth. He had grown up observing a New England town meeting, the most democratic government anywhere in the world at the time. In the towns, people struggled with each other for power and place, gathered parties to help them gain power, and sought to use the laws to further their narrow ends, just as they did in the courts of Europe. Not only would men always contend for power, but they would always do so unequally. Certain men had more true, more useful, or more persuasive ideas than others. Perhaps more important, certain men always would be more able to assert power than others. In any given society, some led and others followed (WJA 4:427). Adams advised Jefferson: "Pickup, the first 100 men you meet, and make a Republick. Every Man will have an equal Vote. But when deliberations and discussions are opened it will be found that 25, by their Talents, Virtues being equal, will be able to carry 50 Votes" (AJL 398). And those twenty-five would divide into parties and struggle for preeminence.

Inequalities existed in society because of human diversity and human passions. Because all men were made in God's image, all men enjoyed equal rights (AJL 382, quoting Genesis 1:27). But Adams also asked:

[W]hat are we to understand here by equality? Are the citizens to be all of the same age, sex, size, strength, stature, activity, courage, hardiness, industry, patience, ingenuity, wealth, knowledge, fame, wit, temperance, constancy, and wisdom? Was there, or will there ever be, a nation, whose individuals were all equal, in natural and acquired qualities, in virtues, talents, and riches? (WJA 4:391-92)

Because each individual was unique, each individual had different abilities to rise in any given society. Those things which helped men rise were "talents." "Education, Wealth, Strength, Beauty, Stature, Birth, Marriage, graceful Attitudes and Motions, Gait, Air, Complexion, Physiognomy, are Talents, as well as Genius and Science and Learning" (AJL 398). According to Adams's scientific definition, a talent was that which helped one man advance over another. It did not make one man better than another in any absolute sense. "The equality of nature is moral and political only, and means that all men are independent."20

While Adams's observation of human diversity led him to conclude that men were not, for practical purposes, equal, his study of the passions led him to conclude that men do not want to be equal. "Why . . . should any man be ashamed to make known his own poverty," Adams asked. "What glory in a coach? What shame in a wagon?" (WJA 6:238). Material possessions were not the true measure of value, but most men, most of the time, valued them nonetheless; they allowed men to compare themselves to their neighbors. "Every man
hates to have a superior, but no man is willing to have an equal" (WJA 6:209). No one wants his neighbor to have a nicer house than his own, but every man wants his own house to be nicer than that of his neighbor. While some of Adams's contemporaries thought that these passions grew from accidents of history, and that politicians and philosophers could recast them, Adams held that they were fundamental to human nature. "It is weakness rather than wickedness, which renders men unfit to be trusted with unlimited power. The passions are all unlimited; nature has left them so; if they could be bounded, they would be extinct; and there is no doubt they are of indispensable importance" (WJA 4:406). Just as God gave men reason, so too did He give men passions. These passions, which made men want to live together, made society necessary and possible, and "millions in a state of society are supported with less difficulty than dozens in a state of nature." 21

Other thinkers of the day, particularly the supporters of the French Revolution, thought that because men were naturally sociable, they would get along harmoniously once government got out of the way. Adams thought otherwise. Human sympathy led men to want to be loved by their fellow men. "'Who will love me then?' was the pathetic reply of one, who starved himself to feed his mastiff, to a charitable passenger, who advised him to kill or sell the animal," Adams commented. "In this 'who will love me then?' there is a key to the human heart; to the history of human life and manners; and to the rise and fall of empires" (WJA 6:239). This desire to be loved made men political creatures; it yielded the "passion for distinction" or "spectemer agendo" (the desire to be seen in action, or to be conspicuous) which was elemental to political man (WJA 6:232, 234). By placing himself on stage and outshining his neighbors, men hoped to gain the notice of others. Once they had their neighbors' attention, they hoped to draw their affection. In government, men would use their position to make their neighbors—many of whom would be pleased to shed the burden of self-government—dependent. Unless it was checked, the narrow self-interest of the few and the lassitude of the many conspired against liberty. Adams took issue with those thinkers who thought that men were by nature good and peaceable, and who held that once the artificial aristocratic and priestly orders were removed, politics could be left behind. Instead, Adams found that man's sociability and desire to be loved caused political strife.

Adams designed the bicameral legislature to keep the "natural aristocracy" in line. 22 The unequal distribution of talents made certain men more useful in society than others, but when combined with the passion for distinction, it made the same men the most dangerous to liberty (WJA 4:397). The challenge a constitutional architect faced was to create a regime that made use of the talents of the natural aristocracy but kept them from transgressing the boundaries of law. 23 That was the purpose of the Senate. "The rich, the well-born, and the able, acquire an influence among the people that will soon be too much for simple honesty and plain sense, in a house of representatives. The most illustrious of them must, therefore, be separated from the mass, and placed by themselves in a senate; this is, to all honest and useful intents, an ostracism" (WJA 4:290). 24 The ambition of the talented would naturally drive them to seek a seat in the more exclusive house of the legislature. Once there, their talents could be put to use. By creating a legislature with a lower and upper house, each with an equal vote, a society balanced the many against the few.

Beyond bicameralism, Adams's most innovative contribution to constitutional construction had to do with the executive veto. Adams found that in all societies there was an individual who stood above the rest, and he concluded that "if there is no example, then, in any free government, any more than in those which are not free, of a society without a principle personage, we may fairly conclude that the body politic cannot subsist, any more than the animal body, without a head" (WJA 4:379). Nature decreed that all societies would have a first man. That occurred because the most powerful men always contended among themselves for preeminence, and at any given time one man would inevitably be on top. A wise constitution writer accommodated that reality in the forms of government. Formal (or
institutionalized) power was better than informal power. Formal power could be discussed and checked; by its nature, informal power was harder to tame. A distinct executive also allowed the many to turn to a single champion to help them against the senators. The executive teamed up with the people at large to keep the rich and powerful in line.

In effect, Adams believed in a tricameral legislature. A good constitution set up a "triple-equipoise," with three equal powers in the legislature, each with a veto on the other two. When all three powers in the legislature were equal, and each had an independent power base, they each could defend their place effectively. When any one house grew powerful through institutional slippage, popular acclaim, or some other reason, the other two could combine to tame it. Were there only two houses, the victory of one over the other was more likely to be final. "Without three divisions of power, stationed to watch each other, and compare each other's conduct with the laws, it will be impossible that the laws should at all times preserve their authority and govern all men" (WJA 4:462).

A properly mixed and balanced constitution was essential to the establishment of the rule of law. Such a constitution would ensure the stability of the laws, and it would also contribute to their quality. Whether politicians, statesmen, and constitution writers acknowledged the fact, government was by nature a moral affair. The challenge was to draw men toward the good in their natures, helping reason to guide the passions, rather than allowing the opposite to be the case. That was the end of a well-ordered constitution. Near the end of the Defence, Adams wrote:

Happiness, whether in despotisms or democracy, whether in slavery or liberty, can never be found without virtue. The best republics will be virtuous, and have been so; but we may hazard a conjecture, that the virtues have been the effect of the well ordered constitution, rather than the cause. And, perhaps, it would be impossible to prove that a republic cannot exist even among highwaymen, by setting one rogue to watch another; and the knaves themselves may in time be made honest men by the struggle. (WJA 6:219)

Under a good constitution, mutual checks and mutual vigilance would force each individual to do right by his neighbor. Once they started to do right because of the necessity of the case, perhaps they would internalize the principle.

Checks and balances were only part of the story in America. Adams was pleased that the United States lacked an artificial, or titled, aristocracy. Yet he thought of the House, Senate, and president as the equivalent of the classical mixed regime of the many, the few, and the one all balanced together. "In America," he wrote, "there are different orders of offices, but not of men" (WJA 4:381). By replacing established orders with elected orders, the people of America set the moral tone for their society. Even as the citizens struggled for status, and as the politicians competed for rank, all did so beneath the grand principle of the right of all men to self-government: the greatest man in America would be the greatest servant of that principle. That benevolent ambition pervaded society. "That elevation of sentiment inspired by such a government, makes the common people brave and enterprising. That ambition which is inspired by it makes them sober, industrious, and frugal" (WJA 4:199). In sum, as one student of Adams's political thought put it, "Adams' political thought represents a unique and powerful attempt to synthesize the classical notion of mixed government with the modern teaching of separation of powers." Such a regime was most likely to ensure the rule of law.
From July 2, 1776, the day Congress declared that "these colonies are and of right ought to be free and independent states," Adams realized that the Americans had done something of world-historic importance. By asserting the principles of liberty, Americans had taken a great responsibility upon themselves. Men could use political liberty for good or for ill. For that reason, it would be difficult to ensure that American liberty would be a blessing rather than a curse (WJA 6:448).

Adams's worries about the future of liberty took shape in his reaction to the French Revolution. Reflecting upon the effects that the American Revolution had upon Europe, he wrote Benjamin Rush in 1811: "Have I not been employed in mischief all my days? Did not the American revolution produce the French revolution? And did not the French revolution produce all the calamities and desolations to the human race and the whole globe ever since?" (WJA 9:635). Adams knew many of the men who would lead the French Revolution (at least its early stages), and he had tried to teach them. To his eternal regret, too few listened. When the French Revolution broke out, Adams sensed what would happen: "poor France I fear will bleed" for its political sins. Adams did not want informed opinion throughout the world to conclude that the principles of liberty led inevitably to violence, terror, bloodshed, and, ultimately, dictatorship. Hence, he did his best to disassociate the French Revolution from the American. Denouncing the French Revolution was not a popular thing to do in America in 1789 and 1790, and Adams's reputation has never recovered from the blow. Jefferson railed against Adams's "heresies." Yet Adams pressed on, consoling himself with the knowledge that "virtue is not always amiable."

Adams concluded that what the country most needed was candor. The sloganeering of the American Revolution had become the professed political gospel to many political men and their followers in America and Europe. They taught that the light of reason was leading men forward to a better and brighter future. In the future, the people would enjoy equal power and men would create a world of perpetual peace. Adams disagreed, and he sought to undeceive the nation. There was a school of political thought in Adams's day which taught that "if the good people wish to be deceived, deceive them" (SF 106). The chief modern deception was that the chaos of life could be turned into a universal order of peace, justice, and brotherhood. That myth made people reluctant to admit such ageless truths as "if you wish peace, prepare for war" (SF 134). It made them blind to the inequalities that exist in every society, and hence less able to manage them. Most seriously, it made them think that the good life was easy. Adams held all that to be false, and he wrote as much: "the perfectability of man is only human and terrestrial perfectibility. Cold will still freeze, and fire will never cease to bum; disease and vice will continue to disorder, and death to terrify mankind" (WJA 6:279). There was a human condition that people could ignore but not overcome. Men had to plot their course in a world which they would only understand imperfectly.

The great deception Adams perceived in the philosopher and their disciples was the claim to clear, certain, and communicable knowledge. They claimed that reason could lead men to certainty about their rights and duties in the world, and that the great political problems could be solved. Adams found that belief not only incorrect but also dangerous. To defend the proposition that reason could provide sure guidance, the proponents of reason needed to explain why it had failed to do so in the past. Their answer was that priests, kings, and prophets had deceived and manipulated men, leading them to believe in absurd things. These bad men had established systems of laws and religion which allowed them to control information and continue their power thereby. But, the enlightened defenders of reason contended, over time reason had been freed from her fetters and would lead the people forward, away from the vices, follies, and crimes of the past and toward a happy,
healthy, and peaceful future. Adams was much less sanguine about the capacities of reason. He held that the evils of the past grew from man’s basic ignorance, coupled with his passions. As he saw it, independence presented Americans with an opportunity to find a new way to manage passions and ignorance, not to overcome them. The prophets of reason and of progress built up a false hope which Adams feared would lead men to repeat the crimes of the past. Adams saw no other solution than checks and balances. As he told Jefferson:

Checks and balances, Jefferson, however much you and your Party may have ridiculed them, are our only Security, for the progress of the Mind, as well as the Security of the Body. Every Species of these Christians would persecute Deists, as soon as either Sect would persecute another, if it had unchecked and unbalanced Power. Nay, the Deists would persecute Christians, and Atheists would persecute Deists, with as unrelenting Cruelty, as any Christians would persecute them or one another.

To emphasize his point he concluded with a Socratic flourish: "Know thyself, human Nature!" (AJL 334).32

Beneath the popular claim to certainty, Adams saw a pernicious philosophy. The supporters of the French Revolution rested their hopes for progress on certain philosophic premises. Jefferson was sympathetic to that camp. As he wrote Adams, "on the basis of sensation, of matter and motion, we may erect the fabric of all the certainties we can have or need" (AJL 567). Adams found that doctrine to be both false and insidious. It was false because the knowledge which men derive from their senses is by no means certain; it was insidious because it meant that men were nothing more than common clay. As he wrote in his reaction to the French Revolution, rather than allow that the "government of nations may fall into the hands of men who teach the most disconsolate of all creeds, that men are but fireflies, and that this all is without a father[,] . . . give us again our popes and hierarchies, Benedictines and Jesuits, with all their superstition and fanaticism, impostures and tyranny" (WJA 6:281). There were two ways to think about human equality. Many philosopher discovered human equality by reducing everyone to the same material parts. Adams believed that doctrine to be false, and he feared that it would lead men to behave as beasts, for it gave them no reason to think men were superior to animals. Adams, by contrast, held that men were equal because they were all made with an exalted soul. The task after 1776 was to remind Americans of that fact and of its implications.

Adams had great ambitions for America. Adams knew that Americans would always have to struggle to uphold what was best in their heritage. On June 7, 1826, less than a month before his death on July 4, 1826, Adams gave a final lesson. American independence would be "a memorable epoch in the annals of the human race; destined in future history to form the brightest or the blackest page, according to the use or the abuse of those political institutions by which they shall in time to come be shaped by the human mind" (WJA 10:417). The future would be what Americans chose to make it. Adams hoped that Americans would do the great work of liberty.

Ultimately, Adams tried to bring some moral gravity to his countrymen. To preserve the spirit of liberty in America would be no mean feat. It would require that the children of the Founders and their children’s children not cower before their ancestors. It would require that a certain number of them treat the Founders as peers in a conversation about constitutions and politics, not as demi-gods whose work ought never to be questioned or changed. As he aged, Adams worried that too few Americans were up to that task. They thought too highly of the Founders and not highly enough of themselves to do the hard work of liberty. "I would to God there were more ambition in the country," Adams wrote, "ambition of that laudable kind, to excel."33 Only when a certain number of men in every generation shared the Founders’ profound ambition would it be possible to keep liberty secure. More generally, Adams tried to teach his countrymen that the life of liberty was never easy. Men
always chafed, politically and intellectually, at the restraints of the law. The best that men could do was to reconcile themselves to the struggle. That was what Adams's designed his constitution to do. A well-checked and balanced constitution would moderate the conflicts that inevitably arose in American political life. For an epigraph to the *Defence*, Adams turned to Alexander Pope: "All Nature's difference keeps all Nature's peace" (*WJA* 4:271). For long years he had puzzled over that problem. How could a nation reconcile liberty, order, and conflict? That the American Constitution had endured so long is partly a tribute to the wisdom with which Adams answered that question.

**Notes**


2. Quotations from and references to Adams's works are cited in the text using the following abbreviations:


   (As much as possible, we have maintained Adams's original spelling, punctuation, and capitalization as it is presented in each edition of his works, some of which regularize his style and some of which do not.) Adams also wrote that "a free republic is the best of governments. . . . An empire of laws is a characteristic of a free republic only" (*WJA* 4:370-71; cf. 4:283, 404-5; 5:453).


5. "If there were no ignorance, error, or vice, there would be neither principles nor systems of civil or political government" (*WJA* 6:415).

6. In a striking passage, Adams declared that "I will insist that the Hebrews have done more to civilize men than any other nation. If I were an atheist, and believed in blind eternal fate, I should still believe that fate had ordained the Jews to be the most essential instrument for civilizing the nations. If I were an atheist
of the other sect, who believed or pretend to believe that all is ordered by chance, I should believe that chance had ordered the Jews to preserve and to propagate to all mankind the doctrine of a supreme intelligent, wise, almighty sovereign of the universe, which I believe to be the great essential principle of all morality, and consequently of all civilization" (WJA 9:609).


8. "Being men, they have all what Dr. Rush calls a moral faculty; Dr. Hutchinson, a moral sense; and the Bible and the generality of the world, a conscience. They are all, therefore, under moral obligations to do to others as they would have others do to them" (WJA 6:449).

9. "The multitude have always been credulous, and the few artful" (WJA 4:292).

10. "Every citizen must look up to the laws, as his master, his guardian, and his friend; and whenever any of his fellow-citizens, whether magistrates or subjects, attempt to deprive him of his right, he must appeal to the laws" (WJA 4:462). When the laws themselves fail that task, the situation grows revolutionary.

11. Thompson, *John Adams*, considers the "Principles of Liberty" and the "Principles of Political Architecture" to be the main parts of Adams's thought, and he makes them the titles of the two parts of his book.


15. Immediately preceding this statement, Adams wrote: "To take in M. Turgot's idea [that being subject to law is not a sufficient definition of liberty] we must add to Dr. Price's ideas of equal laws by common consent, this other-for the general interest or the public good. But it is generally supposed that nations understand their own interest better than another; and, therefore, they may be trusted to judge of the public good."

16. Massachusetts's establishment required citizens to support the church that they attended. Officially, it did not favor any denomination. Article II of the Declaration of Rights proclaimed "the duty of all men in society, publicly and at stated seasons to worship the Supreme Being. . . . And no subject shall be hurt, molested or restrained, in his person, liberty, or estate, for worshipping God in the manner most agreeable to the dictates of his own conscience" (PJA 8:238).

17. "I have ever considered all arts, sciences, and literature as of small importance in comparison of morals" (SF 73).


19. Responding to John Taylor of Caroline's complaint that there is no such thing as human nature, Adams stated: "It is unnecessary to discuss the nice distinctions, which follow in the first page of your respectable volume, between mind, body, and morals. The essence and substance of mind and body, of soul and body, of spirit and matter, are wholly withheld as yet from our knowledge" (WJA 6:450).


22. Having concluded that there would be some with more and some with less power in every society, Adams defined an aristocrat at someone with more than the average of
power. An aristocrat could control more than one vote (*WJA* 6:451). For Adams’s discussion of "natural aristocracy" with Jefferson, see *AJL* 365-402.

23. "I can never too often repeat that aristocracy is a monster to be chained; yet so chained as not to be hurt, for he is a most useful and necessary animal in his place. Nothing can be done without him" (*SF* 189).

24. "The only remedy is to throw the rich and proud into one group, in a separate assembly, and there tie their hands; if you give them scope with the people at large or their representatives, they will destroy *all equality and liberty, with the consent and acclamations of the people themselves* (*WJA* 4:444-45).


27. As Adams wrote in a letter to Abigail Adams on July 3, 1776: "Yesterday the greatest question was decided, which ever was debated in America, and a greater perhaps, never was or will be decided among men." See *Adams Family Correspondence*, 2:27-30.


31. Adams held that some were "honest enthusiasts carried away ... but the greater part of politicians and philosophers who prated about the perfectibility of man mean nothing but to seize, occupy, and confound the attention of the public" (*SF* 74).
