

Natural Rights and The Declaration of Independence: (Part III): Diverging Theories Of Natural Rights Theory Before the Revolution.

In part I of this essay, I argued that the American colonists were initially ambivalent about Lockean natural rights theory for several reasons. First, they thought that natural rights theory was grounded in a problematic historical proposition that did not have unanimous agreement. There were, for example, doubts about the existence of a State of Nature and the founding of government in general in social compact. Some believed government's origin was lost in antiquity and there was no evidence that government was founded in general on social compact. In fact, some believed that government was in actuality founded on power, property or divine appointment. And secondly, the classic Lockean theory seemed to diminish the role of God by portraying government as a human creation, an accident, or arbitrary choice rather than a "divine appointment."

Some writers, such as Stephen Hopkins, explicitly avoided natural rights arguments for this reason and based colonial rights on the British constitution and colonial charters. Others such as James Otis attempted to offer an alternative theory of government's origin that circumvented these problems.

The question now at hand in the second part of this essay is how and why the attitude towards natural rights shifted by the time of the Declaration of Independence. Does the Declaration reflect any of this earlier ambivalence or does it represent an unambiguous embrace of Lockean natural rights? If not, what happened to the earlier ambivalence about natural rights?

In Part II of this essay it will become apparent that natural rights does take on more prominence in colonial writing as the resistance to Great Britain unfolds. There are several reasons for this increased prominence. The earlier arguments about British rights and colonial charters had failed to convince all American or British subjects of the justice of colonial rights. Counter arguments had disputed the right to representation or the right to local legislative authority over taxes. The earlier conviction that these other rights arguments had less problematic starting points, beginning from what were shared assumptions about the British constitution and British rights, proved to be wrong. They simply did not have the desired effect of convincing Parliament that Americans should be able to tax themselves. Furthermore, it became clear that the American colonies could not justify a limitation on Parliament's power from British rights and the constitution alone. Critics had responded that British Americans could not have their cake and eat it too. They could not argue they shared in British rights, and then reject Parliament's authority which was derived and grounded in those very same rights and source, the British constitution. And critics had also argued that in fact the colonies did actually enjoy the rights guaranteed in charters and the Constitution, but enjoyed them virtually through the commons who represented them.

Natural rights, as a source of rights outside the constitution, could serve as a basis for arguing a limitation on Parliament’s power. Anchoring rights outside a specific social compact provided a point of absolute reference. If some rights were outside the constitution, then they did supersede Parliament’s authority. Part of the impulse to turn to natural rights was to do just this as the debate proceeded.

Another reason that natural rights began to appeal to the colonists was that it served to unify them across the colonies. The reliance on colonial charters, as we have seen, tended to fragment colonial arguments making each colony’s argument dependent on its own specific charter. But as the colonies move towards finding common ground with each other, the language of natural rights serves as a basis for rights that transcend specific colonial charters and unites the colonies in a common shared framework. For all of these reasons, natural rights language becomes more important as the colonies move from protest towards revolution.

Nonetheless, we shall see that despite this growing use of natural rights arguments, there remains some healthy ambivalence about natural rights up to the Declaration. The story that Becker and others tell in which the colonists increasingly shifted from British rights arguments to natural rights arguments as they moved towards independence is too simplistic. To begin with, not all writers appeal to natural rights to justify American claims and there are colonial debates over whether or not to appeal to natural rights in particular public statements. When colonists do appeal to natural rights, moreover, they sometimes opt for the language of “inalienable” or “inherent” rights rather than “natural rights”, as if to equivocate on whether they are invoking natural rights, British rights or some other kind of universal right. Indeed, there remains among some colonists the conviction that natural rights actually provides a more “feeble foundation” for rights than other arguments. In addition, even when natural rights are invoked, they are often used in conjunction with and complementary to several other arguments for rights. Sometimes natural rights acts as a supporting argument. At other times it is the driving force of the argument.

It would be a mistake, moreover, to assume that there was a single monolithic theory of natural rights that was invoked among the colonists. There is sometimes the tendency to construe any statement that looks like natural rights theory as an embrace of Lockean theory. But the use of natural rights was much more fluid and complex. There are in fact at least two and possibly more distinctive strands of natural rights arguments. One is a more classically Lockean type argument, appealing to the social compact and the origin of government in consent. The other appeals to a natural right to quit society and bases much of its argument on the right of “expatriation”. Each of these different strands moreover can be combined with arguments from British rights and Charters and with the other strand of natural rights argument. In short, there is a complex multi-faceted set of arguments in which various forms of natural rights arguments form one strand.

Carl Becker in *The Declaration of Independence* is thus only partially correct when he explains the shift to natural rights arguments in colonial literature after the Townshend acts:

To meet this emergency, a theory which denied the jurisdiction of the British government in this or that particular matter, such as the taxing power, was inadequate; what was needed was a theory which would define the respective jurisdictions of the British and colonial

governments in terms of some general principle....That assumption was that the Americans were one “people,” the English another, and each a ‘free’ people. No doubt an Englishman might have said this was begging the question; the precise question at issue, he might have maintained is whether the American *are* a ‘free’ people. We maintain that they are subject to the British Parliament. The Parliament has always exercised jurisdiction over them in fact; and to prove this we point you to any number of statutes duly passed and recorded and submitted to...On this ground it was indeed difficult to meet the British contention. In order to maintain the rights of a free people, the colonists were accordingly forced to change the question; and from this time on we find them less disposed to ask, What are the rights which we possess as British subjects? and more disposed to ask What are the rights which we possess as members of the human race?¹

Looking back from the Declaration of Independence, Becker presents the turn to natural rights as an almost inevitable necessary shift in colonial discourse and as part of a shift towards independence. It is true that the appeal to natural rights helps ground colonial claims in rights that transcend the authority of and limit the British parliament. But Becker oversimplifies the shift and complexity, because he fails to see the ongoing ambivalence toward natural rights and the multivalent meaning of natural rights in the colonial debates. From the end game of independence, it looks like an inevitable development. But the colonists disagreed about both the theory of the British empire and about the use of natural rights in defending their rights or articulating the theory of the empire. Many of their debates continuing up to the Declaration of Independence reflect substantial disagreement on theoretical issues about the nature of how best to ground colonial rights, the nature of the human being, and the overall goals and purposes of social life. Had the revolution not occurred and succeeded, the picture of the colonists’ debates about rights likely would have been and therefore should be read very differently. The debate was not simply how explicit to be in declaring independence of parliament or whether reconciliation was possible. The debate was also over the best way to view the empire, to justify and understand American rights, and to understand the purposes of society in general.

Noting that different colonial writers had different views of rights, Morgan, for example, notes that not all thought natural rights the best way to make their case. Writing about why the Maryland lawyer and politician, Daniel Dulany, avoided use of natural rights and argued only from British rights, Morgan writes that:

Other spokesmen for the colonial cause had already begun to argue in terms of the natural rights of man, but Dulany knew that however such arguments might appeal to Americans, they would carry small weight in the British Parliament. The question, as he saw it, did not hinge so much on natural rights as it did on constitutional rights. As long as the colonists had the constitution on their side—and he was sure that they had—it would be best for them to ground their arguments on it.²

We shall see that some colonists continue to express doubts about the strength of natural rights arguments into the mid 1770's and even a year before the Declaration of Independence. There were multiple intersecting impulses that both drove the colonists towards natural rights language but at the same time made them ambivalent about them. This is why the story of natural rights language in the period before the Revolution moves in fits and starts and depends on context and inclinations of particular writers. Natural rights language solved certain problems but created others. It united the colonists in some ways, but also surfaced differences in their understandings of rights and society.

As the debate moved from protest towards independence and then on to revolution the colonial ambivalence about natural rights may have lessened, although it does not disappear entirely. Natural rights seem more and more like the only grounds on which to base colonial arguments. As arguments shifted from the justification of equal rights of British and American subjects, to the argument that the colonies were independent states and not subject to Parliamentary authority, to the final argument that the colonies should declare independence, natural rights will take a more prominent role.

But the very power and usefulness of natural rights arguments was also its danger. For natural rights arguments could be interpreted as veiled threats of independence. Though the colonists' intention was not to use natural rights in this way, at least initially, the danger was that appeals to natural rights would be so construed. And the colonists had already been criticized for wanting independence, even when they had been making arguments that did not rely on natural rights at all. Natural rights theory was a two-edged sword. Such arguments bolstered the colonies' claims about their rights not to be taxed without representation but they challenged the notion that Parliament had ultimate authority. The debate over whether to ground American arguments in natural rights therefore was also tied in with how explicit Americans felt they wanted to be in denying Parliament's authority over the colonies. It is to this part of the story that I turn in the second part of this essay.

Natural Rights and Stamp Act Resolutions

The Stamp Act was passed into legislation by parliament in March 1765, one year after the original announcement, ignoring all the colonies' petitions and protests in the intervening year. In response, the colonies came out with various Stamp Act resolves. Symptoms of the colonies' continued ambivalence towards natural rights is evident in the various Stamp Act Resolutions adopted by many of the colonies and the Stamp Act Congress, in which colonies came together in New York to provide a united response.

In May 1765, the first set of resolutions, proposed by Patrick Henry, were adopted by Virginia House of Burgesses in a controversial meeting after part of the assembly had already recessed. Only four of Henry's original resolutions were adopted and Henry was apparently accused of sedition for some of his statements, although it is not entirely clear what the grounds of this charge were and may possibly have been an innuendo suggesting revolution.³

The Virginia Resolves make no mention at all of natural rights and base the colonial rights, in order of the resolutions, on the fact 1) the early Virginia settlers brought their rights with them, 2) that their rights were affirmed in two Royal Charters of King James 3) “That the Taxation of the People by themselves, or by Persons chosen by themselves to represent them” are the “distinguishing Characteristick of *British* Freedom, without which the ancient Constitution cannot exist” and, 4) “That his Majesty’s liege People of this his most ancient and loyal Colony have without Interruption enjoyed the inestimable Right of being governed by such Laws...and that the same hath never been forfeited or yielded up...”⁴

Even after the Boston riots in August 1765, some of the colonial resolves still make no mention of natural rights. For example, no mention of natural rights is made in the Rhode Island Resolves (September 1765) nor in the Maryland Resolves (Sept 28 1765).⁵

Given that Americans were ambivalent about the use of natural rights, it is not surprising that no mention of natural rights is made in the *Declaration of Rights Of the Stamp Act Congress*, published in October 1765. The idea for the Stamp Act congress seems to have been suggested by James Otis who, in early June, asked the Massachusetts legislature to send a circular to invite all the colonies to a congress in New York.⁶ Representatives from nine colonies attended though only six were empowered to sign the resolves. The resolves rest primarily on British rights, with a hint of more universal rights:

1st. That His Majesty's subjects in these colonies owe the same allegiance to the crown of Great Britain that is owing from his subjects born within the realm, and all due subordination to that august body, the Parliament of Great Britain.

2d. That His Majesty's liege subjects in these colonies are entitled to all the inherent rights and privileges of his natural born subjects within the kingdom of Great Britain.

3d. That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.

4th. That the people of these colonies are not, and from their local circumstances cannot be, represented in the House of Commons in Great Britain.

5th. That the only representatives of the people of these colonies are persons chosen therein, by themselves; and that no taxes ever have been or can be constitutionally imposed on them but by their respective legislatures...⁷

It took the Stamp Act Congress twelve days to come to the wording of its resolution. There was debate over how much of Parliament’s authority to acknowledge and a general consensus that Parliament had a right to regulate trade, though some of the participants did not want to make such an explicit acknowledgement.

Morgan notes that there are two drafts of the resolves that tried out different language regarding the colonists' subordination to Parliament and the basis of rights.⁸ The first states that “all Acts of Parliament not inconsistent with the Rights and Liberties of the Colonists are obligatory upon them.” Right and Liberties here are completely equivocal of course as to which types of rights and liberties are being discussed. A second draft tries a more universal approach: “all Acts of Parliament not inconsistent with the Principles of Freedom are obligatory upon the Colonists.” This wording alludes to general principles of Freedom that apparently are not dependent on any specific British constitution or colonial charters. This phrasing however was also abandoned for the final wording of the first resolution that his Majesty's subjects owe “all due Subordination to that August Body the Parliament of Great-Britain.”⁹ “All due subordination of course leaves completely open the question of what type of rights the colonists stand on and whether they limit at all Parliament's authority.”

But the appeal to general rights did make it into the third resolve. Here the statement that “it is inseparably essential to the freedom of a people” is an allusion to rights outside of strictly British rights. It is the freedom of “a people” not “the British people.” One could infer that natural rights were being addressed here. But the language clearly leaves open the question as to the source and character of those rights. Are they from nature, from divine appointment or human nature or some other source? Are they discerned by Reason or written on the heart? By not specifying “nature” as the source, the resolves equivocate on what theory of rights lies behind the claims about freedom. In addition, the emphasis in the first few resolves is on British rights, not these general essential freedoms. Since the Stamp Act Congress had to speak for a broader audience, namely, a consensus across colonies, it is not surprising that it opted for “lowest common denominator” and thus based the colonial claims primarily on British rights, not natural rights. During the congress there was discussion of adding in more general rights language but this was rejected. In a letter after the Congress, Christopher Gadsden of South Carolina reflected on the discussion.

I have ever been of opinion, that we should all endeavor to stand upon the broad and common ground of those natural and inherent rights that we all feel and know, as men and as descendants of Englishmen, we have a right to, and have always thought this bottom amply sufficient for our future importance...There ought to be no New England men, no New Yorker, &c., known on the Continent, but all of us Americans; a *confirmation* of our essential and common rights as Englishmen may be pleaded from the Charters safely enough, but any further dependence on them may be fatal.¹⁰

Gadsden puts his finger on one key reason why natural rights would seem stronger a source of argument than colonial charters. Natural rights is a common right that is shared across the colonies and enables each colony to be united in their joint claim. It enables the colonies to argue, not as members of individual colonies, but as Americans in general. The shift to natural rights made sense to some, at least, as a way to shift discussion from the specific unique claims of each colony to more general claims as Americans. Thus unification of identity across the colonies in a common cause was one reason why natural rights arguments made sense to some.

If the Stamp Act Congress remained somewhat equivocal in its use of natural rights, some individual colonies were willing to be bolder, signaling a shift in attitude

towards natural rights arguments.¹¹ On Sept 21, 1765, The Pennsylvania Assembly added an appeal to natural rights to its list of resolves alongside of an appeal to an inherent birthright:

Resolved, N. C. D. 3. That the inhabitants of this Province are entitled to all the Liberties, Rights and Privileges of his Majesty's Subjects in Great-Britain, or elsewhere, and that the Constitution of Government in this Province is founded on the natural Rights of Mankind, and the noble Principles of English Liberty, and therefore is, or ought to be, perfectly free.

Resolved, N. C. D. 4. That it is the inherent Birth-right, and indubitable Privilege, of every British Subject, to be taxed only by his own Consent, or that of his legal Representatives, in Conjunction with his Majesty, or his Substitutes.¹²

The Massachusetts Resolves (Oct 29, 1765) takes the thinking even further. Instead of just laying universal rights and British rights claims side by side, as does the Pennsylvania Resolves, the Massachusetts Resolves implicitly argues that the latter are derived from the former:

Resolved, That there are certain essential Rights of the *British Constitution* of Government, which are founded in the Law of God and Nature, and are the common Rights of Mankind--therefore

II. Resolved, --That the inhabitants of this province are unalienable entitled to those essential rights in common with all men: and that no law of society can, consistent with the law of God and nature, divest them of those rights.

III. Resolved, --That no man can justly take the property of another without his consent; and that upon this original principle the right of representation in the same body, which exercises the power of making laws for levying taxes, which is one of the main pillars of the British constitution, is evidently founded....¹³

The first three resolves anchor essential rights of the British Constitution in more general universal rights. Nothing can divest anyone of those rights since they are invested in the law of God and nature. After arguing that the British Constitution is founded in these general rights, the resolutions go on to make arguments from other sources of rights as well, including, charters and equity.

It is interesting to note how these Massachusetts Resolves do not use the expression "natural rights" preferring the expressions "'common Rights of Mankind" and "essential rights in common with all men" and "original principle," "which are founded in the "Law of God and Nature".

It is possible the expressions "common rights" and "inherent and unalienable rights" are simply an alternative equivalent way of saying "natural rights". That is how most people interpret comparable language in the Declaration of Independence, for example. And if so, these Massachusetts resolutions are a straightforward appeal

to natural rights theory. But it is interesting the care which these resolves take to use some expression rather than natural rights. Is this significant?

It depends on how one construes the statement “founded in the Law of God and Nature” which appears in two of the resolves. If one takes this expression as simply a way of referring to natural rights, then the Massachusetts resolutions are here simply arguing that the British constitution is founded in natural rights. But if the expression “founded in the Law of God and Nature” carries some other significance above and beyond or in contrast to “natural rights”, then “common rights” and “natural rights” are not identical concepts.

It is possible, in fact, that the expression “founded in the Law of God and Nature” really equivocates to some extent on the origin of rights and attempts to be much more inclusive and open an expression, leaving ambiguous the precise origin and nature of these common rights. Natural rights of the classically Lockean sort carried with them a number of assumptions about God, the nature of human beings, the reasons society arose and was needed, and the origin and purpose of government. Lockean natural rights assumed there was a Law of Nature, discernible by Reason and obligatory in a State of Nature, that gave humans the rights of life, liberty and property. Because life in society was better than life alone, people were inclined to join society and relinquish some of their natural freedoms in consenting to join a political entity.

But at least some aspects of natural rights theory were in dispute or troubling, as we have already seen in Part I. We have already seen, for example, how James Otis and Stephen Hopkins have doubts about the exact origin of government and original rights. As we shall see below, the same concern is reiterated by Samuel Adams. In addition, we have seen already in writers like Otis and Williams a desire to more strongly emphasize the role of God in creating society and government. Though Locke gave God a prominent place in his political theory, some colonial writers did not think God’s role was emphasized enough. Otis argued that there was no general social compact or a State of Nature and used both the language of common rights and natural rights of humankind to describe his position. Abraham Williams had explained that “when Men enter into civil Societies, and agree upon rational Forms of Government, they act right, conformable to the Will of God, by the Concurrence of whose providence, Rulers are appointed.”¹⁴

Beyond these two writers, moreover, there was in fact a rich American literature of “political sermons” that brought Christian theology, Scriptural exegesis, and theory of government much more evidently together. This literature, already developed before the Stamp Act controversy and continuing after, uses many key concepts that are very much natural rights like in substance and language. But in these political sermons there is a recurring emphasis on how key natural rights concepts are compatible with classic notions of Christianity and of God’s will. From within the traditions of Christianity, concepts of sin, redemption, eschatology, God’s will, free will, evil all are central concepts that are brought together with the classic notion of natural rights. The effort to bring together and intertwine these theological conceptions with classic Lockean ideas of consent, the law of nature and liberty at a minimum transformed and in some cases arguably fundamentally changed the natural rights tradition. What emerged was something that was Lockean and not Lockean at the same time. Natural rights now looked quite different then they had in Locke. Now rights are understood within the larger religious frame of humans as religious beings and as Christians fulfilling God’s purpose and being righteous by

living in societies under consent. Consent is now a religious act that fulfils God’s will. We shall see some further examples of this theological discourse on rights below.

The appearance of and priority given to “God” in the expression “God and nature” in these Massachusetts resolves and the avoidance of the term “natural rights” therefore may signal a kind of distancing from traditional Lockean natural rights theory or at least a move to be more inclusive of more religious-oriented conceptions of rights, liberty and political society. The expression “law of God and nature” could be a strictly Lockean view of rights. But more theologically inclined and religiously sensitive individuals would also find their own understanding of rights embraced by this expression. There were in fact a range of different views on how the theological conceptions of Christianity should be reconciled with concepts from the natural rights tradition. The expression “law of God and Nature” leaves open the precise way in which these original rights are understood.

It is important to note that the expression “law of God and nature” which is so common in the American colonists writing during this period, appears in Locke’s *Second Treatise*, but much less frequently than the expression “law of nature.”¹⁵ Although Locke himself clearly presupposed a God who created Nature and embedded law in Nature which was self-evident to reason, Locke prefers the term “law of nature” throughout his *Second Treatise*. Indeed, Locke’s political discourse in the *Second Treatise* was light on theological justifications and Scriptural interpretations at least compared with the American political sermons. Of course, Locke also wrote a more theologically oriented exposition of liberty in his *First Treatise of Government* as an exercise of rejecting Filmer’s theory of divine right. But in his *Second Treatise*, which is his classic exposition of natural rights theory, religious and theological language are noticeably secondary and illustrate just how far an exposition of the theory of Reason and Right can move from classic Christian concepts and language. The American political sermons were pulling that discourse back in, if not remaking it in their Christianizing of political theory.

The expressions “common rights” and “unalienable” rights in these Massachusetts resolution, therefore, may not simply be synonyms for “natural rights” as is often assumed. They might be circumlocutions that distance themselves to some degree from some aspects of classical Lockean theory, even as they embrace a general theory of human rights. This language then symbolically strips natural rights theory of its problematic Lockean historical assumptions and tries to appeal to a broader audience that sees God and Christian concepts as much more central to the origin of society, rights and government. It is as if the resolves want to argue for a general human rights, without making a specific commitment to which theory of rights they rely on. The language enables both the more Lockean oriented theory and the religiously oriented theory of rights to be embraced in this general allusion to rights.

We shall set this question of God and natural rights aside for now and return to it after we look at the circumspection towards and inconsistent use of natural rights language in another Massachusetts writer during the same period, namely, Samuel Adams. Adams of course is well-known as a early leader in Massachusetts resistance to Great Britain, an attendee to the First Continental Congress and later signer of the Declaration of Independence. In the early correspondence of Samuel Adams during 1764 and 1765, natural rights language is used sporadically throughout his correspondence but gradually takes on a more prominent role.

The earliest of these letters contains “Instructions Of The Town Of Boston To Its Representatives In The General Court” (May 1764) written by a committee that included Samuel Adams and addressed interestingly enough to James Otis and Oxenbridge Thatcher, among others. In this first correspondence we find no appeal to natural rights at all. Instead, the committee advises their representatives “to remonstrate for us all those Rights and Privileges which justly belong to us either by Charter or Birth”. No mention here is made of natural rights.¹⁶

But by September 1765, more than a year later, and after the August riots in Boston and Newport, the “Instructions Of The Town Of Boston To Its Representatives in the General Court” extend these rights when speaking about the Stamp Act:

But we are more particularly alarmd and astonishd at the Act, called the Stamp Act, by which a very grievous and we apprehend unconstitutional Tax is to be laid upon the Colony.

By the Royal Charter granted to our Ancestors, the Power of making Laws for our internal Government, and of levying Taxes, is vested in the General Assembly: And by the same Charter the Inhabitants of this Province are entitled to all the Rights and Privileges of natural free born Subjects of Great Britain: The most essential Rights of British Subjects are those of being represented in the same Body which exercises the Power of levying Taxes upon them, and of having their Property tryed by Jurys: *These are the very Pillars of the British Constitution founded in the common Rights of Mankind.* [emphasis added]¹⁷

This one paragraph trots out several notions of rights and like other documents which are not more theoretical does not necessarily reflect on the relationship of these various rights. The colony has the same rights as natural free born subjects of Great Britain and these are granted in Charters. They are also the pillars of the Constitution and founded in “the common Rights of Mankind.” The letter goes on to explain that the new courts of admiralty that allow Stamp Act issues to be tried without a jury “annihilates the most valueable Privileges of our Charter, deprives us of the most essential Rights of Briton,” and , in very Lockean language, “greatly weakens the best Security of our Lives, Libertys and Estates...”¹⁸ We see in this one paragraph how the various theories of rights could be tied together and viewed as complementary, even though the exact relationship or prioritization of these theories is not developed. But still there is no explicit mention of natural rights.

The Instructions go on to urge the Boston representatives “to use your best Endeavors in the General Assembly, to have the inherent, unalienable Rights of the People of this Province, asserted and vindicated and left upon the publick Records...”¹⁹ The language of “inherent, unalienable Rights of the People of this Province” can be referring to any or all of these theories of rights, because rights given by charter or by the constitution or by nature or even God can all be construed as inherent and unalienable and belonging to the people of the province. The language of the instruction, then, still veers away from the explicit language of natural rights, in the same way that the Massachusetts Resolves did.

Then on Oct 23, 1765 as an “Answer Of The House Of Representatives Of Massachusetts To The Govenor’s Speech” the appeal to natural rights

begins to become somewhat more explicit, although it is used alongside of several others arguments for rights.²⁰ At one moment, natural rights is used to justify the colonial protections. In the next breath, the charters are used as the basis of rights and in still another breath the colonists are pictured founding their own independent governments in the colonies. The letter slides back and forth between these various not completely consistent theories, with natural rights being the least emphasized of all.

First, the Answers emphasize that

...your Excellency tells us that the right of the Parliament to make laws for the American colonies remains indisputable in Westminster. Without contending this point, we beg leave just to observe that the charter of the province invests the General Assembly with the power of making law for its internal government and taxation; and that this charter has never been forfeited. The Parliament has a right to make all laws within the limits of their own constitution; they claim no more. *Your Excellency will acknowledge that there are certain original inherent rights belonging to the people, which the Parliament itself cannot divest them of, consistent with their own constitution:* among these is the right of representation in the same body which exercises the power of taxation.”²¹ [emphasis added].

Here is an appeal first to the charters and then to original inherent rights. Initially, we cannot yet tell whether these “original inherent” rights are natural rights, or have some other kind of source. They could be the original inherent rights of natural British subjects. But then in more explicitly natural rights language, the letter emphasizes the colony’s affection for his Majesty.

They have a warm sense of honor, freedom and independence of the subjects of a patriot King: they have a just value for those inestimable rights which are *derived to all men from nature*, and are happily interwoven in the British constitution. They esteem it sacrilege for them to ever give them up; and rather than lose them, they would willingly part with every thing else.”²² [emphasis added]

In this case there is an explicit appeal to rights from nature, but immediately it is emphasized that these rights are interwoven in the British constitution. Instead of appealing to natural rights alone, the letter is arguing that the colonies are protected by natural rights and because they are interwoven within the framework of British rights. Significantly, these rights are described as so important that the colonists would regard it a “sacrilege” to give them up. And “rather than lose them they would willingly part with every thing else.” There is no mistaking here that the letters are both explaining the recent riots and threatening resistance, if not something more, should these rights continue to be jeopardized.

The letter goes on to reiterate the concerns that the Massachusetts colonists have with the Stamp Act, this time totally ignoring natural rights.

They complain that some of the most essential rights of Magna Charta, to which as British subjects they have an undoubted claim, are injured by it: that it wholly cancels the very conditions upon which our ancestors settled this country, and enlarged his Majesty’s dominions,

with much toil and blood, and at their sole expense: that it is totally subversive of the happiest frame of subordinate, civil government, expressed in our charter, which amply secures to the Crown our allegiance, to the nation our connection, and to ourselves the indefeasible rights of Britons: that it tends to destroy that mutual confidence and affection, as well as that equality which ought to ever to subsist among all his Majesty's subjects in his wide and extended empire:²³

Here appeal is made to the Magna Charta as the source of rights, which the colonists have claimed as British subjects, with no attempt to explain the relationship between natural rights and the rights embodied in the Magna Charta.

This letter with its multiple theories of rights was written in the weeks before the Massachusetts Resolutions examined above.

In a letter to "Reverend G-W-", on November 11, 1765, Samuel Adams and Thomas Cushing together give still a further explication of the charters and essentially make the charters the source of the colonies' rights. But now the meaning of the charters has changed.

We need not inform you that we are the Descendents of Ancestors remarkable for their Zeal for true Religion and Liberty: When they found it no longer possible for them the [sic] bear any part in the Support of this glorious Cause in their Native Country England, they transplanted themselves at their own very great Expence, into the Wilds of America, till that Time inhabited only by Savage Beasts and Men: Here they resolvd to set up the Worship of God, according to their best Judgment, upon the Plan of the new Testament; to maintain it among themselves, and transmit it to their Posterity; and to spread the knowledge of Jesus Christ among the ignorant and barbarous Natives. As they were prosperd, in their Settlement by Him, whose is the Earth and the Fullness thereof, beyond all human Expectation, they soon became a considerable Object of National Attention, and a Charter was granted them by King Charles the first... *Thus we see that Whatever Governmnt in general may be founded in, Ours was manifestly founded in Compact.* Of this Charter we were however deprivid, in an evil Reign, under Color of Law, but we obtaind Another, in Lieu of it, after the Revolution, tho compar'd with the former, it is but as the Shadow of the Substance, and we enjoy it at this day.²⁴
[emphasis added]

Significantly, we see here that Adams and Cushing express the same worry about the doubtful origin of government in general that we saw earlier in Otis and Hopkins: "*Thus we see that Whatever Governmnt in general may be founded in, Ours was manifestly founded in Compact.*" If you have doubts about how government in general originated, that concern does not matter, since it is clear that "ours" was founded in an actual compact. There is a continued sense here that the origin of government in general is still contentious and that a more concrete source of rights is needed. Charters therefore feel more "concrete" a source of rights as actual compact rather than a general theory of rights. We shall see this same exact sentiment

continue to appear in the debates of the First Continental Congress, in which natural rights are still thought by some to be “feeble supports.”

The charters are construed here, not as grants of privileges from Great Britain, but as their own original compacts, analogous to the British Constitution itself. The colonists could have been independent states had they wanted. But they chose to swear allegiance to the Crown.

For, As their Ancestors emigrated at their own Expence, and not the Nations; As it was their own and not a National Act; so they came to and settled a Country which the Nation had no Sort of Right in: *Hence there might have been a Claim of Independency, which no People on Earth, could have any just Authority of Pretence to have molested.* But their strong and natural Attachment to their Native Country inclind them to have their political Relation with her continued; They were recognizd by her, and they and their Posterity, are expressly declar'd in their Charter to be entitled, to all Libertys and Immunitys of free and natural Subjects of Great Britain, to all Intents Purposes and Constructions whatever. So that this Charter is to be looked upon, to be as sacred to them as Magna Charta is to the People of Britain; as it contains a Declaration of all their Rights founded in natural Justice.

By this Charter, we have an exclusive Right to make Laws for our own internal Government and Taxation:...”²⁵

Here is a theory of the colonies as independent states founded on their own original social compact or charters. We have seen a similar view put forward by Hopkins before. But now this view is grounded explicitly in the charters. The colonists came of their own accord and own expense to the new country. The colonization was not a national act of Great Britain. They therefore had a “claim of Independency” from the start. Out of their own desire and choice, the colonies chose to enter into relationship with Great Britain and were “recognized by her.” The charters then were like an actual social contract, entered into by choice by both political entities, and not privileges granted to the colonies nor a birthright inherited because they were always subjects. Out of this new contract, their own Magna Charta, the colonies have all the rights of British subjects by contract.

Whether the understanding of this new American social compact is based here on natural rights theory is not entirely clear. One could construe the statements here as resting on Lockean notions of “social compact.” But we have to be careful. The notion of consenting to social contracts does not always rest on Lockean natural rights philosophy. We have seen, as an example, that appeals to rights in the British constitution rested on notions of “common law,” “ancient tradition”, without invoking Lockean notions of rights of nature. What theory of rights underlies these colonial compacts, these letters do not say. What made these contracts legitimate? On whom are they binding? What is their relationship to natural rights? These are questions that are not explicitly addressed here. We shall see one pamphlet writer take on these questions within a few months after this letter was written. But in this letter, there is only a hint here at the end of the passage of what points towards a more universal notion of rights: This compact is “as sacred to them as Magna Charta is to the People of Britain; as it contains a Declaration of all their Rights founded in natural Justice.” The use of “founded in natural justice” points to some more general theory of rights, but displays at least a remaining hesitation to name natural rights as the foundation of colonial rights theory.

While Adams anchors Massachusetts’ rights in the independent decision to continue relationship with Great Britain, it is clear that he does not believe that same view of rights applies to other colonies. In a letter to John Smith in December of 1765, for example, Adams indicates that the other colonies “undoubtedly brought with them all the Rights and Laws of the Mother State.”²⁶ So Adams essentially argues that different colonies have different sources of rights. Massachusetts was independent at the start, but other colonies brought their rights with them.

As discussed earlier, basing colonial rights on different charters presented a problem for colonial unity. We see here one outcome of that problem: there are different sources of colonial rights. This fragmentation is precisely the problem that had been on the mind of Christopher Gadsden when he had desired to found colonial rights on broader rights in the Stamp Act Congress discussed earlier. Sensing the need for a broader basis for rights, Adams argues that the British Constitution is founded on “unalienable Rights of Nature”:

The British Constitution is founded in the Principles of Nature and Reason-it admits of no more Power over the Subject than is necessary for the Support of Government which was originally designd for the Preservation of the unalienable Rights of Nature—It engages to all Men the full Enjoyment of these Rights, who take Refuge in her Bosome—
...²⁷

Regarding, the colonist’s right of representation in the House of Commons, he writes:

This is his indisputable Privilege-It is founded in the eternal Law of Equity—It is an original Right of Nature—No man in the State of Nature can justly take Another’s Property without his Consent—The Rights of Nature are happily interwoven in the British Constitution –It is its Glory that it is copyd from Nature—It is an essential Part of it, that the supreme Power cannot take from any man any Part of his Property without his Consent...²⁸

And then in another letter (Dec. 20 1765) signed by Samuel Adams, James Otis and others and addressed to Dennys De Berdt, who was then agent in London for the colony of Massachusetts, we see both the most explicit statement of natural rights intertwined with the other theories.

They hold themselves intituled to all the inherent, unalienable Rights of Nature, as Men—and to all the essential Rights of Britons, as subjects. The common Law of England, and the grand leading Principles of the British Constitution have their Foundation in the Laws of Nature and universal Reason. Hence one would think that British Rights, are in a great Measure, unalienably, the Rights of the Colonists, and of all Men else. The American Subjects are by Charters from the Crown, and other royal Institutions declared intituled to all the Rights and Privileges of natural born Subjects within the Realm— and with good Reason; for *as emigrating Subjects, they brought the Rights and Laws of the Mother State with them.* Had they been conquered, we presume that by the British Constitution, after taking the Oaths of Allegiance, they would be acknowledged as free Subjects... The primary, absolute,

natural Rights of Englishmen as frequently declared in Acts of Parliament from Magna Charta to this Day, are Personal Security, Personal Liberty and Private Property, and to these Rights the Colonists are intitled by Charters, by Common Law and by Acts of Parliament.²⁹

Natural rights language is here more explicit and moves to the fore in the way not evident in the earlier letters. It is no longer just an additional argument supporting colonial rights or British rights but a central driving part of the argument. The argument has in fact been reversed in a way. Instead of inherent common rights being protected by being interwoven in the British Constitution, now all men share British rights because those are grounded in the “Laws of Nature and Universal Reason”. The shift is subtle but noticeable. Instead of the British constitution protecting subjects’ natural rights, British rights are “are in a great Measure unalienable, the Rights of the colonists, and of all Men else.” British rights are in other words “universal rights.” Natural rights starts to take more prominence and importance in the argument, providing more of a grounding, and arguments from British rights and the charters start to move behind it and become secondary.

And yet even here a need is still felt to ground the colonists’ claims, not on natural rights alone, but on the fact that as “emigrating Subjects, they brought the Rights and Laws of the Mother State with Them.” In the earlier letter signed by Adams quoted above (Nov 11) a quite different claim was made about the status of emigration. There Adam’s argued that with the emigrants to Massachusetts “there might have been a Claim of Independency”. But here no claim of independence is made for emigration. Now the emigrants brought British rights, which are natural rights, with them.

The statement goes on to consider whether the colonies should be treated as conquered territories. Adams and other colonial writers would repeatedly emphasize that the colonists emigrated with their own blood and effort, and therefore, that the colonization is not a national act of Great Britain. But in case someone argued that the colonies were considered conquered territories, the letter argues that even in such a case the colonists would become subjects through the Oath of Allegiance and thus would be entitled to all the rights of British subjects.

We shall see the whole question of whether to argue from natural rights, colonial charters, the nature of emigration or naturalization and the question of whether the colonies were conquered territories remain points of contention between the colonists up into the First Congress in 1774. Here in the letter by Adams, Otis, Cushing, and Gray we see multiple different claims about rights being made with no attempt to fully think through their relationship or consistency.

It is interesting that James Otis signed this letter with Adams, despite his own alternative theory of government’s origin and his doubts about social compact theory, written a year before. As we saw in Part I of this essay, Otis himself used natural rights language, even though he dismissed the idea of a State of Nature and the origin of government in social compact. Perhaps even here the language of natural rights was general enough that Otis could still feel that his own theory of government’s origin was represented by it.

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In any case, these Massachusetts letters and instructions show a complicated, inconsistent use of natural rights arguments combined with several other arguments grounding colonial rights. We have seen that over a period of months in late 1765 after the Stamp Act Congress, natural rights language moves more to the fore of the argument. In part, this language helps justify a united story across the colonies, avoiding the problem that each colony had its own separate source of rights. And while there are hints in these letters that the use of natural rights could help support notions of armed resistance, that is not primarily how the arguments are used. On the contrary, the argument that seems to move in the direction of independence rests on a historical argument that the first settlers came to Massachusetts at their own expense and risk and thus were to all intents and purposes a free people who chose to join the British Empire. This argument which grounds the independence of Massachusetts in a historical argument does not yet explicitly appeal to natural rights theory nor is generalized to all the colonies. But just that transformation will occur before the Stamp Act controversy closes.

By December 1765, Adams and his Massachusetts colleagues are using natural rights more explicitly and more prominently in their arguments.

At the same time, another set of colonial resolves makes one of the most radical uses of natural rights thus far examined. The Connecticut Resolutions of December 10, 1765 appeal to natural rights to justify the dissolution of society and armed revolt.³⁰ In linking natural rights to revolt, these resolves signal a shift in the debate and in the use of natural rights, now referring not to rights to be equal with British subjects, but to leave and abandon British society. In making this link, these resolves go where Otis was not yet willing to go and anticipate more detailed arguments of the same type in a pamphlet by Richard Bland, which would follow in the spring.

Resolved, 1st. That every form of government rightfully founded, originates from the consent of the people.

2d. That the boundaries set by the people in all constitutions are the only limits within which any officer can lawfully exercise authority.

3d. That whenever those bounds are exceeded, the people have a right to reassume the exercise of that authority which by nature they had before they delegated it to individuals.

4th. That every tax imposed upon English subjects without consent is against the natural rights and the bounds prescribed by the English constitution.

5th. That the Stamp Act in special, is a tax imposed on the colonies without their consent

6th. That it is the duty of every person in the colonies to oppose by every lawful means the execution of those acts imposed on them, and if they can in no other way be relieved, to reassume their natural rights and the authority the laws of nature and of God have vested them with.³¹

Here the Connecticut resolves make one of the most explicit and radical uses of natural rights theories examined so far. We see an explicitly Lockean view that governments “rightfully founded” derive from the consent of the people. That consent represented in the constitution sets the limits on authority and “the people” can take back that authority “which by nature they had delegated” to authorities. This is not merely a right. It is a duty to oppose laws that infringe the boundaries set by the people in their constitution. If there is no legal way to ensure that those boundaries are preserved, they must “reassume their natural rights and the authority the laws of nature and of God have vested them with.”

Not coincidentally, this more radical use of natural rights appear about the same time that the Sons of Liberty have begun to formally constitute themselves as a distinctive group and began to announce their willingness to resist by force.³² Yet interestingly enough, even the charters of the Sons of Liberty, who organize specifically to offer resistance, do not consistently appeal to natural rights.³³ Here again we see that that the impulse towards resistance did not inevitably lead to a use of natural rights arguments.

The statements made by colonies to this point (December 1765) anticipate most of the uses made of natural rights until the Declaration of Independence with one notable exception discussed below. But even as they begin turning more fully to natural rights, we see hints that the colonists still had some ambivalence about the possible negative religious implications of the natural rights doctrine and the problematic origin in social compact. They prefer at times the language of “inherent rights” and “common human rights”, as well emphasizing that natural rights are interwoven in the British constitution. They also develop arguments that start to articulate a notion of independence that is not self-evidently founded on natural rights arguments, namely, the notion that the colonies were set up originally as independent entities and only chose to join the Great Britain through a compact.

Morgan is partially correct yet somewhat misleading when he writes that

Thus by the fall of 1765 the colonists had clearly laid down the line where they believed the Parliament should stop, and they had drawn that line not merely as Englishmen but as men. The line was far short of independence, and there was no suggestion in any of the resolutions of the congress or of the assemblies that the colonists wished to cease being Englishman. Nevertheless, if England chose to force the issue, the colonists would have to decide—in that winter many were trying to make up their minds—whether they would be men and not English or whether they would be English and not men.³⁴

To begin with, it would be mistaken to assume that all “the colonists” had drawn the line “as Englishmen and as men.” The colonists disagreed among themselves whether they should argue “from common rights” or “from English rights” or from both. That issue was by no means resolved and would stay unresolved for quite some time. Some saw the appeal to natural rights as helpful; others did not. Those who did appeal to natural rights did so, not to argue that they were anything other than British, but actually to shore up and defend their British rights. Indeed, the colonists who argued from natural rights saw no incompatibility initially between claiming their rights as Englishmen and as men, for they believed

the British constitution was founded on natural rights. The appeal to natural rights was initially viewed as a way to ensure that the colonies stayed British subjects. To be protected by one was to be protected by the other.

Of course natural rights arguments did imply a possible limitation on Parliament’s authority. And it may have been this implication, rather than their desire to revolt or cease being English, that lay behind some colonists’ hesitation to use natural rights arguments. But as we have seen the hesitation over natural rights language seems to have other sources as well. The colonists clearly had doubts about the best way to justify their rights. Natural rights arguments still seemed like an insecure foundation for their arguments and were thus used to bolster other types of arguments from the British constitution and the charters. We thus see a continued emphasis on their rights as British subjects and to the importance of the charters as actual social contracts.

As we shall now see, there was also another use of natural rights language that was on the verge of emerging. Some writers would soon envision themselves, not as men in general, as Morgan puts it, but as men of a different political entity. They saw the colonies as independent states within the Empire of Great Britain. We have already seen Hopkins and Adams use an early version of this argument. In what follows, we see this argument developed in detail relying on a new kind of natural right argument that lay inarticulate in Adam’s letters discussed above. In this case, natural rights are used to justify that the colonies are actually their own independent states and thus not subject to Parliament’s authority.

The Natural Right To Quit Society and The New Emerging Theory of the Empire

In early 1766, the colonies’ policy of embargoing British goods had created enough pressure on British merchants that they petitioned Parliament to repeal the Stamp Act. In the debates in Parliament, at least one British champion of the colonists, William Pitt, would allude to the natural rights of the colonies in making his arguments.³⁵

In March 7-14, 1766, shortly before the repeal of the Stamp Act, one of the most developed uses of natural rights argument in this first phase of colonial resistance appears. A Virginian politician and lawyer by the name of Richard Bland gives the natural rights argument a new twist in his Pamphlet “*An Inquiry into the Rights of the British Colonies*.”³⁶ Bland was an important Virginian politician and had been in the Virginia House of Burgess during the initial Stamp Act resolves, when he interestingly enough voted against them. The reasons for his vote are unknown. He would later participate in the First Continental Congress in 1774 and was a member of the revolutionary conventions in 1775 and 1776.

It is striking how far Bland’s essay moves beyond the Virginia Stamp Act Resolves against which he voted. Bland is responding in this pamphlet in particular to the argument of Thomas Whately, in *Regulations Lately Made*. As mentioned earlier, in the spring of 1765, Whately had authored the official Parliamentary response to the colonial protests arguing that the colonies were virtually represented in Parliament. Bland’s pamphlet was written as a refutation of that position. Although

not widely read or circulated at the time, some of his ideas were quoted in the Virginia Gazette and it was later published in England in 1769.³⁷

Bland makes an ingenious use of natural rights arguments that anticipates in critical ways the writing of Thomas Jefferson. Unlike Hopkins or Otis, Bland does not seem to have any worry at all about the “metaphysical jargon” or historical accuracy of social compact theory. He argues unabashedly from a notion of social compact and State of Nature. But as we shall see his use of natural rights theory is quite different than anything considered thus far and points to a shift in how natural rights could be put to new use.

Men in a State of Nature are absolutely free and independent of one another as to sovereign Jurisdiction², but when they enter into a Society, and by their own consent become Members of it, they must submit to the Laws of the Society according to which they agree to be governed; for it is evident, by the very Act of Association, that each Member subjects himself to the Authority of that Body in whom, by common Consent, the legislative Power of the State is placed:³⁸

So far this is good standard Locke and Bland cites Locke, Vattel and Wollaston as sources of this view. But now Bland adds an important twist. It is worth quoting him in full.

But though they must submit to the Laws, so long as they remain Members of the Society, yet they retain so much of their natural Freedom as to have a Right to retire from the Society, to renounce the Benefits of it, to enter into another Society, and to settle in another Country; for their Engagements to the Society, and their Submission to the publick Authority of the State, do not oblige them to continue in it longer than they find it will conduce to their Happiness, which they have a natural Right to promote. This natural Right remains with every Man, and he cannot justly be deprived of it by any civil Authority. Every Person therefore who is denied his Share in the Legislature of the State to which he had an original Right, and every Person who from his particular Circumstances is excluded from this great Privilege, and refuses to exercise his natural Right of quitting the Country, but remains in it, and continues to exercise the Rights of a Citizen in all other Respects, must be subject to the Laws which by these Acts he *implicitly*, or to use your own Phrase, *virtually* consents to: For Men may subject themselves to Laws, by consenting to them *implicitly*; that is, by conforming to them, by adhering to the Society, and accepting the Benefits of its Constitution, as well, as *explicitly* and directly, in their own Persons, or by their Representatives substituted in their Room.³⁹

It is worth pondering this statement in detail as it offers both a new use of natural rights as well as anticipates in quite some detail the views of Thomas Jefferson in his pamphlet *A Summary View*, written on the eve of the First Continental Congress in 1774, nearly a decade later. Indeed, it is arguable that Bland here anticipates most of Jefferson’s major ideas in that essay and partly sets the philosophical foundation for the Declaration of Independence by doing so. Jefferson in later life credits Bland with having articulated the key ideas early in the

debate but Jefferson arguably understates the importance of Bland’s essay in anticipating most of his own ideas in *A Summary View*.⁴⁰

Although starting initially from a straightforward Lockean account of natural rights and social compact, Bland is using natural right theory in a different way than some other Americans and in a way that departs from Locke. Instead of emphasizing the right to be represented in society and the right to consent, although he acknowledges those, Bland emphasizes the natural right “to quit” or “retire” from society, “for their Engagements to the Society, and their Submission to the publick Authority of the State, do not oblige them to continue in it longer than they find it will conduce to their Happiness.”

In doing so, Bland both builds on but also departs from Locke. Locke did argue that every person at the age of maturity has the opportunity to decide whether to stay or take leave of a society. “For every Man’s Children being by Nature as free as himself, or any of his Ancestors ever were, may, whilst they are in that Freedom, choose what Society they will join themselves to, what common-wealth they will put themselves under.”⁴¹ In Locke’s view, reaching the age of maturity is when people have the opportunity to leave their parental authority and make their own choice about under which political society they wish to live. “And thus the consent of Free-men, born under Government, which only makes them Members of it, being given separately in their turns, as each comes to be of Age, and not in a multitude together...”⁴² When people leave society, they can start a new government “in any part of the world they find free or unpossessed.”⁴³

But Locke is much more stringent than Bland on the grounds for leaving society once one a person has signed on and consented. Locke acknowledges that a person who gave “tacit” consent to live in a society, by having property under or any benefits from a particular government, can leave a society when use or benefit has been given up. “Whereas he that has once, by actual Consent, and by express Declaration given his Consent to be of any Commonwealth, is perpetually and indispensable obliged to be and remain unalterably a Subject to it, and can never be again in the liberty of the State of Nature: unless by any Calamity, the Government he was under comes to be dissolved, or else by some publick Act cuts him off from being any longer a Member of it.”⁴⁴ According to Locke, once explicit consent is given to join a political society, one cannot renounce that consent, unless the government is dissolved, some legal action puts an end to the relationship, or the government abuses its power. Locke of course does offer a lengthy discussion on the appropriate grounds for dissolving a government but Locke recognizes no individual “right to quit” society and certainly not for the reason of one’s individual happiness.⁴⁵ On the contrary, Locke acknowledges that when one joins society, one is going to have to conform to the wishes of the majority and thereby make a sacrifice and give up some of one’s natural freedom and some of one’s desires for the good of the whole.⁴⁶

In arguing that people can quit society if it doesn’t conform to their happiness, Bland anticipates the Declaration’s shift of emphasis from “life, liberty and property” to “life, liberty and the pursuit of happiness.” Happiness in Bland and in the Declaration of Independence is described as a natural right. It was widely accepted in colonial writing before the Revolution that happiness was one way to describe “the end” or purpose of government.⁴⁷ Indeed, Locke often comes close to saying something similar, when explaining why people join society. “And ’tis not without reason, that he seeks out, and is willing to joyn in Society with other who

are already united, or have a mind to unite for the mutual *Preservation* of their Lives, Liberties, and Estates, which I call by the general Name *Property*.” Or again “ “But though Men, when they enter into Society, give up the Equality, Liberty, and Executive Power ...all this to be directed to no other *end*, but the *Peace, Safety, and publick good* of the People.” ⁴⁸

It might be fair to characterize Locke as saying that people join society for reasons of happiness, though this is not the way Locke put it. But this is different than saying that each *individual* has a natural right to promote individual happiness and may leave society when it will no longer “conduce to their Happiness, which they have a natural Right to promote.” Locke would have been more comfortable describing the pursuit of happiness as one of the reasons people relinquish their natural rights to join society, rather than a way to describe the rights they have in nature before joining society, or the rights they have to justify quitting society. Calling “promotion of Happiness” an inherent right, as Bland does here, and as Jefferson does in the Declaration, would not have been language with which Locke would have been comfortable.

Why then did Bland emphasize the right to quit society for purposes of happiness? Whether Bland knew he disagreed with or was reinterpreting Locke is unclear. But by emphasizing this natural right to quit society, rather than the right to join society, Bland in a tour de force reinterprets the debate with Great Britain, reformulating the debate over virtual representation as well as the meaning of the colonial charters and immigration. At the same time, he fundamentally reinterprets Locke.

Let’s follow Bland’s ingenious and beautifully executed arguments. Bland starts with his founding assumption that each individual has a right to quit society whenever it is not conducive to happiness. If people do not exercise this right to quit society, and choose instead to stay in society, they have tacitly consented to the rules of that society.

This natural Right remains with every Man, and he cannot justly be deprived of it by any civil Authority. Every Person therefore who is denied his Share in the Legislature of the State to which he had an original Right, and every Person who from his particular Circumstances is excluded from this great Privilege, and refuses to exercise his natural Right of quitting the Country, but remains in it, and continues to exercise the Rights of a Citizen in all other Respects, must be subject to the Laws which by these Acts he *implicitly*, or to use your own Phrase, *virtually* consents to:⁴⁹

According to Bland, the British subjects who remain in Great Britain without the right to vote are “implicitly” or “tacitly” consenting to the laws of society. One cannot say that they are “virtually represented” as Thomas Whately claimed; it is just that they have “tacitly consented” to live in British society *despite their lack of representation*. The notion of tacit consent is familiar from Locke as well. Locke had used “tacit” consent to describe the situation where a person comes to maturity and continues to live in a society without expressly consenting to become a member of that society. But Bland applies the concept here to a new context to explain the status of non-electors (i.e., people who are not eligible to be elected or vote). While these “non-electors” accept the status quo and tacitly consent to live in society, this

hardly proves that they are in fact represented in Parliament or that situation is right.⁵⁰

In language striking for its criticism of the British constitution, Bland condemns the British Constitution for failing to live up to standards of liberty.

If what you say is a real Fact, that nine Tenths of the People of Britain are deprived of the high Privilege of being Electors, it shows a great Defect in the present Constitution, which has departed so much from its original Purity; but never can prove that those People are even *virtually* represented in Parliament. And here give me Leave to observe that it would be a Work worthy of the best patriotick Spirits in the Nation to effectuate an Alteration in this putrid Part of the Constitution; and, by restoring it to its pristine Perfection, prevent any "Order or Rank of the Subjects from imposing upon or binding the rest without their Consent." But, I fear, the Gangrene has taken too deep Hold to be eradicated in these Days of Venality.⁵¹

On Bland’s view, then, because the British non-electors have not exercised their natural right to quit society, they are under its constitutional authority. But this does not mean they are “virtually represented.” Having proven that there is no “virtual consent” at work in Britain, Bland can dismiss Whately’s claims that the colonies are also virtually represented. The colonies did not tacitly consent to this situation the way the non-electors in Britain had.

But Bland goes further, turning to a second ingenious use of natural rights, again derived from the right to quit society. This time he reinterprets the meaning of the emigration to America and the colonial charters and finds it on natural rights. Recall that some earlier American had argued that the early immigrants to the colonies had brought British rights with them and that the colonial charters had granted or reinforced those rights. Other writers, like Samuel Adams, had argued that Massachusetts was founded as an independent entity and voluntarily concluded an agreement to join Great Britain. Bland now grounds this theory explicitly in natural rights.

I have observed before that when Subjects are deprived of their civil Rights, or are dissatisfied with the Place they hold in the Community, they have a natural Right to quit the Society of which they are Members, and to retire into another Country. Now when Men exercise this Right, and withdraw themselves from their Country, they recover their natural Freedom and Independence: the Jurisdiction and Sovereignty of the State they have quitted ceases; and if they unite, and by common Consent take Possession of a new Country, and form themselves into a political Society, they become a sovereign State, independent of the State from which they separated. If then the Subjects of England have a natural Right to relinquish their country, and by retiring from it, and associating together, to form a new political Society and independent State, they must have a Right, by Compact with the Sovereign of the Nation, to remove into a new Country, and to form a civil Establishment upon the Terms of the Compact. In such a Case, the Terms of the Compact must be obligatory and binding upon the Parties; they must be the Magna Charta, the fundamental Principles of Government, to this new

Society; and every Infringement of them must be wrong, and may be opposed. It will be necessary then to examine whether any such Compact was entered into between the Sovereign and those English Subjects who established themselves in America.⁵²

Instead of interpreting the migration to America as bringing British rights to the colonies, and making the colonies subjects of Great Britain, Bland flips the story on its head. The immigration to America now involves instances where emigrants exercised their natural right to leave their mother country (England), to come together, and form a new sovereign state (the new colonies). The colonial charters, instead of granting British rights to the colonies, represent completely new social compacts, a kind of new Magna Charta, of new sovereign states. The compacts are between the King, the head of the empire, and each individual state. And these colonial compacts represent constitutions independent of the British one.

Here then is a “federated view of the empire” identical to what Stephen Hopkins and Samuel Adams had articulated earlier but now with an explicit philosophical foundation: the colonies represented independent states, equal to the commons of England, but sharing the King as the head of government.⁵³ But Bland here provides what Hopkins and Adams had not: a philosophical foundation for this vision of the empire, this time anchored in a particular reading of natural rights. Bland does not tackle the important question of whether, to use Locke’s words, they set up government “in any part of the world they find free or unpossessed.” As we shall see, the question of whether the colonies are conquered territories emerges as an important question as the debate unfolds.⁵⁴

Having argued that the colonies are independent states, Bland seems to equivocate back and forth about the extent of Parliament’s power.⁵⁵ On the one hand, he seems to concede Parliament’s authority “I will not dispute the Authority of the Parliament, which is without Doubt Supreme within the Body of the Kingdom, and cannot be abridged by any other Power.”⁵⁶ But after conceding Parliament’s authority in the next breath Bland makes it clear that this is authority based on power and not right. “I say that *Power* abstracted from *Right* cannot give a just Title to Dominion. If a Man invades my Property, he becomes an Aggressor, and puts himself into a State of War with me: I have a Right to oppose this Invader; If I have not Strength to repel him, I must submit, but he acquires no Right to my Estate which he has usurped.”⁵⁷ While Bland is clear that Parliament has no authority to tax the colonies, he equivocates on the question of trade. His argument about trade rests on an argument from equity rather than right.

If “the British Empire in Europe and in America is the same Power,” if the “Subjects in both are the fame People, and all equally participate in the Adversity and Prosperity of the Whole,” what Distinctions can the Difference of their Situations make, and why is this Distinction made between them? Why is the Trade of the Colonies more circumscribed than the Trade of Britain? And why are Impositions laid upon the one which are not laid upon the other?⁵⁸

In a hopelessly confusing and difficult passage, Bland both admits and then denies Parliament’s power.

I acknowledge the Parliament is the sovereign legislative Power of the British Nation, and that by a full Exertion of their Power they can

deprive the Colonists of the Freedom and other Benefits of the British Constitution which have been secured to them by our Kings; they can abrogate all their civil Rights and Liberties; but by what *Right* is it that the Parliament can exercise such a Power over the Colonists, who have as natural a Right to the Liberties and Privileges of Englishmen as if they were actually resident within the Kingdom? The Colonies are subordinate to the Authority of Parliament; subordinate I mean in Degree, but not absolutely so: For if by a Vote of the British Senate the Colonists were to be delivered up to the Rule of a French or Turkish Tyranny, they may refuse Obedience to such a Vote, and may oppose the Execution of it by Force. Great is the Power of Parliament, but, great as it is, it cannot, constitutionally, deprive the People of their natural Rights; nor, in Virtue of the same Principle, can it deprive them of their civil Rights, which are founded in Compact, without their own Consent... if the Colonists should be dismembered from the Nation by Act of Parliament, and abandoned to another Power, they have a natural Right to defend their Liberties by open Force.⁵⁹

Thomas Jefferson was correct that Bland did not take his argument to its logical conclusions. Here Bland vacillates, seeing the colonists as entitled to both English rights by their compact with the King, and natural rights. While the colonists are subordinate to Parliament with respect to their liberties and privileges as English men, they are not subject to Parliament with respect to natural rights or their civil rights founded in compact. Others would go further than Bland in arguing that as independent states Parliament lacks all authority over the colonies.⁶⁰

To summarize, Bland's ingenious use of natural rights is of interest both for the ways it follows Locke and departs from Locke at the same time. Yet his selectivity is different in emphasis than Otis'. Bland seems more comfortable with the theory of social compact, apparently having no qualms about the theory's lack of historical foundation or with the lack of sufficiently religious overtones about God's appointment. Why is Bland not concerned with the problems of natural rights that earlier worried Hopkins and Otis? He does not say. Perhaps, he simply wasn't aware or worried about these objections.

But it may be because Bland shifts the emphasis away from the origin of government to the individual right to leave society, having in mind primarily the individual's right to quit society if it doesn't conform to one's happiness. Moreover by the time that Bland writes his essay, near the repeal of the Stamp Act, it was clear that the argument from British rights alone had its own problems. Starting from the uncontested starting point of British rights did not generate agreement about the rights of the colonies to tax themselves. Perhaps the earlier disagreements and doubts over natural rights theory and social compact had temporarily receded into the background as colonists sought other footing for their rights. But in the years to follow, some colonial writers still exhibit ambivalence over natural rights justifications, showing the doubts about such arguments had not gone completely away.

It is also evident that this particular appeal to natural rights here was tied to the new emerging American theory of the empire that saw the colonies as independent states, with independent legislatures, under the King. The burden now was to show, not that the Americans had British rights, but on the contrary, that they had their own distinctive American rights founded in several social compacts,

namely, the charters. In this new theory, the crux was now to prove that the colonists had had a right to leave their mother country and set up an independent state. To make this claim, however, required finding a new natural right to quit society that Locke had never really formulated. In this argument, Bland completely anticipates Jefferson’s view in *Summary View*.

Because the colonial charters were now construed as new social compacts, Bland sidesteps the question of government’s theoretical origins too. For if the colonial charters were “social compacts”, as Bland suggests, they are empirical compacts between the sovereign and the states and thus as “real” and empirical as the British compact. But Bland had still to justify the colonists leaving and setting up a new government and this right the original natural rights theory did not fully provide.

Categories of Natural Rights Arguments

By the end of the Stamp Act controversy, the positions on natural rights had been staked out in their major outline, though there was by no means a consensus on whether natural rights argument should be used or a consistent approach to natural rights arguments in the debate. In what follows, we look at subsequent examples from each of these major approaches to natural rights in the period after the Stamp Act controversy. These same categories of approach will remain visible into the late 1760’s and into the 1770’s leading up to the Revolution. The Declaration of Independence actually assumes, builds on and consolidates and even papers over the differences of several of these various positions on natural rights as we shall see.

There are four fairly defined positions on natural rights arguments: First, some writers continue to avoid natural rights arguments completely, showing that there continued to be some ambivalence towards natural rights arguments. Of the writers who do appeal to natural rights, there are at least four different ways in which natural rights get developed. James Otis, Samuel Adams and Richard Bland, discussed above, represent these different approaches.⁶¹ Like Adams, some writers rely on what can be thought of as a classically Lockean version of natural rights. These writers ground rights in essentially a theory of the State of Nature in which people give up some of their natural rights to join society. Typically, this classically Lockean theory is combined with and is used to complement arguments from British rights and colonial charters. As in the case of Samuel Adam’s letters discussed above, these other sources of rights are thought complementary to natural rights which typically are thought to be the most fundamental source of rights. The exact prioritization of each set of rights is sometimes left unclear and at other times made explicit. This view of natural rights is often thought of as “the” colonial view of natural rights.

The second strand of writings that uses natural rights tends to follow in the path of Richard Bland, and focuses on the specific right to quit society.⁶² In contrast to the first use of natural rights, which buttresses the claims to British rights, this strand argues that the colonies were essentially independent political entities that created new social compacts with Great Britain. While these social compacts were modeled on British rights, the colonists in this case have British rights because they chose them, not because they inherited them. Neither of these lines of argument immediately calls for revolution, though the “right to quit” argument leads more

directly to the argument that Parliament lacks any authority over the colonies including the right to regulate trade.

The third strand of natural rights arguments ponders the relationship of Christian and Lockean notions. This strand of rights thinking sometimes sounds very much like a classical Lockean theory. But at other times, these religious political writings articulate a theory of society, consent, and human freedom that produce something new, in both language and in concept.

All of these arguments aimed at the same result: To deny Parliament the power to tax the colonies and in some cases to regulate the commerce of the colonies. And all could in the future be used to justify a right to revolt. But these various versions were not all consistent or necessarily compatible with each other. Papering over some of the differences in theories would be one achievement if not goal of the Declaration.

In what follows, we look at examples of each of these tendencies in the period between the end of the Stamp Act Controversy and the Declaration of Independence.

Continued Avoidance of Natural Rights Arguments

There is continued evidence beyond the Stamp Act controversy that some colonists still had qualms about relying on natural rights arguments. The repeal of the Stamp Act in March 1765 had certainly ended the immediate controversy, but the Declaratory Act, issued at the same time, had insisted that Parliament still had full authority to make any laws whatsoever for the colonies. In late spring 1767, a new set of acts proposed by Charles Townshend, Chancellor of the Exchequer, stirred up tensions again. Like Grenville, Townshend intended to reduce British taxes by more efficiently collecting duties levied on American trade. To do so, he tightened customs administration and sponsored duties on colonial imports of paper, glass, lead and tea exported from Britain to the colonies. The Townshend Acts, as they were referred to, were designed to test the premise that duties imposed on goods imported by the colonies were legal while internal taxes (like the Stamp Act) were not, a distinction that some colonial writers had earlier advocated.

The most widely read colonial response to the Townshend acts was the twelve *Letters of a Pennsylvania Farmer*, written by Philadelphia lawyer and politician, John Dickinson beginning in December 1767. Dickinson we recall had been involved in drafting the resolves of the Stamp Act Congress. On the one hand, Dickinson was clearly trying to awaken his fellow colonists to what he regarded as the seriousness of the new acts. Insisting they were as serious as the earlier Stamp Acts, Dickinson urges the colonists to react as strenuously as they had earlier. “Here then, my dear countrymen, ROUSE yourselves, and behold the ruin hanging over your heads. If you ONCE admit, that Great-Britain may lay duties upon her exportations to us, *for the purpose of levying money on us only*, she then will have nothing to do, but to lay those duties on the articles which she prohibits us to manufacture—and the tragedy of American liberty is finished.” Or: “In short, if they have a right *to* levy a tax of *one penny* upon us, they have a right to levy a *million* upon us: For where does their right stop?”⁶³

Dickinson argues, in distinctions familiar from earlier writings we have seen, that Parliament does have the right to control imperial commerce for the good of the whole empire but not to tax the colonies. “The parliament unquestionably possesses

a legal authority to *regulate* the trade of *Great-Britain*, and all her colonies. Such an authority is essential to the relation between a mother country and her colonies; and necessary for the common good of all.” Rejecting arguments like those of Adams and Bland that viewed the colonies as separate entities, he writes:⁶⁴

He, who considers these provinces as states distinct from the *British Empire*, has very slender notions of *justice*, or of their *interests*. We are but parts of a *whole*; and therefore there must exist a power somewhere, to preside, and preserve the connection in due order. This power is lodged in the parliament; and we are as much dependent on *Great Britain*, as a perfectly free people can be on another.⁶⁵

But while Parliament has the right to regulate trade, it does not have the right to tax the colonies, whether those are internal or external taxes. Dickinson rejects arguments of colonists who say the Stamp Acts were worse because they imposed internal taxes whereas the new Townshend acts were “external” taxes placed on trade. “To this I answer, with a total denial of the power of parliament to lay upon these colonies any ‘tax’ whatever.”⁶⁶ Dickinson insists that the colonists can discern the intention behind an act, to determine if it is a legitimate regulation of trade or an inappropriate external tax.

For our purposes it is significant that throughout his Farmer letters in 1767, Dickinson nowhere appeals to natural rights explicitly as a justification of colonial rights. Indeed, he barely invokes rights arguments of any sort, even though he everywhere assumes the Townshend acts are denying American freedom. He writes: “Those who are taxed without their own consent, expressed by themselves or their representatives, are slaves.” “WHO ARE A FREE PEOPLE? Not *those*, over whom government is reasonable and equitably exercised, but *those*, who live under a government so *constitutionally checked and controlled*, that proper provision is made against its being otherwise exercised.”⁶⁷

Here Dickinson comes close to an outright rejection of natural rights theory. Freedom is not those over whom government is “reasonable and equitably exercised.” Instead he finds freedom in the checks and balances of government. And again:

No free people ever existed, or can ever exist, without keeping, to use a common, but strong expression, ‘the purse strings,’ in their own hands. Where this is the case, *they* have a *constitutional check* upon the administration, which may thereby be brought into order *without violence*. ...*The elegant and ingenious Mr. Hume, speaking of the Anglo-Norman government...* Thus this great man, whose political reflections are so much admired, makes *this* power one of the foundations of liberty.⁶⁸

Is it possible to form an idea of a slavery more *complete*, more *miserable*, more *disgraceful*, than that of a people, where *justice is administered, government exercised, and a standing army maintained, AT THE EXPENSE OF THE PEOPLE, and yet WITHOUT THE LEAST DEPENDENCE UPON THEM?*⁶⁹

But despite powerful statements about liberty such as these, one looks in vain for a justification of liberty or rights theory, which is never given but everywhere

assumed. What are the grounds of colonial rights? The only time that Dickinson offers a justification of colonial rights is when he quotes the resolves of the Stamp Act Congress, which he had of course drafted but which avoided the use of natural rights.

Quoting the third resolve of the Stamp Act Congress, and referring to these resolves as the “American Bill of Rights”, this is as close as Dickinson gets to offering a theory of freedom

III. “That it is *inseparably essential to the freedom of a people, and the undoubted right of Englishmen*, that NO TAX± be imposed on them, *except with their own consent*, given personally, or by their representatives.”⁷⁰

We see here again allusion to “the essential freedom of a people” and “undoubted right of Englishmen”. But Dickinson never alludes to natural rights arguments explicitly and we have no way of knowing on what he grounded those essential rights. Only on one occasion (letter seven) does Dickinson quote Locke: “If they have any right to tax us—then, whether our own money shall continue in our own pockets or not, depends no longer on us, but on them. ‘There is nothing which we can call our own; or, to use the words of Mr. Locke—WHAT PROPERTY HAVE WE IN THAT, WHICH ANOTHER MAY, BY RIGHT, TAKE, WHEN HE PLEASES, TO HIMSELF?’” This is as close as Dickinson gets to Locke or an explicit statement of natural rights. His only other reference to Locke is in a quote he cites approvingly of Lord Cambden at the end of Letter 7.

Instead, Dickinson seems to assume that colonies’ rights were given by Great Britain to the colonies as a privilege. After reviewing all the benefits of the colonies derived to the mother country, Dickinson explains that property is given as recompense to them. This is certainly a far cry from a natural rights theory.

For all these powers, established by the mother country over the colonies; for all these immense emoluments derived by her from them; for all their difficulties and distresses in fixing themselves, what *was the recompense made them?* A communication of her rights in general, and particularly of that great one, the foundation of all the rest—that their property, acquired with so much pain and hazard, should be disposed of by none but themselves*—or, to use the beautiful and emphatic language of the sacred scriptures,± “that they should sit *every man* under his vine, and under his fig-tree, and NONE SHOULD MAKE THEM AFRAID.”⁷¹ [emphasis added]

The right to property is here described as a “recompense” from Great Britain to America for the benefits that accrued to the mother country. No one arguing from natural rights would ground the American right of property this way. Moreover, the religious overtones in Dickinson’s essays, though not frequent, are obvious here and elsewhere.⁷² Dickinson credits American freedom to Divine Providence.

But while Divine Providence, that gave me existence in a land of freedom, permits my head to think, my lips to speak, and my hand to move, I shall so highly and gratefully value the blessing received as to take care that my silence and inactivity shall not give my implied

assent to any act, degrading my brethren and myself from the birthright, wherewith heaven itself *“hath made us free.”*⁷³

Quoting Scripture, Dickinson appeals to freedom as a grant from God. The absence of natural rights language or even a fully articulated rights theory in Dickinson would seem consistent with his ongoing commitment that the colonies to remain part of Great Britain. Dickinson rejects any talk of the colonies as “independent states” or of independence generally. “But if once we are separated from our mother country, what new form of government shall we adopt, or where shall we find another Britain to supply our loss? Torn from the body, to which we are united by religion, liberty, laws, affections, relation, language and commerce, we must bleed at every vein.”⁷⁴ Dickinson, as is well known, would later refuse to sign the Declaration of Independence, believing that there was still some hope for reconciliation between the colonies and Great Britain in 1776.

We see in Dickinson, then, several impulses familiar from others who avoided natural rights language: a commitment to subordination to Parliament’s authority, a resistance to seeing the colonies as independent entities, and an inclination towards grounding freedom in divine appointment.

To summarize, Dickinson’s *Farmers Letters* in 1767 barely provided a theory of rights at all and when they did allude to rights, they grounded them in British rights that had been granted the colonists. Eight years later, we will see Dickinson rewriting Jefferson’s draft of the *Declaration of the Causes and Necessity of War*, which avoided natural rights arguments altogether again. In this case, too, we will see both a heavy use of theological and religious language, linking freedom to God’s actions.

Natural Rights As A Complement To British American Rights

If one strand of colonial arguments continued to avoid natural rights and preferred theological language as a foundation for rights, other strands began to put natural rights language front and center. In one strand, natural rights is used in what can be called a classical Lockean version. By this we mean that the general outlines of a natural rights theory are evident with little alternation of either the general assumptions or the language in which that theory was embedded.

As an example of this first strand, we can turn to an essay called “A State of the Rights of the Colonists” in 1772, which was likely written by Sam Adams.⁷⁵ We recall that by December 1765, natural rights language had already moved to the fore in Adams’ letters. Now in 1772, Samuel Adams requested that a committee be appointed to state the rights of the colonists. The immediate issue that provoked the committee was the decision by the ministry in England to pay the salaries of the Superior Court Judges from custom duties. A committee of twenty-one men was created and led by men close to Adams. The output was “A State of the Rights of the Colonists”⁷⁶ But whoever wrote it, this essay offers a classic Lockean style argument with social contract theory and natural rights front and center.

The essay puts natural rights front and center in the argument. It begins:

Among the natural rights of the Colonists are these: First, a Right to *Life*; Secondly to *Liberty*, thirdly to *Property*; together with the Right

to support and defend them in the best manner they can. Those are evident Branches of, rather than deductions from the Duty of Self Preservation, commonly called the first Law of Nature.

All Men have a Right to remain in a State of Nature as long as they please; And in case of intolerable Oppression, Civil or Religious, to leave the Society they belong to, and enter into another. When men enter into Society it is by voluntary consent, and they have a right to demand and insist upon the performance of such conditions, And previous limitations as form an equitable *original compact*.⁷⁷

Note that Adams follows the Lockean view that “all men have a right to stay in the state of nature as long as they please”. We have seen that Otis already contested that view and we shall see later religious statements that argue that the state of nature is essentially a state of sin. Adams continues from here to write a dozen paragraphs giving a fairly straightforward uncontroversial summary of natural rights theory. The only noticeable difference from Locke’s *Second Treatise* is that Adams also argues that freedom of faith is part of natural rights, referring explicitly to Locke’s own views on religion in Locke’s *A Letter Concerning Toleration*. We note here that Adams is more stringent than Bland in the grounds for quitting society, citing intolerable civil or religious oppression rather than happiness as grounds for leaving the society to which they belong.

After this first section on classic Lockean natural rights, the essay goes on to consider “the rights of colonists as Christians”. “This may be best understood by reading and carefully studying the institutes of the great Lawgiver and head of the Christian Church: which are to be found closely written and promulgated in *the New Testament*.”⁷⁸ Adam’s does not here specify the content of the Christian “institutes” but he signals that he regards natural rights and Christian rights to be compatible. Adams then indicates that freedom of faith is one of the core principles of the Act of Toleration in Britain and reaches back to the Magna Charta.

After discussing Christian rights, Adam’s goes on to talk about his third category of rights, those of the “colonists as subjects.” Regarding the latter, they do not rest on the charters: “All Persons born in the British American Colonies are by the laws of God and nature, and by the Common law of England, exclusive of all charters from the Crown, well Entitled, and by Acts of the British Parliament are declared to be entitled to all the natural essential, inherent & inseparable Rights Liberties and Privileges of Subjects born in Great Britain, or within the Realm.”⁷⁹

For Adams by this point it is explicit that natural law stands outside common law and limits it: “The first fundamental positive law of all Commonwealths or States, is the establishing the legislative power; as the first fundamental *natural* law also, which is to govern even the legislative power itself, is the preservation of the Society.”⁸⁰ The rest of Adam’s essay is an enumeration of the particular actions taken by Parliament that violate American natural and colonial rights.

A second more sophisticated example of a classical Lockean natural rights argument is found in James Wilson’s pamphlet, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, written in 1770 but not published until 1774. This essay will serve as an interesting point of contrast for Jefferson’s *A Summary View*, which we examine below, for they come to similar conclusions but by very different routes. We know that Jefferson read this essay as

he quotes from it in his commonplace book and there is some speculation that this essay influenced his writing of the Declaration of Independence. I will discuss this issue in more detail below. Here the point is to examine another use of explicit natural rights argument to justify the colonists' rights.

The heart of Wilson's essay addresses the question whether Parliament has authority over the colonies. His answer is that it does not. Like Bland and Hopkins before him, Wilson argues that the colonies are independent states which Parliament has no right to tax or even to regulate their commerce. While the colonies as free political states are not subject to parliament's authority, the colonists as individuals are still subjects and have allegiance and duties to the Crown. But Wilson grounds his argument, not in a right to quit society, as did Bland and as will Jefferson, but much more explicitly in an explicit natural rights theory that limits Parliament's authority, in the same vein as Samuel Adams.

Specifically, Wilson takes aim at the commentaries of Blackstone, the British jurist who wrote authoritative “commentaries” on the British common law in the mid 1760s. Blackstone himself grounded the British constitution in natural rights. But Blackstone argued that the colonists were conquered territories and for that reason subject to Parliament's supreme authority. Acknowledging Blackstone's view that there must be a supreme authority in every society, and that “by the constitution of Great Britain” the authority is vested in “the king, the lords, and commons,” Wilson nonetheless adds an important qualification:

I admit that the principle, on which this argument is founded, is of great importance: its importance, however, is derived from its tendency to promote the ultimate end of all government. But if the application of it would, in any instance, destroy, instead of promoting, that end, it ought, in that instance, to be rejected: for to admit it, would be to sacrifice the end to the means, which are valuable only so far as they advance it.⁸¹

All men are, by nature, equal and free: no one has a right to any authority over another without his consent: all lawful government is founded on the consent of those who are subject to it: such consent was given with a view to ensure and to increase the happiness of the governed, above what they could enjoy in an independent and unconnected state of nature. The consequence is, that the happiness of the society is the first law of every government.⁸²

In language that anticipates the Declaration of Independence and that is very Lockean in character, although Locke is nowhere quoted, Wilson begins with a very classical natural rights argument that “all men are, by nature, equal and free” and that “all lawful government is founded on the consent of those who are subject to it.” Wilson then goes on to say that the consent was given “to ensure and to increase the happiness of the governed, above what they could enjoy in an independent state.” So far Wilson has not said anything that Locke would likely have objected to, though Locke does not use the term happiness in this way. But Wilson arguably comes closer to Locke's view than does Samuel Adams who, as noted above, argued that “the first fundamental natural law also, which is to govern even the legislative power itself, is the preservation of the Society.”⁸³ For Locke, people relinquish natural rights in order to make their lives better, not just to preserve society. Interestingly

enough, Wilson does not quote Locke here at all and instead cites Jean-Jacque Burlamanqi, a natural law professor in Geneva, whose “The Principles of Natural and Political Law” was translated into English in 1763 and taught in American universities.⁸⁴ Burlamanqi is cited as the authority for the conclusion that “The consequence is, that the happiness of the society is the first law of every government.” What does it mean to talk about the happiness of society?

This rule is founded on the law of nature: it must control every political maxim: it must regulate the legislature itself.⁴ The people have a right to insist that this rule be observed; and are entitled to demand a moral security that the legislature will observe it. If they have not the first, they are slaves; if they have not the second, they are, every moment, exposed to slavery.⁸⁵

Although Wilson’s use of the term happiness here could be leveraged to move quite far from a Lockean point of view, in fact Wilson stays very close to a traditional theory of natural rights. A large part of the essay to follow explores what it means “to demand a moral security that the legislature will observe it.” As the essay unfolds it is clear that Wilson has in mind a very traditional Lockean notion of representation. He reviews the constraints that developed to ensure Parliament represents the views of commons. Those measures include rules of representation and the fact that the members of the House of Commons live among their constituents and are thus affected by the laws they make and also worry about their reputations.

But the House of Commons lacks those constraints when it comes to the Americans.

But are the representatives of the commons of Great Britain the representatives of the Americans? Are they elected by the Americans? Are they such as the Americans, if they had the power of election, would probably elect? Do they know the interest of the Americans? Does their own interest prompt them to pursue the interest of the Americans? If they do not pursue it, have the Americans power to punish them? Can the Americans remove unfaithful members at every new election? ...

The answer to all these questions is “Obviously not.” The inevitable conclusion is that Parliament cannot make laws for Americans since it is not bound by “a moral security that the legislature” will heed Americans’ happiness. Here then is a familiar argument that the house of commons cannot represent Americans because of their geographic distance from the House of Commons. But now that argument is grounded in natural rights.

In contrast to Bland, then, Wilson never argues that the Americans ancestors had a right to quit their society and establish new societies. The Americans brought their British rights with them to the new colonies:

Can the Americans, who are descended from British ancestors, and inherit all their rights, be blamed—can they be blamed by their brethren in Britain—for claiming still to enjoy those rights?

Is British freedom denominated from the soil, or from the people of Britain? If from the latter, do they lose it by quitting the soil? Do those, who embark, freemen, in Great Britain, disembark, slaves, in America? Are those, who fled from the oppression of regal and ministerial tyranny, now reduced to a state of vassalage to those, who, then, equally felt the same oppression?

In Wilson's view, the Americans brought British rights with them to the new world and held them by birthright. They did not give up those rights when they left Britain, the way Bland and later Jefferson would argue. The limit on Parliament's power, therefore, does not derive from their quitting their country and founding independent states. It derives rather from natural rights such as the right to representation that transcends and limit government authority in general. Since the British commons can not adhere "to the moral security" required to protect American happiness, the commons can not have authority over the colonies, as a principle of natural rights. Therefore the colonies have to function with independent legislatures to meet the basic requirement of natural rights.

In arguing that Americans never lost their British rights, Wilson contests the view of Blackstone that the colonies are conquered territories. Though endorsing natural rights as the foundation of the British constitution, Blackstone had concluded that the American colonies were conquered territories and subject therefore to the power of parliament. Wilson quotes Blackstone:

Besides these adjacent islands (Jersey, etc.), our more distant plantations in America and elsewhere are also, in some respects, subject to the English laws. Plantations, or colonies in distant countries, are either such where the lands are claimed in right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest, or ceded to us by treaties. Our American plantations are principally of this latter sort; being obtained in the last century, either by right of conquest, and driving out the natives (with what natural justice I shall not at present inquire) or by treaties." 1. Bl Com. 106. 107.

Wilson rejects the view that the colonies are conquered territories.

The original and true ground of the superiority of Great Britain over the American colonies is not shown in any book of the law, unless, as I have already observed, it be derived from the right of conquest. But I have proved, and I hope satisfactorily, that this right is altogether inapplicable to the colonists. The original of the superiority of Great Britain over the colonies is, then, unaccounted for; ... we may justly conclude, that the only reason why it is not accounted for, is, that it cannot be accounted for. The superiority of Great Britain over the colonies ought, therefore, to be rejected; and the dependence of the colonies upon her, if it is to be construed into "an obligation to conform to the will or law of the superior state," ought, in this sense, to be rejected also.

It is unfortunate that Wilson does not delve more into the question of whether the colonies are conquered territories or into Blackstone's parenthetical remark that

the colonies were founded by “driving out the natives (with what natural justice I shall not at present inquire)”. The founders were so focused on the relationship of their rights with respect to Great Britain, that they did not in these reflections ponder the question of the sovereign or natural rights of the native American populations.⁸⁶

In any case, Wilson draws a legal analogy between the American colonies and the Irish.

It is very observable, that the reason, which those reverend sages of the law gave, why the people in Ireland were not bound by an act of parliament made in England, was the same with that, on which the Americans have founded their opposition to the late statutes made concerning them. The Irish did not send members to parliament;

But the analogy with the Irish goes beyond the limitation on Parliament’s authority. Like the Irish, the Americans are still “subjects of the Crown.” Being subjects of the Crown means they still have allegiance to the King and benefit from his protection:

From this authority it follows, that it is by no means a rule, that the authority of parliament extends to all the subjects of the crown. The inhabitants of Ireland were the subjects of the king as of his crown of England; but it is expressly resolved, in the most solemn manner, that the inhabitants of Ireland are not bound by the statutes of England. Allegiance to the king and obedience to the parliament are founded on very different principles. The former is founded on protection; the latter, on representation. An inattention to this difference has produced, I apprehend, much uncertainty and confusion in our ideas concerning the connection, which ought to subsist between Great Britain and the American colonies.

Wilson goes on to apply this same distinction to the Americans. They are not subject to the authority of Parliament but they are still subjects of the Crown. In migrating to America they never lost that latter status. “They never quit society.” As subjects of the Crown, they are still protected by the King and still have allegiance to him.

An Englishman, who removes to foreign countries, however distant from England, owes the same allegiance to his king there which he owed him at home

Thus we see, that the subjects of the king, though they reside in foreign countries, still owe the duties of allegiance, and are still entitled to the advantages of it. They transmit to their posterity the privilege of naturalization, and all the other privileges which are the consequences of it.⁴³

Wilson’s natural rights arguments ends in the “privilege of naturalization” as he explicitly calls it and can be contrasted with the theory of Bland and Jefferson that depends on the theory of quitting society or “expatriation” as Jefferson later calls it.

Now we have explained the dependence of the Americans. They are the subjects of the king of Great Britain. They owe him allegiance.

They have a right to the benefits which arise from preserving that allegiance inviolate. They are liable to the punishments which await those who break it. This is a dependence, which they have always boasted of. The principles of loyalty are deeply rooted in their hearts; and there they will grow.

To summarize, Wilson holds that the Americans brought their British rights with them. They are still subjects of the King with both the privileges and duties of being subjects. But they are not subject to Parliament, because they cannot be represented in that body. Wilson thus comes to the same conclusion as Bland that the colonies are independent states. But he gets there by a different route. Since they cannot be represented, they cannot be subject to Parliament’s authority. This is why they are independent states.

There is only one final objection to consider to his conclusion that the Americans are independent states.

How, it will be urged, can the trade of the British empire be carried on, without some power, extending over the whole, to regulate it? The legislative authority of each part, according to your doctrine, is confined within the local bounds of that part: how, then, can so many interfering interests and claims, as must necessarily meet and contend in the commerce of the whole, be decided and adjusted?"

Recall that in earlier colonial writers such as Stephen Hopkins and John Dickinson had acknowledged Parliamentary authority on matters of trade, assuming there had to be a supreme authority regulating trade for the common good. Wilson essentially rejects this argument, arguing by analogy that just as the trade among European countries had no “superintending authority” to regulate it, so too the flow of trade among the independent parts of the empire needs no authority to manage it. Invoking a free trade philosophy, Wilson argues that

It has been the opinion of some politicians, of no inferiour note, that all regulations of trade are useless; that the greatest part of them are hurtful; and that the stream of commerce never flows with so much beauty and advantage, as when it is not diverted from its natural channels. Whether this opinion is well founded or not, let others determine. Thus much may certainly be said, that commerce is not so properly the object of laws, as of treaties and compacts.

Wilson pictures the different parts of the empire as independent states that can let commerce develop organically with no regulation. But this freedom of trade is not itself a “natural right.” It derives rather from the fact that Parliament lacks authority over the colonies. If politicians conclude, however, that there needs to be a superintending power for economic reasons, then Wilson proposes that the King can play that role of regulating commerce. Regulation of commerce, then, is not an issue of natural rights, but of economic policy: “commerce is not so properly the object of laws, as of treaties and compacts.”

To summarize the discussion to this point, we see then that James Wilson like Adams uses classic natural rights arguments to set limits on the authority of

Parliament. Both use language that is very Lockean in style and substance, though Locke himself barely makes an appearance. Wilson goes further than Adams and makes this classic natural rights argument the basis for the claim that the American colonies are independent states, even though as individuals they are still subject to the Crown. This independence, however, is not derived as in Bland from the right to quit society, but from the fact that the house of commons cannot meet its natural rights obligations to respect and protect the happiness of Americans. Happiness here in Wilson is understood as achieved through representation in a classically Lockean way and does not apparently signal a different understanding of the ends of government, like the very different notion of happiness that informs Bland.

The Law of God and Nature: Religious Takes on Natural Rights Theory

Much discourse on American natural rights arguments tends to ignore or downplay the allusions to God in the political documents about American rights. It is as if the religious theological language is viewed as secondary and tangential to the core rights arguments. But to make this assumption misses the doubts and reservations that the colonists have about a straightforward Lockean account. One of the reasons they were ambivalent about natural rights theory was for religious reasons. While Lockean theory did make God central to its rights theory, many American writers did not think it gave enough prominence to God or traditional Christian concepts and themes. We have already seen doubts about natural rights theory in Otis on grounds that it did not give God a sufficiently prominent role in rights theory.

There was in fact a rich literature of political sermons given by Americans on election days, thanksgiving and other occasions. These political sermons combine political theory with classic themes of Christian morality, sin and redemption. These sermons are often ignored as peripheral to the development of American rights language and thinking in the period before the Revolution. That is why some collections of American pamphlets before the Revolution do not even have any examples of these political sermons.⁸⁷ But this parallel stream of writing suggests another view. There was an American attempt to think through how traditional Christian themes of sin, redemption, creation, and morality intersected with what were political ideas derived from natural rights theory. These sermons asked “How does Christianity and natural rights relate to each other?” In the process of asking this question, these sermons pose a number of questions that are not found in the purely political pamphlets. How is Christian morality and notions of evil related to the notion of political consent? How does the Christian story of creation relate to the idea of the State of Nature? How does the need for society relate to the Christian notion of Adam’s fall from grace? How are free will and liberty related? Is society and happiness ordained by God? How can current political views of consent be reconciled with various religious monarchies that the Jews had in the Bible. Are humans meant to be social beings by God’s intent? The view of human beings, of rights, and of political society that emerges is not always consistent with a classic Lockean account.

Sandoz notes that these sermons:

...demonstrate the existence and effectiveness of a popular political culture that constantly assimilated the currently urgent political and

constitutional issues to the profound insights of the Western spiritual and philosophical traditions...

...the sermon authors take as their reality the still familiar biblical image of Creator and creation, of fallen and sinful men, striving in a mysteriously ordered existence toward a personal salvation and an eschatological fulfillment. They knew that these goals are themselves paradoxically attainable only through the divine grace of election, a condition experienced as the unmerited gift of God, discernible (if at all) in a person's faith in Christ, which yields assurance of Beatitude. The relationships are variously symbolized by personal and corporate reciprocal covenants ordering individual lives, church communities, and all of society in multiple layers productive of good works, inculcating divine truth and attentiveness to providential direction according to the “law of liberty” of the sovereign God revealed in the lowly Nazarene. The picture that thus emerges is not merely parochially Puritan or Calvinistic but Augustinian and biblical.⁸⁸

We have already looked at the election sermon of Abraham Williams in 1762 as one example of this interplay of Christian and political discourse. As another example, we can consider the sermon six years later in 1768 of Daniel Shute, Harvard graduate and Congregationalist minister in Hingham, Massachusetts. The sermon is given in Boston addressing the Governor, Council, and House of Representatives in the annual election day sermon. What is interesting is both how natural rights concepts are clearly discernible even as they are embedded in and transformed by more traditional religious language and theological concepts.

Shute makes some statements that sound remarkably Lockean in character like the following statement about natural rights:

The design of mankind in forming a civil constitution being to secure their natural rights and privileges, and to promote their happiness, it is necessary that the special end of the electors in chusing some to govern the whole, should be assented to by the elected to vest them with a right to govern...⁸⁹

Here familiar themes of natural rights philosophy are evident with the purpose of government being to protect natural right for the ultimate end of human happiness. But the larger framework in which this view and statement is embedded is quite different and dependent on a religious and Christian view that fundamentally alters the landscape of what natural rights means.

Shute begins his sermon by noting that God created humans for happiness. As we have seen, notion that “happiness” is the goal of human life and social life in particular is one that is popular in the colonial political discourse. But here it has definite religious overtones and associations.

The communication of happiness being the end of creation, it will follow, from the perfections of the creator, that the whole plan of things is so adjusted as to promote the benevolent purpose; to which the immense diversity in his works...And every creature in the universe, according to its rank in the scale of being, is so constituted,

as that acting agreeably to the laws of its nature, will promote its own happiness, and of consequence the grand design of the creator.⁹⁰

Here human happiness is part of the grand scheme of design and humans as well as other animals who act in conformity to their happiness therefore are acting according to the laws of nature. The notion that every being acts “agreeably to the laws of its nature” is close to a notion of instinctive behavior. Certain ordained patterns linked to the creature’s nature enable them to conform to the design of the creator and attain happiness. Happiness is not only the end of society but the goal of all of creation.

Agreeable hereto, all beings in the class of moral agents are so formed, that happiness will result to them from acting according to certain rules prescribed by the creator, and made known to them by reason or revelation. The rules of action, conformity to which will be productive of happiness to *such beings, must be agreeable to moral fitness in the relation of things; in perfect conformity to which the rectitude, and happiness of the creator himself consists.*⁹¹

Here the pursuit of happiness has a moral and religious end. In the strictly political pamphlets and resolves, by contrast, there is no “moral theological” dimension emphasized in discussions of human happiness. But here happiness is conforming to the rules prescribed by the creator and made known through reason or revelation. If therefore happiness involves acting religiously according to God’s word, then consent to political society is not simply an individual decision but a religious act conforming to God’s will and the purpose of the universe.

Mankind may naturally have a liberty to live without civil government in the same sense that they have a liberty, i.e., a power to neglect any moral duty: But they are evidently made dependent on one another for happiness; and that method of action, which in the constitution of things, will present misery, and procure happiness to the species, on supposition of their being acquainted with it, and in a capacity of going into it, is not only wrong in them to neglect, but even duty indispensable to pursue. From hence arises their obligation to civil government as mentioned before;⁹²

We see here a view like that of Otis. It is a sin to live outside of political society. This is a dramatic departure from Locke’s classic view of the state of nature, which saw consent as key to entering political society. But if living alone is in fact a sin, then the notion of consent that operates in the entrance to political society is substantively different than the notion of consent presupposed by Locke. Civil government is a moral and religious obligation. One must join society to fulfill God’s law. There can not be laws in the State of Nature as that state is a state of sin.

From here Shute offers a fundamental break with Lockean theory. In Shute’s view, civil government does not involve a relinquishing of natural rights.

Civil government among mankind is not a resignation of their natural privileges, but that method of securing them, to which they are morally *obliged* as conducive to their happiness. In the constitution of things, they can naturally have no rights incompatible with this; and therefore none to resign. For each individual to live in a separate state,

and of consequence without civil government, is so pregnant with evil, and greatly preventive of that happiness of which human nature is made capable, that it could never be designed as a privilege to man by the munificent creator: [emphasis added]⁹³

Since living alone is evil, one cannot say that a person renounces natural rights when they enter society. To say they have natural rights to live alone would be to say they have rights to live in a state of evil.

Shute also sees society as having a religious end. Though he acknowledges that there should be freedom of conscience to worship as one likes:

That public homage which the community owe to the great Lord of all; and which is equally their interest as their duty to pay, should be earnestly promoted by their rulers.⁹⁴

Since the purpose of political society is promoting human happiness in accordance with the plan of creation, society should promote recognition of God’s role.

The religious political writing in the colonies in the period before the revolution represents an important strand of discourse that certainly weighed in on the debate with Great Britain. This strand of discourse, moreover, both affirmed classic natural rights doctrines, even as it changed and transformed them. The discourse of Wilson, Bland and Shute are quite different from one another even though all endorse a natural rights theory. Even Samuel Adam’s essay on natural rights which embraces a classical Lockean view makes an explicit overture to the “rights of Christians”. It is reasonable to assume, therefore, that in public documents such as the Massachusetts Resolutions or in the later Resolutions of the Continental Congress that a sensitivity to, if not an endorsement of, these kind of religious and Christian perspectives is encoded in statements about the law of “God and nature.” The colonists were straddling several very different perspectives and views of natural rights that were not self-evidently compatible or self-evidently would lead to the same vision of the future society. These fault lines had to be papered over as the colonies came together to contest Great Britain’s actions. But under the surface there were deeper divisions among the colonists in their view of rights that the public statements only hinted at but wanted to downplay.

The Right To Quit Society: From Bland to Jefferson

If one strand of natural rights argument found represented in Adams and Wilson used a classically Lockean style argument and language to limit Parliament’s authority, another strand argued from a natural right to quit society. We have already reviewed Richard Bland’s argument in March 1766 that people have a natural right to quit society. There is a striking similarity between Bland’s essay and Thomas Jefferson’s *Summary View* written in 1774 in preparation for the First Continental Congress. Though there is no direct evidence that Jefferson read Bland’s essay, they were both Virginia politicians in the house of Burgesses and part of Bland’s essay was published in the Virginia Gazette at the time. Whether or not Jefferson read Bland’s essay at the time is unclear. But in any case, Bland has anticipated many of Jefferson’s key points.⁹⁵

Let's fast forward to that moment in 1774 to see how Jefferson is essentially recapitulating the same argument as Bland. Much had happened in the intervening years. The Stamp Act was repealed but the Declaratory Acts still proclaimed that Parliament had supreme authority over the colonies. A new parliament had come to power and brought with it a new series of acts, the Townshend acts, that set out to test the authority of Parliament over the colonies. Those acts had suspended the legislature of New York, quartered troops in the colonies and required the colonies to pay for them. There had been a few years of calm in 1770-1773 once the Townsend acts were repealed, but violence had broken out again with the new restrictions on Tea. In response to a new set of legislation, the "Intolerable Acts" as the colonies called them, the colonies had decided to convene a Continental Congress and it was in preparation for this congress that Jefferson had penned a pamphlet that was published under the name of *A Summary View Of The Rights of British America*. Jefferson himself was too ill to attend but his pamphlet was read to the congress. The congress, it turned out, offered a set of resolves fundamentally different than Jefferson's *Summary View*, which we shall examine below.

In *this pamphlet*, Jefferson lays out a summary of the contentions between the colonists and Great Britain and the foundation for the colonies' complaints. Making essentially the same argument as Bland earlier, Jefferson argues that the colonies are free and independent states who share a sovereign with England. He bases his arguments on the same natural right argument as Bland, namely, the right to quit society.⁹⁶

Jefferson begins by providing an overview of what he considers the responsibility of his fellow Virginia delegates to the First Continental Congress. Their responsibility is:

to propose to the said congress that an humble and dutiful address be presented to his majesty begging leave to lay before him as chief magistrate of the British empire the united complaints of his majesty's subjects in America; complaints which are excited by many unwarrantable encroachments and usurpations, attempted to be made by the legislature of one part of the empire, upon those rights which god and the laws have given equally and independently to all.⁹⁷

The complaints of the colonies are made to "his majesty" from one legislature about the inappropriate behavior of another legislature (i.e., Parliament). Jefferson here indicates that the "settlements" are still part of the British empire, but as independent legislatures on equal footing with Parliament, they are excited by "many unwarrantable encroachments and usurpations", attempted "by the legislature of one part of the empire" on the "rights which God and the laws have given equally and independently to all".

Note that here Jefferson says the infringement is not "rights of nature" but "upon those rights which God and the laws have given equally and independently to all."⁹⁸ Jefferson will use the term "right of nature" later in the essay. But here he does not say "God and Nature" but simply God and "the laws". Though appealing to common rights, Jefferson does not call them explicitly "laws of nature" in this instance but highlights the role of God in giving these laws, showing some disinclination to use more classical natural rights language, in contrast to writers like Adams and Wilson. Jefferson will end his essay as well with the emphasis on God's

role in creating liberty. “The god who gave us life, gave us liberty at the same time: the hand of force may destroy, but cannot disjoin them.”⁹⁹ This emphasis on God’s role in the creation of liberty we have seen before in writers like James Otis, Abraham Williams, and Daniel Shute, but it was noticeably absent in writers like Wilson, for example, who never uses the word God. Jefferson’s writing thus resonates more with the more theological sub-tradition for describing liberty’s origin even though he was likely already a deist by this point and likely did not have a personal notion of God like some of the other writers previously discussed. Jefferson’s statement that rights were “given equally and independently to all” anticipates the rights language of the Declaration of Independence and can be reasonably construed as a restatement of the Lockean classical idea that all individuals are created equal and independent by God and that from the equality flows the rights of each person.¹⁰⁰ But it should be noted that there is another quite different possible interpretation of this statement. The context refers to the encroachment of the legislature of one part of the British empire on another legislature of the British empire. Jefferson’s reference to “the laws” giving rights “equally and independently to all”, then, could be a reference, not to general natural rights given equally to all individuals, but to the British common law tradition (“the laws”) which gives equal rights to all political entities of the empire. This could explain why Jefferson avoids the term “nature” here. He is referring to the “the laws” reaching back into antiquity which the Americans inherited from the Saxons. This reading as we will see does also fit with a possible interpretation of Jefferson’s later comments.

Interestingly enough, the first time that Jefferson refers explicitly to “rights of nature” in the essay, he does so in precisely the same way as Bland to mean the right to depart one’s country. Congress should remind his majesty:

that our ancestors, before their emigration to America, were the free inhabitants of the British dominions in Europe, and possessed a right, which nature has given to all men, of departing from the country in which chance, not choice, has placed them, of going in quest of new habitations, and of there establishing new societies, under such laws and regulations as to them shall seem most likely to promote public happiness.¹⁰¹

Jefferson here talks of a natural right to depart a country in which one was born. The status of this right as a natural right was debatable. Wilson following Blackstone had articulated the view that an English subject could not throw off their natural born allegiance. And Locke certainly did not make the right to quit society a right under all conditions but only for individuals who had not explicitly consented to embrace the social compact at social maturity.¹⁰² Jefferson does not offer any justification or source of this natural right and simply takes it for granted. In his later autobiographical reflections he will refer to this as the right of “expatriation” and actually single out this right as the main point of his essay.¹⁰³ This right to depart one’s country entitles people to leave the country in which they were born and to set up new societies under laws that will “promote public happiness.” In contrast to Bland, Jefferson does not here refer to happiness as a “natural right”, although in the Declaration of Independence he will call pursuit of happiness a sacred right, a significant shift in emphasis from this essay. Here he is more in line with Locke and Wilson, seeing the end of political society to promote

“public happiness” which is different from an individual’s right to pursue happiness, as discussed earlier.

Jefferson does not say what he means by “our ancestors...were the free inhabitants of the British dominions in Europe”. Does he mean the American ancestors were free because they were part of British common law? Or were they free in some other sense? It appears he assumes they were part of the British Commonwealth, for otherwise there would be no need to justify a right to quit society. In any case, he seems to share the view of Bland that one has a right to depart a country at will, and not just at the age of majority. In arguing that the colonists had a natural right to depart their mother country, Jefferson rejects the argument of other colonial writers such as Wilson that the colonists brought their British liberties and duties with them and therefore have them as birthright. For Wilson, the ancestors brought their British rights with them. But they still could no longer be subject to Parliament’s authority because of Parliament’s inherent inability to provide adequate representation to the colonies who were geographically removed. For Jefferson, by contrast, the emigrants came without British rights and were never subject to Parliament’s authority from the start. Thus Jefferson differs from writers such as Wilson on the question of how American’s got their rights and also on the question of why Parliament has no authority over the Americans, even though both appeal to natural rights arguments.

To drive home the point that the settlers of the Americas had the right to settle and start new political entities, Jefferson argues that England was founded in the same way.¹⁰⁴

That their Saxon ancestors had, under this universal law, in like manner, left their native wilds and woods in the North of Europe, had possessed themselves of the island of Britain, then less charged with inhabitants, and had established there that system of laws which has so long been the glory and protection of that country. Nor was ever any claim of superiority or dependence asserted over them by that mother country from which they had migrated; and were such a claim made it is believed his majesty’s subjects in Great Britain have too firm a feeling of the rights derived to them from their ancestors to bow down the sovereignty of their state to visionary pretensions.¹⁰⁵

Jefferson this time calls the right to leave a society “a universal law”, although he still does not explain or justify it. This same law was operative in the Saxon migration to England. Jefferson is assuming standard Whig history that attributed the birth of liberty to the Saxons who brought liberty to Britain.¹⁰⁶ When the Saxons exercised the right to leave their mother country and established a society in the island of Britain, no claim of sovereignty was made over them by their mother country, as they were recognized as an independent state. Just as the Saxon mother state exercised no power over the emerging and now free Britain, to which the Saxons migrated, the same should be true of the American entities. The Americans by right of nature left their mother country and Great Britain should have no further claim over them.

In Jefferson’s view, America was therefore not “colonized” but was conquered.

America was conquered, and her settlements made and firmly established, at the expence of individuals, and not of the British public. Their own blood was spilt in acquiring lands for their settlement, their own fortunes expended in making that settlement effectual. For themselves they fought, for themselves they conquered, and for themselves alone they have a right to hold. ¹⁰⁷

Unlike Wilson who argued (against Blackstone) that the colonies were not conquered, Jefferson argues they were indeed conquered. And in Jefferson’s view America belongs to the American ancestors precisely because it was conquered territory. Jefferson here reflects the view repeated in his *Commonplace Book* that in Saxon times “upon settling in the countries which they subdued, the victorious army divided conquered lands.”¹⁰⁸ It is because the ancestors conquered the new lands that they have independent rights over these territories. For Jefferson, the ancestors of the settlers own their land independently of the Crown in line with the “allodial” nature of land holding that Jefferson traces back to Anglo-Saxon ancestors. Thus the assumption among some fellow American settlers that they received their lands from the Crown is a mistake, although an understandable one. The colonists “were farmers, not lawyers”. “The fictitious principle that all lands belong originally to the king, they were early persuaded to believe real; and accordingly took grants of their own lands from the crown.” But in fact the land never did belong to the Crown since the ancestors conquered the land with no help from the Crown. They therefore were a new people and the lands belonged to them through their settlements. Setting out his theory of property and rights, Jefferson argues that:

It is time, therefore, for us to lay this matter before his majesty, and to declare that he has no right to grant lands of himself. From the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed around itself are assumed by that society, and subject to their allotment only. This may be done by themselves, assembled collectively, or by their legislature, to whom they may have delegated sovereign authority; and if they are allotted in neither of these ways, each individual of the society may appropriate to himself such lands as he finds vacant, and occupancy will give him title.

What happened once the emigrants settled their new lands? They set up their own political entities. Interestingly enough, Jefferson does not say they founded a constitution based on natural rights of “life, liberty and property”. Instead, Jefferson says they looked back to the tradition they knew best and modeled their laws after those of the country from which they came:

That settlements having been thus effected in the wilds of America, the emigrants thought proper to adopt that system of laws under which they had hitherto lived in the mother country, and to continue their union with her by submitting themselves to the same common sovereign, who was thereby made the central link connecting the several parts of the empire thus newly multiplied. ¹⁰⁹

So while the colonists had a natural right to leave Britain, and were entitled to the lands they conquered, they chose in the end, not to look to reason or nature to devise a new compact to promote public happiness. Instead they “thought proper” to adopt the same British constitution with its liberties that reached back in time to the Saxons. Why they “thought proper” to adopt those laws Jefferson does not say. He

never says, as did Samuel Adams for example, that Americans inherently had British rights since those rights are universal rights and “unalienably” the rights of the colonists by definition. Instead, Jefferson gives the impression of an unbroken liberty tradition reaching from the Saxons through Britain to America. And he does make clear that the Saxons had established “the system of laws which has so long been the glory and protection of that country.” Jefferson thus appears to endorse the view that the American emigrants became the inheritors of the liberty traditions reaching back to the Saxons and in this respect seems to embrace the common law tradition that traces liberty and rights back to the Saxon ancestors without invoking natural rights of life, liberty and property outside of that tradition.¹¹⁰ Jefferson does not quite say it this way, but the implication is that Americans are preserving Saxon liberty traditions that are being undermined in Britain, which once had been their bastion.¹¹¹

Based on his assumption that the ancestors had a right to quit their former society and start new ones, Jefferson also redefines the relationship of the settlements to the King. The King is no longer the sovereign of the people to whom the colonists owe allegiance and who is obligated to protect them. Instead, the emigrants voluntarily submitted themselves as subjects to the King so as to continue their relationship with their mother country. In Jefferson’s view, the King only has executive authority over the settlements because the emigrants voluntarily adopted him as their “chief officer”. The clear implication is that the settlements could have chosen a different sovereign had they wanted. This relationship thus constrains the King’s powers over the settlements:

And this his majesty will think we have reason to expect when he reflects that he is no more than the chief officer of the people, appointed by the laws, and circumscribed with definite powers, to assist in working the great machine of government, erected for their use, and consequently subject to their superintendance. And in order that these our rights, as well as the invasions of them, may be laid more fully before his majesty, to take a view of them from the origin and first settlement of these countries.¹¹²

The King should understand that he is nothing more than the chief officer for the settlements whose executive role is to assist in the working of government which is established for the people’s use. His executive powers are therefore circumscribed by the laws and subject to the people’s “superintendance.” In describing the King’s role this way, Jefferson went further at this point than many other colonists such as Wilson who still believed that the colonists were still bound by allegiance to the King because they had been born natural born subjects. As Wilson put it, “Allegiance to the king and obedience to the parliament are founded on very different principles. The former is founded on protection; the latter, on representation.” But Jefferson abandoned this distinction arguing that the freedom to quit society meant that the emigrants had the right to quit both Parliament’s authority and the King’s sovereignty. Ironically, Jefferson feels that the King is not exercising enough power in the present situation. Jefferson calls on the King to more forcefully exercise his veto power: “It is now, therefore, the great office of his majesty, to resume the exercise of his negative power, and to prevent the passage of laws by any one legislature of the empire, which might bear injuriously on the rights and interests of another.”¹¹³

Given the right to quit society, Jefferson naturally interprets the colonial charters not as privileges granted by the Crown, but as social compacts that

establish new societies. And the colonies which in essence are new states appoint the Crown to be their chief officer. Toward the end of the essay he writes:

That these are our grievances which we have thus laid before his majesty, with that freedom of language and sentiment which becomes a free people claiming their rights, as derived from the laws of nature, and not as the gift of their chief magistrate: Let those flatter, who fear; it is not an American art. To give praise where it is not due might be well from the venal, but would ill beseem those who are asserting the rights of human nature. They know, and will therefore say, that kings are the servants, not the proprietors of the people.¹¹⁴

Here Jefferson is telling the King that the Americans as a free people will not mince their words. Flattery “is not an American art.” When Jefferson describes the Americans here as “a free people claiming their rights, as derived from the laws of nature,” we cannot know for sure whether he is referring to general natural rights of “life, liberty and property” or to what he explicitly calls the natural right to “depart from a society”. One might argue that the difference is semantic. After all, doesn’t Jefferson’s natural right to depart a society imply a right to create a new society with a new social compact? And doesn’t the right to quit a society rest already on the notion of a social compact that one can choose to leave? Perhaps. But many writers who affirmed natural rights never made such arguments. And Jefferson never puts it this way, nor ties together any of these background assumptions about natural rights and the right to quit society. In other words, Jefferson nowhere justifies his critical assumption that everyone has a natural right to quit society. We therefore do not know for certain whether or how Jefferson derives that right from natural rights theory. But this is the main point of Jefferson’s essay and Jefferson clearly saw this as differentiating his point of view from those of other colonial thinkers such as James Wilson and Samuel Adams who thought the ancestors brought British rights with them to the Americas. If therefore we want to conclude that Jefferson is relying on a natural rights argument here and throughout, it is at the very least a very different framework than that version of natural rights used by many other colonists who argued from natural rights, but nonetheless argued that the ancestors brought British rights with them to the Americas. They arrived at their justification of American rights without arguing that there was a natural right to quit society. At the very least, then, Jefferson is providing a very different application of natural rights arguments to the colonial situation.

But it is also possible that Jefferson differed even more dramatically in his understanding of natural rights. It is possible to read Jefferson as assuming that the rights of individuals flow from the natural right to quit society and not from more general “natural rights” that individuals have in a state of nature. Recall that in the traditional Lockean view, individuals are created with natural rights in a state of nature and give up some of those rights to enter into and enjoy the benefits of society. That whole story of rights in the state of nature with reference to an original social compact is noticeably absent from Jefferson’s essay. Similarly, no explicit mention is made of rights to “life, liberty and property” together, either here or in Jefferson’s later Declaration of Independence. What do we make of that absence? We could assume as many of Jefferson’s interpreters have that those assumptions were taken for granted in Jefferson. But it is possible to interpret Jefferson as holding a different theory and standing in a different sub-tradition. We have seen ambivalence and doubt in some writers such as Otis and Shute over the notion of an original state of nature and the idea that people ever exist outside of a social compact. Otis had

argued that there was no such thing as a state of nature. And Shute had argued that people were intended by God as social beings from the very beginning and that living outside society was a sin. Jefferson could be interpreted as sharing doubts about the theoretical origin of government in social compact and natural rights in a state of nature. In that reading, Jefferson is avoiding any appeal to natural rights of life, liberty and property that belonged to an individual in an original state of nature. Instead, Jefferson appeals to one natural right only: the right to quit the society one was born into. Jefferson nowhere explicitly justifies this right and so we can't know for certain how he would have grounded it philosophically. But from this right alone Jefferson can be read as justifying American rights. Since people have a right to leave society, they can set up new societies and those societies can be governed by laws that they choose to meet their standards of happiness.

Given that the American settlements were set up as independent states, how did it come to pass that American rights were usurped?

But that not long were they permitted, however far they thought themselves removed from the hand of oppression, to hold undisturbed the rights thus acquired, at the hazard of their lives, and loss of their fortunes. A family of princes was then on the British throne, whose treasonable crimes against their people brought on them afterwards the exertion of those sacred and sovereign rights of punishment reserved in the hands of the people for cases of extreme necessity...¹¹⁵

Jefferson locates the early signs of disintegration in the activity of earlier British “princes” (e.g., Stuart monarchy) who exerted power inappropriately “over their subjects on that side the water”. Jefferson here refers to the beheading of Charles I and the glorious revolution of 1688 that deposed King James II. In both cases, the British people had to exert “those sacred and sovereign rights of punishment”. Referring to the rights to remove a King, Jefferson again avoids the language of “natural rights” and prefers instead the language of “sacred and sovereign rights”, language that will appear again in the early draft of the Declaration of Independence. Once again whether Jefferson grounds such rights in natural universal rights or in the common law traditions reaching back to the Saxons and Magna Carta, is not made explicit. If the people there in Britain had their rights usurped, “it was not to be expected that those here, much less able at that time to oppose the designs of despotism, should be exempted from injury.”¹¹⁶

But it was not just the princes who abused the rights of the colonists. Parliament also began to overstep its bounds and exercised “unwarrantable encroachments and usurpations”. Certainly taxing the Americans without their consent fell into this category. But in addition, Jefferson argues that Parliament had no right to regulate commerce either. Here Jefferson goes further than did Bland and ends up with a position similar to Wilson's: Being independent states means that commerce of the American colonies should be free. Speaking about the support of Great Britain for the colonies, Jefferson writes that:

We do not, however, mean to underrate those aids, which to us were doubtless valuable, on whatever principles granted; but we would shew that they cannot give a title to that authority which the British parliament would arrogate over us, and that they may amply be repaid by our giving to the inhabitants of Great Britain such exclusive

privileges in trade as may be advantageous to them, and at the same time not too restrictive to ourselves.¹¹⁷

Since the colonies were independent states, the Parliament had no authority to impose trade regulations on them. What then about the trade regulations to which the colonies had acquiesced to and never protested in the past? Those regulations, Jefferson insists, were privileges that the new American settlements granted to Great Britain in repayment for Great Britain’s assistance. In other words, they were essentially commercial exchanges or international agreements to which the colonies had assented.

But in certain cases, parliament inappropriately imposed trade sanctions without the consent of the colonies.

But that, upon the restoration of his majesty King Charles the second, their rights of free commerce fell once more a victim to arbitrary power...History has informed us that bodies of men, as well as individuals, are susceptible of the spirit of tyranny. A view of these acts of parliament for regulation, as it has been affectedly called, of the American trade, if all other evidence were removed out of the case, would undeniably evince the truth of this observation...That to heighten still the idea of parliamentary justice, and to shew with what moderation they are like to exercise power, where themselves are to feel no part of its weight, we take leave to mention to his majesty certain other acts of British parliament, by which they would prohibit us from manufacturing for our own use the articles we raise on our own lands with our own labour. By an act (3) passed in the 5th year of the reign of his late majesty king George the second an American subject is forbidden to make a hat for himself of the fur which he has taken perhaps on his own soil; An instance of despotism to which no parallel can be produced in the most arbitrary ages of British history... The true ground on which we declare these acts void is, that the British parliament has no right to exercise authority over us.¹¹⁸

Jefferson argues trade regulations to which the colonies have not consented are inappropriate both on the grounds of justice and because “Parliament has no right to exercise authority over us.”¹¹⁹ Commenting on the right of free trade, Jefferson writes:

That the exercise of a free trade with all parts of the world, possessed by the American colonists *as of natural right*, and which no law of their own had taken away or abridged, was next the object of unjust encroachment...

But that, upon the restoration of his majesty King Charles the second, their rights of free commerce fell once more a victim to arbitrary power. [emphasis added]¹²⁰

One might be tempted to see here an early statement linking natural rights, liberty and free trade, a popular doctrine among libertarians and “market liberals”.¹²¹ But this interpretation would be misleading. Like Wilson, Jefferson means here that the colonists should have free trade because they constitute independent states. Independent states should be able to regulate their own commerce, “as of natural

right”. Free trade in other words is like a natural right because it is a question of national sovereignty. But it is not a natural right per se like the individual right to quit society. Rules of commerce are a domain that derives from the law of nations, not the law of individuals. Jefferson is not implying here that individuals themselves have a right to economic freedom or free trade, but the political entities in which they live do.¹²² This is a fundamental difference between natural rights of individuals and rights of political entities in the law of nations. Jefferson argues that the American colonists should have free trade because they are an independent political entity, not subject to the legislature of Parliament. It is “as of natural right” meaning derived from the natural right that the Americans had to quit their mother country and establish independent states. The expression “as of” is thus like the expression “as derived from laws of nature”, an expression Jefferson uses when speaking of rights derived from the right to quit society. This language differs from the language “possessed a right which nature has given to all men”, which Jefferson uses to describe the individual right to quit society.

Having given an exposition of Jefferson’s argument, let us step back a moment to consider whether we can say that Jefferson in this context is Lockean and embraces natural rights philosophy? The answer is both yes and no. On the yes side of the ledger, one sees something that looks very much like a natural rights philosophy behind his ideas of colonial settlement and founding. Jefferson states that nature has given everyone a right of “going in quest of new habitations and establishing new society under laws and regulations as to them shall seem most likely to promote public happiness.”¹²³ Moreover, Jefferson views the supreme ruler as a “chosen” figure who is constrained within the set of rules consented to by the people. Jefferson also alludes to the sacred right of the people to punish their rulers. These statements are all consistent with and embedded in a Lockean natural rights view and tradition. Furthermore, Jefferson uses explicit natural rights language at various points: he refers to “a right which nature has given to all men,” to “a state of nature” and to rights “derived from nature.” He also calls free trade “as of natural right”. In other writings at the same time he uses similar language.¹²⁴

But in other ways, Jefferson is seemingly not an “overt” Lockean nor a classical natural rights theorist at least in all the same ways as others of his contemporaries. To begin with, we see nothing like the explicit statement about the nature or origin of government in social compact or an account of original rights in a state of nature as found in other writers like Bland or Samuel Adams, to cite earlier and contemporary examples. Although there is a statement about “life and liberty” being created by God, there is no general statement anywhere in this essay about the right to “life, liberty and property.” In Jefferson, the emphasis is not on the general natural rights, but on the right to quit one’s society and set up a new political entity. Instead of an argument from general natural rights, there is still a reliance on what looks like a Whig historical argument that links American liberties back to British liberties and ultimately back to the Saxons liberties.

Should we argue that a Lockean and natural rights philosophy was here everywhere assumed and therefore left unstated. That is the assumption of Jefferson’s biographer Malone: “Jefferson gave no general statement of the doctrine of natural rights in his *Summary View*, but he based his whole argument on it.”¹²⁵ That might be one way to explain Jefferson’s essay. But the absence of a more explicitly Lockean statement about social compact or natural rights seems more studied than that. Jefferson is only explicit about the natural right to quit society and

nowhere provides a justification or explanation of that right.¹²⁶ Furthermore, we see a few examples where reticence seems to guide Jefferson and a conscious avoidance the use of natural rights language. We recall that he emphasizes “God and the laws” rather than “God and Nature” and he emphasizes God’s role in creating liberty, in a way reminiscent of Otis. Moreover, in a passage that deals with the right of the British people to depose their King, and thus a context that would normally seem quite appropriate for a reference to Lockean natural rights, Jefferson avoids the language altogether: “A family of princes was then on the British throne, whose treasonable crimes against their people brought on them afterwards the exertion of *those sacred and sovereign rights* of punishment reserved in the hands of the people for cases of extreme necessity” [emphasis added].¹²⁷ It is interesting that Jefferson here uses the word “sacred” a word that he will use again in the first draft of the Declaration of Independence. Sacred and sovereign rights could simply be common rights derived from the Anglo Saxons and could have religious overtones. They are not necessarily “natural rights.”

To return to the question at hand, why Jefferson deemphasized the explicit language of natural rights is not entirely clear. It is unlikely that he did so because of its “radical implications” since his essay is quite radical by the standards of other colonial writing. And we have seen that other writers such as Wilson will arrive at exactly the same conclusions as Jefferson but with a more explicit and classical natural rights argument. The problem of answering this question is compounded by the uncertainty about Jefferson’s own thinking prior to 1774. **I discuss this question of Jefferson’s relationship to Locke in quite some detail in the next chapter.** The burning of his library in 1770 left doubts about what was or was not in his library. Gary Wills and others noted that Jefferson did not cite Locke even once in his writings or even in his commonplace book.¹²⁸ This led Wills to argue that Jefferson was more influenced by Scottish enlightenment thinkers. But as others have pointed out even if Jefferson did not read Locke, there were ample statements of natural rights philosophy in other things that Jefferson did read. Jefferson’s commonplace book, as Chinard has pointed out, included statements from Lord Kames such as the following which make ample use of natural rights theory.

Mutual defence against a more powerful neighbor being in early times the chief, or sole motive for joining society, individuals never thought of surrendering any of their natural rights which could be retained consistently with their great aim of mutual defense.¹²⁹

It also seems unlikely that Jefferson was worried about religious implications of natural rights language, the way Otis and others seemed to be. Since Jefferson was himself somewhat of a deist, at least based on later writings and his early readings in Bolingbroke, it seems unlikely that he himself was worried about emphasizing a more personal view of God, although he definitely emphasizes God language much more than for example James Wilson, who never mentions God in his essay.

Or perhaps, what we see here is simply the inconsistencies in the writing of a young man who was not yet matured a fully developed philosophy that ironed out inconsistencies. But while it may be impossible to know for sure why Jefferson seems reticent about using a more classical natural rights argument, we can take an educated guess inferred from his readings as a young man as evidenced in his Commonplace book and Literary Bible. It is arguable that Jefferson may not have completely bought into the idea that government was founded on social compact and

general rights of nature. Indeed, it is interesting that Jefferson on several occasions talks about rights from “human nature” rather than “from nature.”

One example of this is his statement on slavery which anticipates a section he later drafted in the Declaration of Independence that was deleted before publication.

Yet our repeated attempts to effect this by prohibitions, and by imposing duties which might amount to a prohibition, have been hitherto defeated by his majesty's negative: Thus preferring the immediate advantages of a few African corsairs to the lasting interests of the American states, and to the rights of human nature, deeply wounded by this infamous practice.¹³⁰

“Rights of human nature” might be a different way of saying “natural rights”, although it may signal something else. Rights of “human nature” lends itself to an interpretation like that James Otis’ where liberty is anchored in the nature of human beings as created by God. Recall Otis’ argument that people entered into society as soon as they were created. Jefferson may be alluding to a similar notion, that rights are embedded in human nature, and not derived from the discernment of Reason. Indeed, we know that Jefferson was intimately familiar with philosophers such as Henry Home (Lord Kames) who argued that moral sense was part of human nature and a direct feeling without reflection.¹³¹

Another example of Jefferson’s tendency to both use and avoid “natural rights language” appears in his summary of why the American colonists could not accept their subjugation to British parliament:

One free and independent legislature hereby takes upon itself to suspend the powers of another, free and independent as itself; thus exhibiting a phenomenon unknown in nature, the creator and creature of it’s own power. Not only the *principles of common sense, but the common feelings of human nature*, must be surrendered up before his majesty's subjects here can be persuaded to believe that they hold their political existence at the will of a British parliament. Shall these governments be dissolved, their property annihilated, and their people reduced to a state of nature, at the imperious breath of a body of men, whom they never saw, in whom they never confided, and over whom they have no powers of punishment or removal, let their crimes against the American public be ever so great? [emphasis added]¹³²

Here is a statement that is both Lockean and not Lockean at the same time. In very Lockean language he writes that if Parliament suspends the powers of the American legislatures, the states are reverting to a state of nature. This is the only time in this essay he uses the term state of nature, in what is a classically Lockean way to mean a state outside of political entities and rule of law. By contrast, in very non-Lockean language he describes that for the colonies to believe they are subject to Parliament’s power would require them to suspend “not only the principles of common sense, but the common feelings of human nature...” No allusion here to reason or natural rights and the allusion to common feelings may allude to the intuitionist ethics and belief in a special moral faculty accepted by Shaftesbury and Hutcheson, with whom Jefferson may have been acquainted.¹³³

Then in another statement that ostensibly states a natural rights theory that locates sovereignty in the people, Jefferson still avoids natural rights language.

From the nature of things, every society must at all times possess within itself the sovereign powers of legislation. The *feelings of human nature revolt against the supposition* of a state so situated as that it may not in any emergency provide against dangers which perhaps threaten immediate ruin. While those bodies are in existence to whom the people have delegated the powers of legislation, they alone possess and may exercise those powers...[emphasis added]¹³⁴

Here Jefferson refers to “the nature of things” not natural rights and again to “feelings of human nature,” in a context that would naturally lend itself to a reference to rights derived from nature. The reference to “feelings of human nature” again suggests an attempt to find a basis for the moral sense in some natural intuitionist perception that seems different than reflection through Reason.¹³⁵ Whether this was because he was influenced by the Scottish Enlightenment figures, as Wills contends, or his reading in earlier classics, does not really matter. Perhaps it was both. The point is that though one can read a classic natural rights argument back into this essay of Jefferson, there are significant signs that he did not fully embrace or at least emphasize all aspects of classic natural rights theory.

Jefferson’s essay then is seemingly a blend of natural rights, Whig historical arguments, with possible allusions to an intuitionist moral sense, in which pieces are not so neatly separable or completely harmonized. It hardly makes sense to say that Jefferson is a Lockean without qualification. He is both a Lockean and not a Lockean at the same time. Or rather he is a “bricoleur”, to borrow a term of Claude Levi-Strauss. He is taking parts of several different theories, combining them together, but not leaning wholly on one or the other. He refers to natural rights, but emphasizes the right to quit society in a way that departs dramatically from Locke and uses this to provide a philosophical grounding for a historical argument about Saxon liberties that made their way to this country. He nowhere alludes to “life, liberty and property” together or a general natural compact but instead puts emphasis with on common feelings of human nature. Conrad captures this ambiguity in his reading of *A Summary View*. As he puts it, Jefferson has a “multiple, complex visions-of rights.” “It also shows that Jefferson’s ideas about rights defy simple characterization; they cannot be aligned with any single ‘tradition’ whatsoever.”¹³⁶

It is very possible that Jefferson was not entirely conscious of all these various inconsistencies or tensions in his writing. After all, this was the first major writing foray of a young man who had not yet developed or worked out a fully consistent outlook or philosophy.¹³⁷ And in general Jefferson was not a systematic philosophical thinker.¹³⁸ So the inconsistencies may reflect both his youth as well as the fact that he was not ultimately a systematic philosophical thinker. If so, then trying to find a coherent theory of rights might be to impose a framework on this document that did not exist. The pamphlet thus combines many different strands of American pre-revolutionary discourse, not rigorously explaining their relationship to each other, or fully working out a coherent philosophical position. Other writers, such as Wilson, Adams, were doing the same thing but with different emphases.

By way of summary, it is interesting to look at Jefferson’s own reflections on *Summary View* later in life. For it is clear that in his memory at least the heart of *Summary View* was an argument for “expatriation” and a theory of colonization.

Being elected for my own country, I prepared a draught of instructions to be given to the delegates whom we should send to the Congress, which I meant to propose at our meeting. In this I took the ground that, from the beginning, I *had thought the only one orthodox or tenable, which was, that the relation between Gr. Br. and these colonies was exactly the same as that of England & Scotland, after the accession of James, & until the union, and the same as her present relations with Hanover, having the same Executive chief, but no other necessary political connection; and that our emigration from England to this country gave her no more rights over us, than the emigrations of the Danes and Saxons gave to the present authorities of the mother country over England.* In this doctrine, however, I had never been able to get any one to agree with me but Mr. Wythe. He concurred in it from the first dawn of the question What was the political relation between us & England? Our other patriots, Randolph, the Lees, Nicholas, Pendleton, stopped at the half-way house of John Dickinson, who admitted that England had a right to regulate our commerce, and to lay duties on it for the purposes of regulation, but not of raising revenue. But for this ground there was no foundation in compact, in any acknowledged principles of colonization, nor in reason: expatriation being a natural right, and acted on as such, by all nations, in all ages. I set out for Williamsburg some days before that appointed for our meeting, but was taken ill of a dysentery on the road, and was unable to proceed. [emphasis added] ¹³⁹

There are two interesting points to be made about this later Jefferson memory. First, Jefferson claims it was his view of expatriation that the other patriots differed with him on. He does not say the essay was about “justice” or about “natural rights.” His own summary of the *Summary View* dovetails well with our analysis of it, for it remembers “expatriation” as the key point of his essay.

In retrospect, Jefferson’s second statement about why the other patriots rejected his argument does not seem like the full story. He suggests that his essay was too radical for many of his colleagues who “stopped at the half-way house of John Dickinson”, who admitted that England had a right to regulate our commerce, and to lay duties on it for the purposes of regulation, but not of raising revenue.” For this reason, many commentators interpret Jefferson’s essay as “ahead of its time.” But here Jefferson may be overstating his case. We know that other patriots such as James Wilson also questioned the right to regulate commerce but arrived there from a more direct and classical natural rights argument. And as we shall see in the next part of this essay, the Continental Congress though split on the issue of trade, did end up with a position not altogether different than Jefferson’s, although it rejected his philosophical assumptions. It is arguable that Jefferson’s view was at least partly ignored, not just because it was more radical than others, but because he wanted to place the whole argument on the right to quit society rather than on other foundations. As we shall see in the next part of this essay, in the debates during the First Continental Congress, there was debate about which theory of rights to use. And the committee on rights considered whether to base the argument on the right to quit society and rejected that option.

In sum, we have seen thus far that there are at least four different positions with respect to natural rights arguments in the years beyond the Stamp Act

Congress. First, there are some writers who avoid natural rights arguments for the most part, such as John Dickinson in his *Farmers Letters*. But some writers do move natural rights arguments to a central place in their argument. Among these writers there are several different ways in which natural rights arguments are used. The first is to use what amounts to a classical natural rights arguments that grounds claims in rights of life, liberty and property and in classical natural rights language. The argument of James Wilson and Samuel Adams both fall into this category. Both argue that natural rights place limits on Parliament's authority and thus justify and buttress the colonies continued insistence they can only be taxed with representation. In this scenario, the colonies brought rights with them as British subjects and natural rights protect and reinforce those rights. The second strand represented in the writings of Bland and Jefferson argues that there is natural right to quit society and upon this right the independence of the colonies can be founded. Thus the colonies did not bring rights with them but created their own social charters and modeled those after British rights. They therefore chose to enter into relationship with Great Britain. Since that was a choice or real compact there are limits on Parliament's authority, although Bland does not go as far as either Wilson or Jefferson in arguing that commerce is not subject to Parliament's authority.

This part of our discussion has taken us up to the eve of the First Continental Congress in 1774. As we shall now see in Part III of this essay disagreements and ambivalence natural rights usage continue in the First and Second Continental Congress within two years of the Declaration's production.

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¹ Becker, *Declaration*, 96-97.

² Morgan, *Stamp Act*, 87.

³ Morgan, *Prologue*, 46-49 and for an excellent analysis of Patrick Henry's original resolves and the charge of treason, see Morgan, *Stamp Act*, 95-106. There are two or three other resolves that may have been proposed by Patrick Henry that did not get approved by the House of Burgess, one of which may have been the basis for the accusation that he was speaking treason. But none of these includes a claim from natural rights. See Morgan, *Stamp Act*, 95-98. There was a fifth resolve that was apparently expunged from the records that was found in Patrick Henry's papers that may have contained the expunged resolution:

Resolved Therefore that the General Assembly of this Colony have the only and sole exclusive right and Power to lay Taxes and Impositions upon the Inhabitants of this Colony and that every Attempt to vest such Power in any other Person or Persons whatsoever other than the General Assembly aforesaid has a manifest Tendency to destroy British as well as American Freedom.

⁴ See Morgan, *Prologue*, 48. Online resource: [Virginia Resolves](#).

⁵ See Morgan, *Prologue*, 50- 54 for the Rhode Island and Maryland resolves.

⁶ Morgan, *Stamp Act*, 109.

⁷ See Morgan, *Prologue*, 62-63. Online resource: [Stamp Act Congress Resolves](#).

⁸ Morgan, *Stamp Act*, xxx

⁹ Morgan, *Stamp Act*, 113.

¹⁰ Morgan, *Stamp Act*, 113-114.

¹¹ Morgan, *Stamp Act*, 118 notes this as well.

¹² Morgan, *Prologue*, 51-52. For an online resource [Pennsylvania Resolves](#).

¹³ For the Massachusetts Resolves, see Morgan, *Prologue*, 56-59. Online resource: [Massachusetts Stamp Act Resolves](#).

¹⁴ Williams, "Election Sermon", 7 and Hyneman and Lutz, *American Political Writing*.

¹⁵ Use of the expression "God and nature" appears in Locke II 60 (here a quote from Filmer), 66, 142, 168 and 195. The expression "law of nature" appears much more frequently (approximately 55 times) throughout the *Second Treatise*.

¹⁶ Cushing, *Writings of Samuel Adams*, Vol 1.

¹⁷ Cushing, *Writings*, 11.

¹⁸ Cushing, *Writings*, 11.

¹⁹ Cushing, *Writings*, 12.

²⁰ Cushing, *Writings*, 15, 23. These answers has been ascribed to Samuel Adams by Hutchinson, Bancroft and Wells and to John Adams by James Otis.

²¹ Cushing, *Writings*, 18.

²² Cushing, *Writings*, 19.

²³ Cushing, *Writings*, 20.

²⁴ Cushing, *Writings*, 26-27.

²⁵ Cushing, *Writings*, 27.

²⁶ Cushing, *Writings*, 41.

²⁷ Cushing, *Writings*, 41.

²⁸ Cushing, *Writings*, 42.

²⁹ Cushing, *Writings*, 50.

³⁰ Jensen, *Tracts*, xxxiii, also notes that the Connecticut resolutions had boldly asserted the right of revolution. He notes that "Stephen Hopkins in 1764 had fumbled with the idea that each colony was a separate part of the king's dominion."

³¹ See Morgan, *Prologue*, 54. [View online.](#)

³² Meier, *Resistance to Revolution*, 81-85 indicates that the formal organization of a "Sons of Liberty" resistance occurred in December 1765.

³³ See Morgan, *Prologue*, 114-117 for these published statements. No mention is made of natural rights in the Connecticut statement on Jan 13 1766, and in that of the New York Sons of Liberty on Jan. 11, 1766. The New Jersey Sons of Liberty statement on Feb. 25, 1766 refers to our "indubitable rights". The Sons of Liberty of Connecticut and New York published a joint agreement. They declare allegiance to King George III "and with the greatest cheerfulness they submit to his government, according to the known and just principles of the British Constitution, which they conceive to be founded on the eternal and immutable principles of justice and equity, and that every attempt to violate or wrest it, or any part of it, from them, under whatever pretence, colour or authority, is an heinous sin against God, and the most daring contempt of the people, from whom (under God) all just government springs.

³⁴ Morgan, *Prologue*, 119.

³⁵ See Pitt's Speech on the Stamp Act on January 14, 1766 in Kallisch and MacLeish, "American Revolution Through British Eyes", 10.

³⁶ Background on Bland can be found in Jensen, *Tracts*, xxxiv-xxxvi.

³⁷ See Jensen, *Tracts*, 108 -126. On Bland's background, see Jensen xxxiv-xxvi. A version of Jensen's book is available [online.](#)

³⁸ Jensen, *Tracts*, 112. Bland's footnote "2" refers to "Vattel's Law of Nature. Locke on Civil Govern. And Wollaston's Rel. of Nature."

³⁹ Jensen, *Tracts*, 112 - 113. Bland cites Wollaston in a footnote as a source of this view, though Locke says something quite similar about a child taking on the laws of a country when the child inherits the property from his father. See Locke II 73 and 120.

⁴⁰ Jefferson’s reflection on Bland is cited in Jensen, *Tracts*, xxxv and Ford, *The Works*, IX 474.

⁴¹ Locke, *Second Treatise*, II 6, 73 Laslett, *Locke*, 315, 116.

⁴² Locke, *Second Treatise* II 117, Laslett, *Locke*, 347.

⁴³ Locke, *Second Treatise* II 121, Laslett, *Locke*, p. 349. As we will see later, the question of whether the lands of North America were “free or unpossessed” does become an issue as the colonists and their Great British critics debate whether the Americas were discovered or conquered and what implication those facts have on the establishment of American rights. See Schwartz, *Natural Rights*, Part IV.

⁴⁴ Locke discusses tacit and explicit consent in *Second Treatise* II 121 and 119 (Laslett, *Locke*, 349). Locke distinguishes those who give explicit consent to membership from those who give tacit consent. If you give tacit consent, by acquiring property in a country or inheriting property from one’s father, then you have tacitly agreed to live by the laws of that political entity. But once you give up that enjoyment, you can quit and move on. It is only by explicit consent according to Locke that one becomes a subject or member of the commonwealth. But once you become a member, you cannot leave.

⁴⁵ Locke, *Second Treatise* II 211-243 discusses reasons for dissolution of a government.

⁴⁶ For a review of this issue in Locke, see Schwartz, “Liberty Is Not Freedom”.

⁴⁷ We have seen and will see other examples of such sentiments in this essay in the writing of Wilson, Jefferson, and Shute. See also Schlesinger, “Pursuit of Happiness”, for other examples. Schlesinger, however, misses the fact that the idea that government is for the happiness of society is different than individuals having a natural right to happiness.

⁴⁸ Locke, *Second Treatise*, II 123, 131

⁴⁹ Jensen, *Tracts*, 113.

⁵⁰ On Locke’s use of tacit consent, see Locke, *Second Treatise*, II 119, 73.

⁵¹ Jensen, *Tracts*, 114.

⁵² Jensen, *Tracts*, 116-117

⁵³ For a useful discussion of this notion of a federated empire see Adams, *Political Ideas*.

⁵⁴ Wilson argues that the colonies were not conquered territories. Jefferson, by contrast, argues they conquered territory.

⁵⁵ This is probably what Jefferson meant when he wrote that Bland did not follow out the logic of his conclusion.

⁵⁶ Bland, “An Inquiry”, in Jensen, *Tracts*, 118.

⁵⁷ Bland, “An Inquiry”, in Jensen, *Tracts*, 121.

⁵⁸ Bland, “An Inquiry”, in Jensen, *Tracts*, 122.

⁵⁹ Bland, “An Inquiry”, in Jensen, *Tracts*, 122. Bland here makes a distinction between natural rights and civil rights, arguing that if natural rights are violated people have a right to rebel but if civil rights are violated, the people should first complain and try to rectify the situation through peaceable means.

⁶⁰ Silas Downer, James Wilson, and Thomas Jefferson, in later articulating a similar image of the colonies as independent states will go further and use the same theory to argue that Parliament also lacks authority to regulate trade. But Jefferson and Wilson get there by different routes as we shall see. See also my discussion in Part III of this essay on trade during the First Continental Congress.

⁶¹ Jensen, Becker and Morgan tend to reify the notion of "natural rights" as one argument, rather than seeing the various different strands and varieties of natural rights arguments. Some of the strands are more Lockean than others, and some are more religious than others.

⁶² Lewis, "Summary View," 39, makes a similar distinction distinguishing the Adams Wilson view, which held that the colonists had never been released from the King's rule from the Bland/ Jefferson view that they had quit society. But Lewis then mistakenly claims that Bland/Jefferson's view was a "more direct appeal to the ultimate source of sovereignty—natural law." (40). Wilson and Adam's views in my reading are more classically Lockean in character than the Bland/Jefferson view.

⁶³ Dickinson, "Letters", in Jensen, *Tracts*, 127-163. [Online resource](#). See Letter II, Jensen, *Tracts*, 138. The second quote is from Letter VII, not published in Jensen's edition.

⁶⁴ See Letter II, Jensen, *Tracts*, 133.

⁶⁵ I disagree with Becker, *Declaration*, 96-97, who cites Dickinson's statement here as the foundation for the idea that Americans and British were two different peoples. I read Dickinson as making exactly the opposite argument, arguing that the colonies are parts of a whole and subject to British sovereignty for commerce. Jensen, *Tracts*, xli, comes to the same reading of Dickinson here.

⁶⁶ Letter IV. Jensen, *Tracts*, 140.

⁶⁷ End of Letter VII.

⁶⁸ Letter IX. Jensen, *Tracts*, 147.

⁶⁹ Letter IX. Jensen, *Tracts*, 154-155.

⁷⁰ Letter IV. Jensen, *Tracts*, 141

⁷¹ Letter V. Not quoted in Jensen. See [online resource](#).

⁷² This is a theme that reappears in Dickinson's later rewrite of Jefferson's *Declaration of the Causes and Necessity of War*, examined below.

⁷³ Letter III. Not quoted in Jensen. See [online resource](#). The quote is from the New Testament, Galatians 5:1.

⁷⁴ Letter III. Not quoted in Jensen. See [online resource](#).

⁷⁵ This essay was found in Adam's own hand writing. Jensen, *Tracts*, 234. See [online resource](#).

⁷⁶ Jensen, *Tracts*, 234-255.

⁷⁷ Samuel Adams, "A State of the Rights of the Colonies," in Jensen, *Tracts*, 235. See [online resource](#).

⁷⁸ Jensen, *Tracts*, 238.

⁷⁹ Jensen, *Tracts*, 239.

⁸⁰Jensen, *Tracts*, 239. Adams cites Locke here as the source of this view.

⁸¹See [Online versions](#).

⁸² In Wilson’s text, footnote 3 appears here in which Wilson quotes Burlamanqi. The footnote reads “The right of sovereignty is that of commanding finally—but in order to procure real felicity; for if this end is not obtained, sovereignty ceases to be a legitimate authority. 2. Burl. 32, 33.”

⁸³ Jensen, *Tracts*, 239. Locke includes security of the society as only one reason for consenting to government but he also includes other reasons.

⁸⁴ Ganter “Pursuit of Happiness,” 12 reviewing Chinard’s work provides an excellent summary of how Wilson’s reliance on Bulamanqi was ignored by Carl Becker in *Declaration of Independence*, when he implied that Jefferson read Wilson and both were relying on Locke. As noted earlier, there were multiple various summaries of Locke’s that the colonists read in addition to Locke himself. And therefore any particular Lockean idea may have had multiple sources. The interesting issue in asking how Lockean were the colonists was not whether they were reading Locke per se, but whether they endorsed Lockean views, to what extent, and if they did how did they use those arguments. A fuller discussion is provided in Schwartz, *Natural Rights*, Part IV.

⁸⁵ Wilson in footnote 4 is referring to Blackstone. “4 The law of nature is superior in obligation to any other. 1. Bl. Com. 41.”

⁸⁶I hope to return to this issue in a subsequent essay as the presence of native Americans in this country calls into question the very justification of American rights when such rights are founded on natural rights theory.

⁸⁷ Jensen, for example, does not include any political sermons for example in his collection.

⁸⁸ Sandoz, “*Political Sermons*,” 4-5.

⁸⁹ Shute, “Election Sermon,” in Hyneman and Lutz, *American Political Writing*, 117-8

⁹⁰ Shute, “Election Sermon,” 110.

⁹¹ Shute, “Election Sermon,” 110.

⁹² Shute, “Election Sermon,” 116.

⁹³ Shute, “Election Sermon,” 116.

⁹⁴ Shute, “Election Sermon,” 119.

⁹⁵ For a similar conclusion, see Lewis “Summary View”, 72.

⁹⁶ I disagree with those writers who think Jefferson’s *Summary View* articulates a classic natural rights philosophy. See, for example, Malone, *Jefferson*, v. I, 184, Ward, *Politics of Liberty*, 352. Others have come to the same conclusion as I have. See Lewis, *Liberty*, 352, Peterson, *Thomas Jefferson*, 73-74, and Chinard, *Jefferson*, 47-51. Chinard perhaps says it most explicitly: Speaking about Jefferson’s own reflection on Summary View and the centrality of expatriation, Chinard writes, “Jefferson had reached that conclusion, not from following a certain line of abstract reasoning, but after studying the history of the Green colonies in Stanyan, and the history of the Saxon settlement of Great Britain in many authors, as may be

seen in his 'Commonplace Book', and as he was soon to reaffirm the doctrine of expatriation as the fundamental principle on which rested all the claims of the American colonies." Lewis, "Summary View," also sees quitting society as central to Jefferson and provides a good summary. But I disagree with Lewis in seeing *A Summary View* essay making an affirmation of individual rights and in articulating a theory of a balance of powers, thus anticipating the later American Constitution.

⁹⁷ Jefferson, "A Summary View" In Boyd, *Papers*, I:121. Or see [Online resource](#).

⁹⁸ See Lewis, "Summary View", 46 who interestingly enough quotes Jefferson as writing "God and 'the laws of nature'", indicating the desire and inclination to read "natural rights" into Jefferson's statements though Jefferson avoided the term here.

⁹⁹ Boyd, *Papers*, 135.

¹⁰⁰ See Locke II: 2, 6. Locke writes that "The state of nature has a law of nature to govern it which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker..."

¹⁰¹ Boyd, *Papers*, 121.

¹⁰² See Petterson, *Thomas Jefferson*, 73, for a similar conclusion. See also my discussion of this issue earlier in the discussion of Richard Bland.

¹⁰³ Quoted in Ford, *Complete Works*, 14. See also Chinard, *Jefferson*, 49-51 who also emphasizes expatriation as the core idea of Jefferson's pamphlet and the idea that Jefferson thought was original.

¹⁰⁴ See Colbourn, *Lamp of Experience*, for an overview of the use of Saxon history in American rights arguments.

¹⁰⁵ Boyd, *Papers*, 121-22

¹⁰⁶ Colbourn, *Lamp of Experience*, outlines the ways in which rights were thought to derive from the Anglo Saxons and how this view was used in colonial writings.

¹⁰⁷ Boyd, *Papers*, 122. I disagree with Lewis, "Summary View" who sees this as a statement of individual rights.

¹⁰⁸ Chinard, *Jefferson*, 49.

¹⁰⁹ Boyd, *Papers*, 122-23.

¹¹⁰ Jefferson could be construed here as standing in the common law tradition and seeing the rights of Americans as inherited from the tradition extending back to Saxon times. See Colburn, *Lamp of Experience*, for an account of this common law view.

¹¹¹ On the view that Britain was corrupting the liberty tradition, see for example, Woods, *Creation*, 28ff.

¹¹² Boyd, *Papers*, I:121

¹¹³ Boyd, *Papers*, I, 129.

¹¹⁴ Boyd, *Papers*, I:134

¹¹⁵ Boyd, *Papers*, I:123.

¹¹⁶ Boyd, *Papers*, I:123.

¹¹⁷ Boyd, *Papers*, I:122.

¹¹⁸ Boyd, *Papers*, I:124.

¹¹⁹ I disagree with Conrad in arguing that the main point of the pamphlet is to make an argument from justice.

¹²⁰ Boyd, *Papers*, 123 and 124.

¹²¹ See Schwartz, “Why Market Liberals.”

¹²² The law of nations was sometimes based on natural rights assuming that the political entities were like individuals and the relations between nations should be like the relations between individuals. See, for example, Vattel’s *Law of Nations*, which was quoted by some colonists such as Bland and others.

¹²³ Boyd, *Papers*, 121.

¹²⁴ See Jefferson’s “Resolutions on the Freeholders of Albermarle Country” dated July 26, 1774 in Boyd, *Papers*, 117 and Conrad who draws attention to the parallels between this statement and *Summary View*.

¹²⁵ Malone, *Jefferson*, v. I, 184.

¹²⁶ See my previous notes (Endnote 96) on this topic

¹²⁷ Boyd, *Papers*, I:123. Later in life, Jefferson does cite Locke as one source of inspiration for his views in the Declaration of Independence (see Boyd, *The Declaration*, 16.). But Jefferson also claimed he looked at no specific source while writing The Declaration. I shall reconsider that subject again in Part IV of this essay. On May 8, 1825, Jefferson wrote to Madison that “Not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject, [in] terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we [were] impelled to take. Neither aiming at originality of principle or sentiment, not yet copies from any particular and previous writing. It was intended to be an expression of the American mind...All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or the elementary books of public right as Aristotle, Cicero, Locke, Sidney, etc.”

¹²⁸ Wills, *Inventing America*, 167-180.

¹²⁹ See Chinard, *Commonplace Book*, 19.

¹³⁰ Boyd, *Papers*, 130.

¹³¹ Koch, *Philosophy of*, 17. See Chinard, *Commonplace Book*, 19.

¹³² Boyd, *Papers*, 126.

¹³³ Koch, *Philosophy*, 15. See also Peterson, *Thomas Jefferson*, 54-55.

¹³⁴ Boyd, *Papers*, 132.

¹³⁵ Koch, *Philosophy*, 17, notes this dimensions of Jefferson's thinking in his early writings and letters. He notes that Jefferson was influenced by Kames who views the moral sense as based on direct feeling without reflection.

¹³⁶Conrad, "Putting Rights Talk", 261 and 255 and Peterson, *Thomas Jefferson*, 45-46 makes this point in general that Jefferson was not a systematic thinker. See also Chinard, *Jefferson*, 31, who makes the same point. For a contrary view, see Koch, *Jefferson*, xi-xiv.

¹³⁷ Contrast this essay with the first essay of Alexander Hamilton, discussed in Schwartz, *Natural Rights*, Part III, for an explicit appeal to natural rights theory that was fully consistent with a classic Lockean view of natural rights.

¹³⁸On the view that Jefferson was not a systematic philosopher, see notes in endnote 136.

¹³⁹ See Ford, *Complete Works*, I:14.