

Liberty in America's Founding Moment

*Doubts About Natural Rights in Jefferson's
Declaration of Independence*

Howard I. Schwartz, Ph.D.

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rights philosophy as much a political myth as the royalist theory that the king is God's steward on earth. We shall see in fact that many colonial writers, including Jefferson, seemed to be aware of Hume's critique of Locke and took it seriously.

In this sense, my argument moves on two parallel levels. I'm trying to draw out some of the colonial writers' doubts about Locke's natural rights and their sensitivity to the critique of natural rights philosophy, even as they embraced much that they liked about natural rights philosophy and its emphasis on consent. At the same time, I am endorsing a view that is much more suspicious of history as a source of truth that can pin down a notion of American rights, or any notion of rights at all. My larger goal, which moves beyond the discrete study here and which I have written about elsewhere, is to contest the notion that liberty has a fixed, determinate meaning independent of the particular public values that a society has and adopts.¹⁵ One cannot anchor Americans' conception of liberty and rights, nor that of any society, ultimately on an abstract notion of liberty and rights that does not still need interpretation and engagement with the values of a given society at a given place in time. History is just one fact, among others, that enters into a discussion of how we want to live our lives collectively under this social contract that we call America.

PART I

The Declaration and Jefferson's Alternative Theory of American Rights

For more religiously oriented individuals, this account of government's origin seemed to downplay God's role in the creation of government, and appeared to ascribe an inappropriate preponderance of responsibility to the human role in the development of government. This bothered some more religiously and theologically minded writers who thought that the emphasis on the human role in government's origin flew in the face of standard covenantal assumptions. An alternative theory of government's origin attributed the creation of government much more explicitly to God. On that theory, at least the way some writers explained it, government was not a matter of social compact. There was no choice about it. It had been ordained as part of creation itself.⁶⁷

By moving the origin of government back into creation, such thinkers risked undermining the very foundations of the natural rights arguments. After all, Locke understood the individual's decision to submit to government to involve a renunciation of some natural liberties. There was a trade-off, relinquishing some of the freedoms in the state of nature for the benefits of social life. Indeed, it was precisely the view of government as founded in creation that had justified royalist writers such as Robert Filmer in his *Patriarcha* and from whom Locke had differentiated his views. Other writers left the choice of government up to individuals but argued that the state outside of government was not "natural liberty," but a "state of sin." The choice between living under political arrangements and living outside of such arrangements was cast in religious-theological terms. Only by joining a state could one act in accordance with God's will.

2. Jefferson's Declarations of Independence

To understand Jefferson's frame of mind when he sat down to write the Declaration, it is helpful to briefly back up to the moment after the Second Continental Congress rejected his draft *Declaration of the Causes* and adopted Dickinson's reworked version. After writing this draft, Jefferson remained at the Second Continental Congress in Philadelphia, working on committees until December 1775, when he returned home. He did not arrive back to the Congress until May 14, 1776. In the intervening months, Thomas Paine has published his *Common Sense* (January 1776), John Adams had published his *Thoughts on Government* (spring 1776), and several colonies had become ready to declare independence.

We know that in the intervening period since he had left the Continental Congress in December 1775, Jefferson had not yet given up his pet theory about the early settlers' rights. In the period back at home, he was again trying once more to support his theory that the ancestors were entitled to found new states. In an essay that was never published, entitled *Refutation of the Argument that the Colonies Were Established at the Expense of the British Nation*, Jefferson this time turns to a detailed historical argument to prove that the colony of Virginia had no obligation to Parliament.¹ He surveys the various charters that the Crown had made with Sir Walter Raleigh and his predecessors, showing how the lands were granted by the Crown to these early settlers.

After surveying the role of Sir Walter Raleigh in founding of Virginia, Jefferson concludes:

This short narration of facts, extracted principally from Hakluyt's voyages, may enable us to judge of the effect which the charter to Sr. Walter Raleigh may have on our own constitution and also on those of other colonies within it's limits, to which it is of equal concernment. It serves also to expose the distress of those ministerial writers, who, in order to prove that the British parliament may of right legislate for the colonies, are driven to the necessity of advancing this palpable untruth that 'the colonies were planted and nursed at the expence of the British nation': an untruth which even majesty itself, descending from it's dignity, has lately been induced to utter from the throne. Kings are much to be pitied, who, misled by weak ministers, and deceived by wicked favourites, run into political errors, which involve their families in ruin: and it might prove some solace to his present majesty, when, fallen from the head of the greatest empire the world has seen, he shall again exhibit in the political system of Europe the original character of a petty king of Britain, could he impute his fall to error alone.²

It appears Jefferson was prompted to write this historical essay in response to the start of Parliament in October 1775, when, in a speech, the king declared that the colonies were in a state of rebellion and that too much was at stake "to give up so many colonies which she has planted with great industry, nursed with great tenderness, encouraged with many commercial advantage, and protected and defended at much expence and treasure."³ Jefferson apparently read the king's speech on January 19, 1776, and likely wrote his response at some point after that time.⁴ In this essay, we find Jefferson providing a historical justification for the argument he had earlier made in *A Summary View* and his draft of the *Declaration of the Causes*. It is a "palpable untruth" that the British nation planted and nurtured the colonies. Therefore there are no grounds for arguing that either Parliament or the Crown had authority over the colonies.

What is new here is Jefferson's criticism of the king for being misled and deceived by "wicked favourite" ministers who deceived him into adopting an erroneous political view. Jefferson argues that the consequences will be devastating for the king. His mistaken judgment will cost the British leader his empire, and he will end up being nothing more than a mere petty king of England. Jefferson is clearly implying and threatening that the American states (and perhaps other British dominions) will no longer recognize the king as their sovereign; the result will be that he will rule over England only and no longer be the recognized king of a larger British empire that included the American colonies. The empire in other words will be reduced to just a single state.

By implication, Jefferson is suggesting that the colonies will no longer have any ties left to Great Britain, a clear vision of independence for the American colonies. In *A Summary View*, Jefferson had already argued that the colonies were independent states that had essentially chosen or selected the king as their elected leader. Now he is anticipating that the colonies would repudiate their elected official. The league of nations would be dissolved. Jefferson still does not say here how he envisions putting an end to the relationship with an elected king. But by the time he sat down to write the Declaration of Independence, he had given the question some thought and come up with an answer. The answer is contained in a draft constitution Jefferson wrote for the state of Virginia shortly before he had actually drafted the Declaration of Independence. This document, which was reworked and incorporated into the Declaration of Independence, arguably constitutes Jefferson's original Declaration of Independence and more authentically reflects Jefferson's own views than the Declaration he drafted for Congress, as we shall now see.

Jefferson's Original Declaration of Independence

In June 1776, only weeks before he wrote the Declaration of Independence, Jefferson had written several drafts of a constitution for the state of Virginia. Jefferson's home "state" was in the process of responding to the Congress's call on the colonies to produce their own constitutions. On May 10, four days before Jefferson arrived back in Philadelphia, Congress

had approved a resolution recommending that the colonies assume all powers of government.

Resolved, That it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs have been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.⁵

The resolve essentially recognized the end of all local British authority and that local colonial assemblies now had the authority to establish governments that would “best conduce to the happiness and safety of their constituents.”⁶ On May 15, Congress, in a divided vote, approved a preamble written by John Adams as an introduction to the May 10 resolution. The preamble was more radical than the resolution, making it explicit that “his Britannic Majesty, in conjunction with the lords and commons of Great Britain, has, by a late act of Parliament, excluded the inhabitants of these United Colonies from the protection of his crown” and that, therefore:

[I]t is necessary that the exercise of every kind of authority under the said crown should be totally suppressed, and all the powers of government exerted, under the authority of the people of the colonies, for the preservation of internal peace, virtue, and good order, as well as for the defence of their lives, liberties, and properties, against the hostile invasions and cruel depredations of their enemies; therefore, resolved, &c.

In essence, Adams's preamble is announcing the end of the colonies' allegiance to the Crown, which according to Congress was the only remaining tie left to Great Britain. Adams recognized Congress's approval of his preamble as an endorsement of independence.⁷ That same day, May 15, Virginia adopted its resolution calling on Congress to declare the colonies free and independent states.

Jefferson arrived back in Congress on May 15, one day before both the Virginia resolution and approval of John Adams's preamble. It must have been before or shortly after that date that Jefferson began writing his drafts of the Virginia Constitution, for several drafts were written by June 13, when he sent a copy with George Wythe, who was going back to Virginia.⁸ Based on letters Jefferson wrote at the time, it is clear that he actually thought the activity of drafting a Virginia Constitution more important than the activity taking place in Philadelphia at Congress, and he expressed the wish to be recalled. But since he had only recently arrived at Congress, his home colony did not recall him. The result was that Jefferson's drafts of the Virginia Constitution arrived back in Virginia after the shape of the Constitution had been decided, but the committee did alter some of the laws in light of Jefferson's own draft.⁹ Jefferson's preamble listing all the various infractions of King George III was incorporated into the Virginia Constitution.

With some revisions, Jefferson's draft of the Virginia Constitution became the basis for the list of charges against King George that appears in Jefferson's first draft of the Declaration of Independence as well.¹⁰ Jefferson took one of his earlier Virginia drafts and made some improvements in style, thus reworking it into one part of the Declaration of Independence. Thus the draft of the Virginia Constitution is an early draft of one part of the Declaration of Independence. But it is more than just that. It arguably actually is Jefferson's original Declaration of Independence. By this I mean that this document, standing on its own, represents Jefferson's first and original Declaration of Independence. For Jefferson understood the Virginia draft Constitution as a document declaring independence for the state of Virginia.¹¹ He was writing this document, moreover, as an individual and not part of a committee, as he would when drafting the Declaration of Independence for Congress.

Jefferson's first draft of the Virginia Constitution thus provides a window into Jefferson's own political philosophy and conception of independence on the eve of writing the Declaration of Independence. It is illuminating to see which assumptions from the Virginia Declaration made it into the Declaration of Independence and which assumptions did not.

While the Virginia Declaration is consistent with Jefferson's own theory of rights, this is not the case with the Declaration of Independence, at least after the revisions by the Committee of Five and Congress as whole. Understanding that Jefferson had to promote a position on rights that he did not fully approve provides a new context by which to understand some of the wording he chose and some of the interesting changes he arguably made to the classic formulation of natural rights language.¹²

No Natural Rights in Jefferson's Original Declaration of Independence

One of the most obvious and important differences between the draft constitution for Virginia and the Declaration Jefferson would shortly write for Congress is the noticeable absence of any natural rights preamble or language. The significance of this difference seems to have been missed by most commentators who have focused instead on how charges against the king were revised and reused in the congressional Declaration of Independence.¹³ But the absence of any natural rights statement in Jefferson's first draft of the Virginia Constitution is illuminating. Perhaps Jefferson may have known that George Mason was already at work on such a statement of rights, and perhaps Jefferson had seen it.¹⁴ But there may be another reason Jefferson did not preface his constitution with a statement of rights. In Jefferson's political philosophy, no statement of rights was really needed, since the colonies never were under the sovereignty of Parliament from the very beginning. There was, therefore, no reason for Jefferson to invoke natural rights to justify the colonies' legislative independence. In Jefferson's philosophy, Virginia was legislatively free already because of the original immigration and "right to quit society." Jefferson's view contrasted with most of his colleagues, who understood the new Virginian Constitution to represent a rejection of Parliament's legislative authority. For Jefferson there was no reason to appeal to rights to justify legislative independence. The only tie remaining was between the colonies and the Crown whom the colonies had voluntarily adopted as their "chief officer." The problem of independence as Jefferson framed it was how to remove an elected executive, not a usurping legislature. In looking for a model for that process, Jefferson arguably turned to the Eng-

lish Bill of Rights of 1689, which formally ended the reign of James II. And that Bill of Rights may have depended on the tradition of ancient Anglo-Saxon principles more than on any philosophy of natural rights.¹⁵

The focus of Jefferson's Virginia Declaration, therefore, is almost exclusively on the king's misdeeds, consistent with Jefferson's view that the relationship with the Crown was the only remaining connection to the British Empire. Jefferson charges that the king, who was "entrusted with the exercise of the kingly office in this government, hath endeavored to pervert the same into a detestable and insupportable tyranny...." As evidence of this intention, Jefferson cites sixteen violations of his office, such as: vetoing laws of the legislature that were for the common good, stalling the wheels of government, dissolving legislative assemblies, making naturalization of foreigners difficult, keeping standing armies in a time of war, cutting off American trade to the rest of the world, imposing taxes without consent, depriving the right to trial by jury, abandoning the helm of government, and declaring "us" out of his allegiance and protection. Jefferson then provides the theoretical framework for deposing the elected king :

[B]y which several acts of misrule the sd. George Guelf has forfeited the kingly office, and has rendered it necessary for the preservation of the people that he should be immediately deposed from the same, and divested of all its privileges, powers, & prerogatives

And forasmuch as the public liberty may be more certainly secured by abolishing an office which all experience hath shewn to be inveterately inimical thereto and it will thereupon become further necessary to re-establish such ancient principles as are friendly to the rights of the people and to declare certain others which may co-operate with and fortify the same in future....

And then in the second draft of the Virginia Constitution, Jefferson begins with this shortened introduction, which then appears with a slight revision in the third draft as well.

Be it therefore enacted by the authority of the people that the said, George the third, King of Great Britain...and elector of Hanover be & he is hereby ... deposed from the kingly office... within ys. government. & absolutely divested of all it's rights & powers, & that he and his descendants and all persons claimg. by or through him & all other persons whatsoever shall be & for ever remain incapable of the same; & that the sd. office shall henceforth cease & be never more erected within this colony.¹⁶

Jefferson here fills out the theoretical position left unclear earlier in his *A Summary View*, explaining how an elected king can forfeit his office by turning it into a tyranny and abusing the prerogatives the people had given him. When this happens, he forfeits his office and the people therefore should depose him. But Jefferson goes further and argues that the very institution of monarchy should cease within the colony. Thomas Paine had already made an eloquent argument to the same effect in his *Common Sense*, and here Jefferson follows in the same path and recognizes monarchy is "inimical to" the public liberty.

It is possible to interpret Jefferson's argument about the king as a natural rights argument. We shall consider this issue in more detail below in our discussion of his *A Summary View*. But consistent with his view in *A Summary View*, Jefferson here appeals not to natural rights in general, but to "ancient principles." Jefferson thus appeals once again to the common law tradition reaching back to the Anglo-Saxons. The settlers came to and conquered new lands, set up new political entities, and chose to adopt the British Constitution and the ancient principles of rights inherited from the Anglo-Saxons. They are preserving the tradition of liberty that reached back to the Saxon ancestors. In Jefferson's Virginia Declaration of Independence there is no preamble appealing to natural rights in general, for in Jefferson's conception of independence, the American states had already established legislative independence from Parliament through the right to quit society. Now, like Parliament before them, they were simply removing the king whom they had originally elected and

who had abused his trust. Only in this case, the intent is never to accept a future monarch as an officer over the state of Virginia.

Drafting the Declaration of Independence

Having now looked at Jefferson's Virginia Declaration of Independence, we can turn back to the congressional Declaration of Independence and drafting of that document. The story of the official Declaration of Independence has been told by many other writers in some detail and does not need to be rehearsed in detail here. Briefly, on June 7, 1776, Richard Henry Lee of Virginia introduced a resolution in the Continental Congress proposing a Declaration of independence.

Resolved, That these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved.

That it is expedient forthwith to take the most effectual measures for forming foreign Alliances. That a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation.¹⁷

On June 10, 1776, Congress decided to delay the vote on independence until July 1, with the hope of achieving a greater consensus from the colonies. On June 11, 1776, Congress appointed a committee "in the meantime" to draft a declaration so "that no time be lost, in case the Congress agree thereto" on the next vote. The committee of five was comprised of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston; Jefferson was selected, for various reasons, to write the first draft.¹⁸ By June 28, the first draft from the Committee of Five was ready and ordered to lie on table for review. This draft already contained some revisions made by Jefferson himself and some recommended by Adams and Franklin.

Based on the preceding discussion, we are now in a position to see that the official, published Declaration of Independence did not represent the way that Jefferson himself thought about independence. Had he had his druthers, he might never have put in the classic statements about natural rights for which the Declaration and Jefferson are so famous. On three other occasions he had passed over the opportunity to insert explicit statements of natural rights in his writing, first in his *A Summary View*, again in his *Declaration of the Causes*, and then again in his original Virginia Declaration of Independence. It is reasonable to conclude that Jefferson himself would have happily published a Declaration of Independence with no such statement of rights (as in fact he did in his Virginia Declaration). On his view, a statement of natural rights simply was not needed, and he may have had doubts about natural rights theory anyway, as discussed earlier. What was needed was simply a way to depose the king, the elected official.

But Jefferson had on each of these earlier occasions seen his peers reject his view of rights. The First Congress rejected his view of rights in its Declaration of Rights, which it published in early 1774. Then, about a year before he wrote the Declaration of Independence, Jefferson watched his own draft of the *Declaration of the Causes* be rewritten by John Dickinson. In that rewrite, Dickinson inserted a statement of natural rights before Jefferson's own statement of the ancestor's rights essentially obliterating and reinterpreting Jefferson's own theory.

It is not surprising, then, that Jefferson would try a different tact on his third attempt to draft a document that would be acceptable to his colleagues in the Congress. This time he had learned his lesson. And indeed there was no time to waste since this declaration had to be drafted and approved in haste. Indeed, there is some likelihood that the Committee of Five itself gave Jefferson some instructions about what to say and would likely have instructed him to include a statement of rights, given that two of the members were John Adams and Benjamin Franklin.¹⁹ But even had they not done so, Jefferson by this time knew that his own theory would not pass muster. Jefferson may already have seen the Virginia Bill of Rights by George Mason on June 6 in a Pennsylvania

newspaper.²⁰ Some have argued that in fact George Mason's language influenced Jefferson, as perhaps it did. But the important point about that influence is often missed. Jefferson would never have added such language to the Declaration of Independence on his own initiative. Wherever he got such language, whether he had Mason's or Wilson's language in mind, or whether he drafted the language from his own muse or remembered language from Locke, he would only have put such language in the Declaration because he was adopting a model of declaration with which he did not fully agree. On this interpretation, what we have is a young man charged with writing a Declaration that did not represent his own political views.

If this line of interpretation is correct, might we not find some linguistic evidence of Jefferson's continued ambivalence towards the classical theory of rights now embodied in the Declaration? Indeed, Jefferson did in fact try "to smuggle" his own theory into his draft of the Declaration.²¹ But the very core of Jefferson's theory was deleted by Congress in its review of the document. Here is Jefferson's original passage with the words deleted by Congress marked by square brackets and underscored while the words Congress added are marked in bold.

Nor we have been wanting in attentions to our British brethren. we have warned them for time to time of attempts by their legislature to extend a jurisdiction over [these our states] **us.** we have reminded them of the circumstances of our emigration & settlement here. [, no one of which could warrant so strange a pretention: that these were effected at the expence of our own blood and treasure, unassisted by the wealth or the strength of Great Britain: that in constituting indeed our several forms of government, we had adopted one common king, thereby laying a foundation for perpetual league & amity with them: but that submission to their parliament was no part of our constitution, nor ever in idea, if history may be credited: and] we **have** appealed to their native justice & magnanimity, [as well as to] **and we have conjured them** by the ties of our common kindred to

disavow these usurpations which were likely to interrupt our correspondence and connection. They too have been deaf to {our} the voice of justice & of consanguinity, [~~& when occasions have been given them, by the regular course of their laws, of removing from their councils the disturbers of our harmony, they have by their free election re-established them in power, at this very time too they are permitting their chief magistrate to send over not only soldiers of our common blood. These facts have given the last stab to agonizing affection, and manly spirit bids us to renounce for ever these unfeeling brethren.~~] We must {endeavor to forget our former love for them, and to}, **therefore, acquiesce in the necessity, which denounces our Separation, and** hold them as we hold the rest of mankind, enemies in war, in peace friends.²²

Even in this paragraph, buried well towards the end of the Declaration, Jefferson was unable to get his theory by Congress on this his third attempt. Congress deleted the very sections dealing with the settlers constituting several forms of government and adopting one king. One can now understand part of the reason why Jefferson found the editing process by Congress so painful and regarded the changes as “mutilations,” as he reported.²³ Indeed, this likely explains why Jefferson forwarded copies of the original with the changes underscored, but not struck out, to colleagues shortly after the adoption. Jefferson in fact wrote that “the sentiments of men are known not only by what they receive, but what they reject also.”²⁴ The changes in the Declaration were, from one perspective, not really that extensive, at least for anyone who has gone through a strong editing process before. And many commentators praise the changes of Congress as improving the document.²⁵ But from the point of view of Jefferson's own commitments, they were “mutilations” and, once again, obliterated his own understanding of rights. With the removal of this paragraph, Jefferson's pet theory of rights was nearly obliterated from the Declaration.

Commentators such as Becker and Boyd both miss the significance of this deletion. Becker writes, “In cutting out the greater part of the

next to last paragraph, Congress omitted, among other things, the sentence in which Jefferson formulated, not directly indeed but by allusion, that theory of the constitutional relation of the colonies to Great Britain which is elsewhere taken for granted.”²⁶ Becker assumes that after this deletion occurred, Jefferson's constitutional theory remained intact and “is elsewhere taken for granted.” We shall see that this is not so. Boyd, for his part, passes over this deletion in silence and simply summarizes at the end that “[t]he Declaration implied all the way through, the colonies acknowledged a constitutional tie only with the King and that was the only tie that needed to be severed in so solemn a proclamation.”²⁷

But by omitting this passage of Jefferson's, Congress threw open the whole question of what theory of rights the Declaration was in fact endorsing. By which of the various theories that we have examined was the Declaration justifying independence from Parliament? We simply do not know, because the Declaration leaves the answer ambiguous. This is why Becker can still think the Declaration reflects Jefferson's theory of rights and contradicts the views of the First Continental Congress.²⁸ By contrast, Adams thought the Declaration was expressing “but what had been hackneyed in Congress for two years before” implying that the view of the Declaration and the First Continental Congress's view were aligned. What we see evident in these commentators is precisely the ambiguity which was left in the Declaration. For those who held views like Congress, and James Wilson, the Declaration seemed to speak for them, at least in its final form. While much of Jefferson's own theory was obliterated in the editing, the Declaration at least does not explicitly contradict Jefferson's view either. In this way, the Declaration could speak for and to individuals who held very different views of rights. It explains only why the colonies are rejecting the king as their executive officer, but it offers no explicit theory of why Parliament did not hold legislative sovereignty.

A similar set of deletions occurred towards the very conclusion of the Declaration. Again Jefferson's original language which was deleted appears between brackets and underscored; the additions by Congress are marked in bold.

We therefore the representatives of the United states of America in General Congress assembled **appealing to the supreme judge of the world for the rectitude of our intentions** do, in the name & by authority of the good people of these colonies [states,] solemnly publish and declare that these united colonies are and of right ought to be free and independent states; that they are absolved from all allegiance to the British Crown, and that [reject and renounce all allegiance & subjection to the kings of Great Britain & all others who may hereafter claim by, through, or under them; we utterly dissolve] all political connection [which may have heretofore have subsisted] between them [us] & the state [people or parliament] of Great Britain is & ought to be totally dissolved; [and finally we do assert and declare these colonies to be free and independent states], & that as free & independent states they have full power to levy war, conclude peace, contract alliances, establish commerce, & to do all other acts and things which independent states may of right do. And for the support of this declaration **with a firm reliance on the protection of divine providence**, we mutually pledge to each other our lives, our fortunes, & our sacred honour.²⁹

Congress's editorial changes revise Jefferson's language in a couple of significant ways. First, Congress adds in an additional religious reference to God, one that could speak more directly to those who might have liked a more personal notion of God invoked. Similar religious language was added by John Dickinson, for example, at the beginning of the *Declaration of Causes* at the start of the Second Continental Congress.

Second, Congress revises Jefferson's language to be consistent with the earlier Lee resolution: "that these united colonies are and of right ought to be free and independent states; that they are absolved from all allegiance to the British Crown." This language of the original resolution softens Jefferson's strong language towards the monarchy: Instead of "rejecting and renouncing all allegiance" the people "are absolved" from an allegiance for which they were previously obligated. "Absolved"

implies that a responsibility that was previously obligatory is subsequently lifted, and the language may have religious overtones as well.

Congress also rewrote Jefferson's language on the connection to the people and Parliament. Jefferson had written "we utterly dissolve and break off all political connection which may have heretofore subsisted between us & the people or parliament of Great Britain." The language "which may have heretofore subsisted" was definitely an equivocation on whether any relationship had ever existed between the settlers and Parliament and the people of Great Britain, a view consistent with Jefferson's own position that the ties had only been established voluntarily by the settlers after they had freely established their own states. Had there been any previous relationship with Parliament, we utterly dissolve it. But in the language of Congress's resolution, the language shifts meaning. Now "in the name & by authority of the good people of these colonies...all political connection between them & the state of Great Britain is & ought to be totally dissolved." Perhaps Congress was being sensitive to the feelings of people of Great Britain, as Jefferson noted in his own account.³⁰ But there is another significant shift in meaning too: Congress's language "is and ought to be" indicates that going forward the relationship should be dissolved, as opposed to Jefferson's wording ("which may have heretofore"), language which is more equivocal and reflected doubts that any relationship ever existed at all. Congress's language suggests a connection had been established but now needed to be dissolved. Jefferson's underscores the doubt that any relationship ever existed. Congress's language also substitutes the word "colonies" for "states," the first time the term appears in this paragraph. On Congress's rendition, these united colonies "are, and of right ought to be, free and independent states." The language of Congress and the Lee resolution permits the reading that in the past these political entities were colonies but now are and ought to be free states, a view that was consistent with Congress's view.³¹ In Jefferson's language, the states (already in existence) repudiate the monarchy and any relationship which may have existed with the people or Parliament. If there is any remaining doubt about the relationship between the American states and Parliament, we "utterly dissolve" it.

Congress eliminates the reference to “the people or Parliament” and refers instead to the abstract relationship “with the State.” Jefferson was trying to leave no doubt that the relationship with Parliament had ended. On Congress’s rendition, it is not clear at all what theory of rights ended the control of Parliament.

In another section, Jefferson had written, “he [the king] has erected a multitude of new offices by a self-assumed power...” Congress cut out the phrase “by a self-assumed power.”³² For Jefferson, the king had overstepped the powers given him by the people. For Congress, the king’s powers had been already in existence by virtue of the settlers having emigrated under sponsorship of the Crown. They were not “self-assumed” powers. They were legitimate powers. Becker tends to take many of these changes as “stylistic” and claims that the phraseology is “more incisive, and does it not thus add something to that very effect which Jefferson himself wished to produce?” Clearly Jefferson did not think so and viewed the various changes as mutilations to the very theory of rights that he had wanted to articulate. No wonder that Jefferson sent a copy of his original draft to Robert H. Lee showing what Congress had done to it. As he wrote to Lee on July 8, “I inclose you a copy of the Declaration of Independence as agreed to by the house, & also as originally framed. you will judge whether it is better or worse for the critics.”³³

When In The Course Of Human Events

Having suggested that Jefferson was still attempting to reiterate his own theory of rights in his early draft of the Declaration, we can turn back to the most famous passages of the Declaration and now detect some of the ambivalence that Jefferson may have had about the classical understanding of natural rights and its application to American right. Here is the opening paragraph as originally drafted by Jefferson and as revised by the Committee of Five.³⁴ The words with strikeouts show the deletions and the words in brackets the additions.

Jefferson's Original Rough Draft

When in the course of human events it becomes necessary for a people to advance from that subordination in which they have hitherto remained, & to assume among the powers of the earth the equal & independent station to which the laws of nature & of nature's god entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the change.

Rough Draft Presented to Congress as Representing the Committee of Five

When in the course of human events it becomes necessary for a [one] people to ~~advance from that subordination in which they have hitherto remained, & to~~ [dissolve the political bands which have connected them with another,] and to assume among the powers of the earth the ~~equal & independent~~ [separate and equal] station to which the laws of nature & of nature's god entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them ~~to the change~~ the separation.

In the preamble to the original draft, Jefferson is explaining why the settlers are throwing off subordination and assuming the “equal and independent” status as a nation. They never were under the law of Parliament but had been subordinated without right, as he has argued in *A Summary View*. But in the revision which likely reflects the committee’s view, “one people” are not just throwing off subordination but are “dissolving political bands” which had connected them with another.³⁵ This revision recognizes that the colonies and British people have had political connections and had been “one people.” In the postcommittee revision, one people is splitting apart, whereas Jefferson’s earlier version assumes the Americans already were “a people” that had been subordinate.

In his first draft, Jefferson describes the new status as “equal and independent,” whereas after the committee’s revision the status is viewed

as “separate but equal.” The word “separate” implies that the Americans and British citizens had previously been “one” people and subsequently been split apart. Jefferson’s earlier version does not recognize that they were one people who had to separate. Arguably, these are more than just stylistic improvements as Becker suggests.³⁶ On the contrary, these are substantive changes that alter the theoretical understanding. In Jefferson’s draft, they were “a” people asserting their independent status and throwing off subordination; in the postcommittee revision they are originally “one people” (British people) who had to split apart and become separate but equal.

A decent respect to the opinions of mankind, concluded Jefferson, required that Americans “declare the causes which impel them to the change.” The committee’s revision emphasizes the need to explain causes which impel them “to the separation.” This revision, like the earlier one, emphasizes that the colonies had to split apart from the entity to which they had been attached; Jefferson’s first draft implies they were separate from the start and were simply reasserting their already existing rights, which had been inappropriately taken away and forgotten.³⁷ Independence to Jefferson meant return to a rightful earlier state, whereas for the committee and ultimately those in Congress, it meant the culmination of an act of separation that had not been inevitable.

This line of interpretation also accounts for why Jefferson sometimes uses the word “states” in his grievances against the king, as in, for example, “he has endeavored to prevent the population [growth] of these states.” Jefferson’s language indicates they were already independent states, a sentence which was deleted by Congress in its revision.³⁸ Jefferson also writes that the king “has combined with others to subject us to a jurisdiction foreign to our constitutions” again assuming the existence of multiple state constitutions. This is consistent with Jefferson’s view that the colonies had been founded as independent states under their own legislative jurisdictions. Congress changed the word “constitutions” in the plural to “constitution” in the singular. In making the word singular, Congress rejected the view that the various states already had their own constitutions. In the singular, the implication is that the king

had subjected the settlements to a jurisdiction foreign to “our constitution,” a reference to the British constitution, which they brought with them as British subjects in America.

This introductory passage of Jefferson’s draft Declaration, of course, does clearly evoke natural rights language, much more so than either *A Summary View* or his *Declaration of the Causes*. Here Jefferson appeals to “the laws of nature & of nature’s god.” Although Jefferson was still trying to assert his own views, he was also writing for the committee and ultimately Congress, and thus felt compelled to put natural rights language more boldly in the declaration. The language of rights in Jefferson’s first draft is very close to language of his *A Summary View*, but with a small but significant difference. There in *A Summary View*, Jefferson is detailing “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.” The language of “God and the laws” in that context becomes in his draft of the Declaration “the laws of nature & of nature’s god.”³⁹ In the Declaration, the word “nature” inserts itself into his earlier phraseology.⁴⁰ By the same token, the language of “equal and independent” seen in Jefferson’s first draft of the Declaration is interestingly used in *A Summary View* to talk about the relationship of the Parliament to the states in America. When Jefferson writes about “those rights which God and the laws have given equally and independently to all,” he may refer to the rights of individuals but could just as easily also refer to the relationship of the rights of all independent states vis-à-vis one another. In other words, there Jefferson may be referring to “natural rights” to justify the right of states rather than individuals, just as he may be doing here.

The appeal to “the laws of nature & of nature’s god” in the original draft of the Declaration is clearly a reference to a natural rights conception of God, justifying the “equal and independent station” to which a people are entitled. But what theory is Jefferson appealing to here? The language can certainly fit with Jefferson’s own view that the “right to quit society” provides the foundation for the “equal and independent station” of the states. Of course, John Adams reading the same language

easily could project into the language the view of the First Continental Congress. Thus Jefferson is deftly using language that could support his own view, while Adams could easily see Jefferson as repeating ideas that had been “hackneyed” in Congress for two years already. Both would be correct, because the language can sustain both views. Indeed, that may be part of its genius. It is somewhat startling then to find an equivocation on the theory of rights in the Declaration, a document many think definitively puts natural rights at the heart of the revolution and the ultimate vision of America. The Declaration thus leaves equivocal precisely which theory of rights provides the basis for American independence. We cannot determine whether the Declaration supports the official view of the First Continental Congress or that of Jefferson. But that ambiguity at least served its purpose. The Congress could find its theories of rights reflected in the Declaration's language, as could Jefferson, though the latter obviously would have been happier had some of his other language not being obliterated.

The ambiguity discussed above is also consistent with the notable fact that Parliament is scarcely mentioned in the Declaration, as Carl Becker and others have noted.⁴¹ This omission is striking given the ten years of debate in which colonial writers argued against subordination to Parliament. Instead, the focus is almost entirely on the grievous acts by the king. Why is Parliament not mentioned? Some interpreters like Becker argue that the Declaration already assumes that settlements were legislatively independent from Parliament but still under allegiance to the Crown.⁴² And that is a reasonable conclusion. But what this argument misses is the fact that the Declaration never explains which theory of rights it is embracing to explain the legislative independence from Parliament. Is it assuming a view on the basis of Jefferson's position, Wilson's or John Adams's? Did the ancestors have a right to quit society and found new states or did they become independent states because they could not be represented in Parliament? Or did the Crown own the land and have the right to make charters with the colonies? How did the colonies or Crown acquire rightful ownership of the land? Was it through conquest by the settlers, by Great Britain, or through peaceful

occupation of uninhabited lands? If the Declaration is justifying to the world the right of the colonies to be independent states, then surely a “decent respect to the opinion of mankind” would appreciate answers to those questions. Indeed, if Congress was attempting to explain itself to the nations of the world, it would have seemed reasonable to explain the justification of war and independence in terms of the *Law of Nations* tradition, the philosophical tradition that asked about the origin of nations' rights vis-à-vis one another. One of the questions in that tradition was how a people came by rightful occupation of its lands. The Declaration is noticeably silent on the question entirely. Jefferson's earlier draft of the Declaration did emphasize the right of the settlers to quit their land of origin, implying his earlier view that the settlers had rightfully conquered the lands. But after the revision by Congress, that theory of rights was suppressed, making the Declaration's ideas sound more “hackneyed,” in line with the original Declaration of Rights of 1774.

Because other interpreters do not recognize or make anything of this ambiguity, they simply assume that the Declaration is reflecting “The American Mind” or reiterating a hackneyed view of Congress. Thus Becker writes that

Accordingly, the idea around which Jefferson built the Declaration was that the colonists were not rebels against established political authority, but a free people maintaining long established and imprescriptible rights against a usurping king. The effect which he wished to produce was to leave a candid world wondering why the colonies had so long submitted to the oppressions of this king.

The major premise from which this conclusion is derived is that every ‘people’ has a natural right to make and unmake its own government; the minor premise is that the Americans are a “people” in this sense. In establishing themselves in America, the people of the colonies exercised their natural rights to frame governments suited to their ideas and conditions; but at the same time they voluntarily retained a union with the people of Great Britain by professing allegiance to the same King. From this allegiance they

might at any time have withdrawn; ... The minor premise of the argument is easily overlooked because it is not explicitly stated in the Declaration—at least not in its final form. To have stated it explicitly would perhaps have been to bring into too glaring a light certain incongruities between the assumed premise and the known historical facts.⁴³

Becker is correct that Jefferson wrote the Declaration based on his theory of rights. But Becker arguably misses the point when he concludes that this premise is “easily overlooked because it is not explicitly stated in the Declaration—at least not in its final form.”⁴⁴ Becker assumes that the theory is there, just not articulated. He assumes that Jefferson's view was not stated to avoid the incongruity between the premise and the historical facts. I have suggested another reason: Jefferson's thesis was eliminated precisely because it was not a view on which there was consensus. Becker assumes that Congress agrees with Jefferson's view, when in fact it did not. When Congress eliminated Jefferson's theory of rights, therefore, it simply left no statement in the Declaration that made clear which of the two or three different theories of rights it embraced. The effect is that the Declaration eliminates any link or connection between a specific theory of natural rights and the foundation of the rights of the American states.

We Hold These Truths

Turning now to the most famous passage of the Declaration, the one that is always cited as proof of Jefferson's and the Declaration's endorsement of natural rights, we can see that even some of the wording here may hint at Jefferson's ambivalence about the natural rights traditions. In the left column is Jefferson's wording as it likely was presented to Franklin, and on the right is the “fair copy” as it likely looked later when presented to Congress.⁴⁵

Jefferson Draft As Likely Presented to Franklin

We hold these truths to be ~~sacred and undeniable~~ self-evident that all men are created equal & independent; that from that equal creation they derive in rights inherent & inalienable (Adams's copy reads unalienable), among which are the preservation of life, & liberty, & the pursuit of happiness; that to secure these ends, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government shall become destructive of these ends, it is the right of the people to alter or abolish it, & to institute new government, laying its foundation on such principles & organizing its power in such form, as to them shall seem most likely to effect their safety and happiness.

Rough Draft “fair copy” as it likely looked when presented to Congress.

We hold these truths to be ~~sacred and undeniable~~ self-evident that all men are created equal & independent; that ~~from that equal creation they derive in rights~~ they are endowed by their creator with ~~equal rights, some of which are~~ inherent & inalienable rights (Adams's copy reads unalienable), among ~~which~~ these are ~~the preservation of life, & liberty, & the pursuit of happiness;~~ that to secure these rights ~~ends,~~ governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government ~~shall~~ becomes destructive of these ends, it is the right of the people to alter or abolish it, & to institute new government, laying its foundation on such principles & organizing its power in such form, as to them shall seem most likely to effect their safety and happiness.

This is one of the most poetic statements of natural rights philosophy found in the literature leading up to the Revolution. But Jefferson's ambivalence about more classical natural rights language is arguably still in evidence. Jefferson regularly prefers the word “sacred” to describe basic rights. Not only does he use the term here in his first composition

draft, but also in *A Summary View*. Referring there to what are classically thought to be natural rights, Jefferson writes, "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, and judged by the constitution unsafe to be delegated to any other judicature." There Jefferson is referring to what are classic natural rights par excellence, namely, the right to throw off a government that is tyrannical. Jefferson calls them "sacred and sovereign" rights, not natural rights. He also uses the term "sacred" rights in his draft of the Declaration to describe the rights of slaves when blaming King George for reinforcing the slave trade in America, a paragraph that was deleted by Congress.⁴⁶ And in *A Summary View* he calls slavery a violation "to the rights of human nature," another turn of phrase that seems to diverge from more traditional language of "natural rights." While the language of "sacred" and "sovereign" is used by some of Jefferson's contemporaries as synonymous with natural rights, the same language was also used by some to refer to rights from the Common Law tradition and the traditional British rights extending back into the past to the Saxons. The same ambiguous meaning was true of the word "inalienable," which Jefferson also uses here. That term could also refer to either rights inherited from the Common Law tradition or natural rights.⁴⁷ At times such language seems to intentionally obfuscate whether the rights in question are "original British rights" or "natural rights." Both were thought to be "inalienable."⁴⁸ In fact, Jefferson's use of the term "sacred" and his emphasis on God is reminiscent of other writers, such as James Otis, who attempts to anchor political rights in the act of creation, not in a social compact. We shall look at this tendency in the pre-Jefferson writers in chapters to follow. Jefferson uses similar language in *A Summary View* that seems to resonate with those like James Otis who prefer the theological and religious subtradition: "The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them." Jefferson emphasizes that liberty was created by God but nowhere talks about a social compact or the rights to "life, liberty and property."⁴⁹ Instead he

seems to think of rights as inherent in human nature, known intuitively by moral beings, a position that European writers contrasted to classic natural rights formulations such as those of Locke.⁵⁰

Jefferson's avoidance of more traditional natural rights language is evident as well in the body of charges he makes against the king that follow the opening preamble. "He has refused to pass other laws for the accommodation of large districts of people unless those people would relinquish the right of representation [in the legislature], a right inestimable to them & formidable to tyrants only."⁵¹ Here again Jefferson calls the right of representation, which is a natural right par excellence, "a right inestimable to them." There seems to be a conscious and continual avoidance of more traditional natural rights language in the way used by Wilson or Samuel Adams, as contemporaneous examples.

Pursuit of Happiness

We can now turn to one of the most interesting puzzles about Jefferson's language of rights: Why did Jefferson emphasize "life, liberty, and the pursuit of happiness" instead of the more common "life, liberty, and property"? There has been much debate on the question of why Jefferson substitutes happiness for property. In general, the recent consensus seems to be that Jefferson's emphasis should not be all that surprising since "pursuit of happiness" is used frequently in the philosophical tradition of liberty.⁵² Indeed, Jefferson may simply have been improving language from George Mason's Virginia Bill of Rights, which used a similar expression.

But this consensus overlooks a couple of important points. Jefferson never uses the expression "life, liberty, and property", not in *A Summary View*, the *Declaration of the Causes*, or here in the Declaration. It is reasonable to assume, then, that this was intentional. Jefferson certainly knew the refrain. The first resolution of the First Continental Congress read: "Resolved, N. C. D. 1. That they are entitled to life, liberty and property: and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent." If Jefferson wanted to stay true

to the Congress's earlier intention he certainly could have just as easily adopted that language.

It is true that "references to happiness as a political goal are everywhere in American political writings...as anyone can see who bothers to look," to quote Pauline Maier.⁵³ But those who emphasize the use of the word "happiness" in fact miss the subtle point that happiness was very frequently thought of as the end or purpose of government and not as a natural right.

The difference between an "end" and a "right" was preserved by many thinkers, such as John Locke, James Otis, James Wilson, and others. On Locke's view, people gave up some of their natural rights and liberties to reap the benefits from society, which include happiness. Happiness, in Locke's view, was not a natural right, but an end for which people joined society. The search for happiness led people to seek political society, form a social contract, and relinquish some of their rights for the benefits of society. The protection of an individual's rights of life, liberty, and property resulted in happiness, but happiness itself was not conceptualized by Locke as a right. This is the more conventional way that happiness was related to natural rights theory. Reflecting this view, for example, James Otis wrote that "[t]he end of government being the good of mankind, points out its great duties: It is above all things to provide for the security, the quiet, and happy enjoyment of life, liberty, and property."⁵⁴

As James Wilson puts it in language that some claim may have influenced Jefferson,

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. This rule is founded on the law of nature: it must control every political maxim.

Wilson, quoting Burlamaqui, conceives happiness as the end of government, the purpose for which 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." Wilson does not call it a natural right but conceives of happiness as the driving motivation that leads individuals to give up natural liberties in order to enter a state of society under law. This is what he means by happiness is the first law of government.

Similarly, in a passage from section 3 of the Virginia Bill of Rights, George Mason preserves a similar distinction:

SEC. 3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

In another section of George Mason's Virginia Bill of Rights, a section that may also have influenced Jefferson, we find more ambiguous language. Mason wrote:

That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

The status of "happiness" is ambiguous in Mason's wording here. Is it an inherent right or is it a benefit that derives from the more primary inherent right of "life and liberty"? The ambiguity arises from word

“with.” On one interpretation, Mason seems to be saying that the inherent rights are life and liberty *and* “the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” That is, on this interpretation the word “with” is intended to be inclusive. Still, if Mason had used the word “and” instead of “with,” his intention would have been much clearer. The word “with” makes his meaning ambiguous and could imply that he thought of life and liberty as the primary inherent rights “plus” or “with” benefits or goods that derived from those rights, namely, the means of acquiring property and pursuing and obtaining happiness and security. Mason’s language thus leaves ambiguous whether happiness, and the means of acquiring property, are to be treated as inherent rights or derivative social goods. This ambiguity may not matter much in trying to figure out what Mason meant, although the Virginia Bill of Rights was important in shaping the emerging American conceptions of rights.

However, since it is possible Jefferson was influenced by Mason’s language, the ambiguity in Mason’s language becomes more important.⁵⁵ It is possible that Jefferson’s first draft of the Declaration may represent an interpretation of Mason’s language with adjustments to fit Jefferson’s own conceptions or linguistic sense. It may be the case, as Maier suggests, that in avoiding the reference to property, Jefferson simply “sacrificed clarity of meaning for grace of language.”⁵⁶ But it is possible Jefferson’s variation has more deliberation. Not only does Jefferson avoid including property as an inherent right, but he makes explicit that happiness is an inherent right. Here are Jefferson’s words again in his first draft of the Declaration: “...all men are created equal & independent; that from that equal creation they derive in rights inherent & inalienable, among which are the preservation of life, & liberty, & the pursuit of happiness.”

In this initial wording of Jefferson, there is no ambiguity that pursuit of happiness is an inherent right. Unfortunately, in the very next sentence the ambiguity creeps back in: Jefferson continues “that to secure these ends [i.e., life, liberty, and the pursuit of happiness], governments are instituted among men, deriving their just powers from the consent of the governed.” Here happiness, as well as the preservation of life and

liberty, is described as an “end” of government, arguably a concept that differs from a right, a distinction that many like Wilson faithfully preserved. Significantly, in the Rough Draft produced by the Committee of Five (see above), the word “end” is replaced by the word “rights” removing the ambiguity altogether and leaving no doubt that the Declaration treats the pursuit of happiness as a natural right.

Would there have been any reason, apart from literary and stylistic, for Jefferson to emphasize that happiness was an inherent right? Indeed there may have been. In two interesting contexts before the Declaration, we find happiness serving an interesting purpose. In Richard Bland’s *An Inquiry Into the Rights of the British Colonies*, Bland argues that happiness is not just an end of government but a natural right.⁵⁷ Bland makes this argument in the context of arguing that the American rights were based on a natural right to quit society. Bland writes:

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.*⁵⁸
[emphasis added]

As I discuss in chapters below, Bland anticipates most of the core assumptions of Jefferson in *A Summary View*.⁵⁹ He evokes a natural right to quit society, and he also associates this with a natural right to pursue happiness. Thus Bland makes the connection that the right to quit society is tied into the natural right to pursue happiness. In *A Summary View* too, Jefferson links the two conceptions, although there he does not call happiness a natural right but sees happiness as the end of government.

[T]hat 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.

In this quote from *A Summary View*, Jefferson 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.

But turning to the Declaration, where Jefferson had to include a statement of natural rights, Jefferson’s turn of phrase “in pursuit of happiness” serves an interesting purpose. Now the Declaration’s introduction can be read as a good summary of Jefferson’s theory set out in *A Summary View*. The pursuit of happiness is what drives men to quit society and look for new habitations. It is not dependent on “intolerable persecution,” as Samuel Adams would have it, or the failure to meet the happiness rule, as Wilson proposed. The shift from “life, liberty, and property” to “life, liberty, and the pursuit of happiness” enables Jefferson to slide in a reference to and an argument for his view about the origin of American rights. It was not based on general natural rights, on “life, liberty, and property,” as many of his colleagues would and did say, but the right to quit one’s society and go in search of happiness. The “pursuit of happiness” for Jefferson is arguably the equivalent of Jefferson’s right to quit society. This position differs from that of Wilson, who considered happiness as the key criterion by which to measure government’s execution of its responsibility to the people. By making this a natural right, or at least eliminating the ambiguity in Mason’s language, Jefferson smuggles in a reference to his own theory and to the foundation for the right to quit society. He said it without saying it. While there is no way to prove that this is the case, it does fit with Jefferson’s repeated desire to defend his own theory of rights. And while he may have copied from Mason, he shortened up the language and removed an ambiguity that Mason had left in his language.

Jefferson’s statement on rights went through a revision some of which reflect his own changes, some of which are likely from Franklin or Adams. Interpreters debate whether the change of “sacred and undeniable” to “self-evident” was Franklin’s, Adams’s, or Jefferson’s own.⁶⁰ “Self-evident” is very close in meaning to “undeniable,” but may carry more direct allusion to the self-evidence to reason. Jefferson himself never seems to appeal to reason as a basis of rights, and instead, as he puts it in *A Summary View*, refers to “not only the principles of common sense, but the common feelings of human nature”, and then again to “the feelings of human nature.” But “self-evident” can also fit in with and support other types of evidence and thus fit within the parallel tradition that was doubting natural rights based on reason. In this way, the language can embrace other means of knowing, such as “common sense,” as visible in Thomas Paine and in the young Alexander Hamilton, or even a kind of innate knowing that may have been presupposed by Jefferson.

In his original language, Jefferson writes that “from that equal creation they derive in rights inherent & inalienable.” The notion that “they derive” their rights, is certainly more tentative than the claim that they are self-evident to reason, which the natural rights tradition argued, and more tentative than the wording of the subsequent draft: “they are endowed by their creator with inherent & inalienable rights.” This latter phraseology, which came from the committee, puts much more emphasis on the active role of God in giving these rights rather than of men deriving their rights from their equal creation.⁶¹ This may reflect some sensitivity to the theological reinterpretation of natural rights theory discussed in more detail below.⁶² Interestingly, this revision also breaks the original dependence of rights on human equality at creation in Jefferson’s first draft. Now the statement posits two facts at creation: people were created equal, and God conferred inherent rights. Inherent rights are not derived from equality of creation, the way that Locke originally had put it. It also eliminates the word “independent.” Perhaps this was just a literary improvement, as Becker suggests, but it could also reflect some sensitivity to the idea that Otis and other

religious-minded writers had put forward: that people were created to be in society, and that sociality was mandated by God, a view that religious thinkers had emphasized in their critique of the natural rights tradition.

PART II

Placing Jefferson in Context

61. Boyd, *Declaration* (31) attributes these changes to the committee.
 62. See my discussion below, in Chapter 3.

Chapter 3: Early Doubts About Natural Rights Before The Revolution

1. See, for example, Reid, *Authority of Rights*; Maier, *American Scripture*; Morgan, *Stamp Act Crisis*. I discuss some of this literature below.
2. See accounts in Bailyn, *Pamphlets*, 356, and Morgan, *Stamp Act*.
3. Morgan, *Stamp Act* (54-74) has an excellent analysis of what was on Grenville's mind.
4. See Bailyn, *Pamphlets*, 508, 516.
5. The early consensus that Parliament had a right to regulate commerce of the empire but not tax the colonies foreshadows in interesting and complex ways the later debates over federal and state powers in the debate over the ratification of the constitution. There is a huge irony in the fact that colonists thought Parliament had no right to tax them but later gave such rights to federal powers.
6. The Rhode Island assembly commissioned the drafting of a remonstrance against the renewal of the Molasses Act. The document was written by the governor who based it on the earlier document of the Boston merchants called the State of Trade. See Bailyn, *Pamphlets*, 358, and Jensen, *Tracts*, 3-4.
7. An example of another pamphlet that argues strictly in economic terms, see *Considerations Upon The Act of Parliament* in Bailyn, *Pamphlets*, 361-377.
8. Jensen, *Tracts*, 7.
9. *Ibid.*, 7.
10. *Ibid.*, 12.
11. An interesting partial exception is the New York Petition to the House of Commons written on Oct. 18, 1764. This petition does evoke Lockean natural rights and does link freedom of commerce to liberty. But it does so in the context of recognizing that Parliament retains the authority "to model the Trade of the whole Empire, so as to subserve the Interest of her own." "But a Freedom to drive all Kinds of Traffick in a Subordination to, and not inconsistent with, the *British* Trade; and an Exemption from all Duties in such a Course of Commerce, is humbly claimed by the Colonies, as the most essential of all the Rights to which they are intitled, as Colonists from, and connected, in the common Bond of Liberty with the unslaved Sons of *Great-Britain*." See Morgan, *Prologue*, 9, 11.

12. Bailyn, *Pamphlets*, 358-59.
13. Morgan, *Stamp Act*, 33.
14. In his *Regulations Lately Made* (1765), Thomas Whately argues that "Duties laid for these Purposes, as well as for the Purposes of Revenue, are still Levies of Money upon the People. The Constitution again knows no Distinction between impost Duties and Internal Taxation and if some speculative Difference should be attempted to be made, it certainly is contradicted by Fact." Quoted in Morgan, *Prologue*, 20.
15. The Sugar Act, April 5, 1764. Quoted in Morgan, *Prologue*, 4-5.
16. See note 11 above where New York does frame the response to the Stamp Act in terms of rights.
17. Bailyn, *Pamphlets*, 379.
18. See, for example, John Dickinson's "The Late Regulations Respecting the British Colonies." December 1765. In Bailyn, *Pamphlets*, 659-691 and discussed below.
19. For Hopkins, *Rights*, see Bailyn, *Pamphlets*, 499-521. A shortened version is also available in Jensen, *Tracts*, 41-62.
20. Hopkins, *Rights*, quoted in Bailyn, *Pamphlets*, 516.
21. Hopkins, *Rights*, quoted in Bailyn, *Pamphlets*, 507.
22. Dulany, *Considerations*, quoted in Bailyn, *Pamphlets*, 634. For background on Dulany, see Bailyn, *Pamphlets*, 599-607.
23. The fact that the origins of government were veiled explains why so much of colonial writing emphasizes "the end" or purpose of government in contrast to "the beginning" of government. Be that as it may, the "end of government" can only be justified if there is some theory as to anchor that view of government. Emphasizing the end of government does not really provide a ground for justifying that end as opposed to other ends of government.
24. Hopkins, *Rights*, quoted in Bailyn, *Pamphlets*, 507.
25. Hopkins, *ibid.*, 516. Jensen, *Tracts*, 54.
26. Hopkins, *Rights*, quoted in Bailyn, *Pamphlets*, 508.
27. See Zuckert, *Natural Rights*, 49-118.
28. Hopkins does not specify whose alternative theories he has in mind here. We can speculate that it could have been Harrington and possibly Hume.
29. Locke asks about the historical evidence of the state of nature and social compacts (*Second Treatise* 2, 15, p. 277). He writes: "To those that say, There were never any Men in the State of Nature; I will not only oppose the Authority of the Judicious *Hooker*,...But I moreover affirm, That all Men are naturally in that State, and remain so, till by their own Consents they make themselves Members

of some Politick Society; And I doubt not in the Sequel of this Discourse, to make it very clear.”

Locke then takes up the question again (*Second Treatise*, 8, 100, [Laslett, *Locke*, 333-334]) where he discusses the origin of political societies. “To this I find two Objections made. *First, that there are no Instances to be found in Story of a Company of Men independent and equal one amongst another, that met together, and in this way began and set up a Government. Secondly, 'Tis impossible of right that Men should do so, because all Men being born under Government, they are to submit to that, and are not at liberty to begin a new one.*” Locke gives a number of answers. First he says that it is no wonder that we have no accounts since the nature of that condition in a state of nature drove people very quickly into society and do not leave a record of that stage. Secondly, Locke then points to certain societies such as Rome and Venice which he regards as examples of states that came together through social compact. But it is clear that Locke's argument does not simply rest on the need for historical examples. He also bases it on what's right. “For if they can give so many instances out of History, of Governments begun upon Paternal right, I think (though at best an Argument from what has been, to what should of right be, has no great force), one might, without any great danger, yield them the cause.” The parenthetical clause here is interesting because Locke argues that history is essentially irrelevant for what is right. He then continues to show that history is only one part of his argument: “But to conclude, Reason being plain on our side, that Men are naturally free, and the Examples of History, shewing, that the *Governments* of the World, that were begun in Peace, had their beginning laid on that foundation, and were *made by the Consent of the People*; There can be little room for doubt, either where the Right is, or what has been the Opinion, or Practice of Mankind, about the *first erecting of Governments.*” Locke clearly sees that his argument can have a foundation in reason and what's right, even apart from any historical proof of a state of nature. See also my discussion in chapter 1, note 66.

30. Laslett, *Locke* (93), puts it this way: “When men think of themselves as organized with each other they must remember who they are. They do not make themselves, they do not own themselves, they do not dispose of themselves, they are the workmanship of God. ... To John Locke this was a proposition of common sense, the initial proposition of a work which appeals to common sense throughout. It is an existentialist proposition...and it relies not so much on the proved existence of a Deity as upon the possibility of taking what might be called a synoptic view of the world, more vulgarly a God's-eye view of what happens among men here on earth. If you admit that it is possible to look down on men from above, then you may be said to grant to Locke this initial position.

John Rawls's work is the most well known example of providing social contract theory a theoretical and non-historical grounding in an ‘original position.’”

31. For a discussion of Hume's influence among American colonial writers, for example, see Spencer, *David Hume*. I discuss Hume's critique in my discussion of Jefferson's reading habits in Chapter 8.

32. It is beyond the scope of the present essay to look at the “religionizing” of Locke. Locke was clearly “religious” in the sense that he assumed natural rights were embodiments of God's law and in assuming that scripture and reason were compatible. But Locke is also the beginning of, and catalyst for, the great deist critiques of the early eighteenth century. Those critiques used reason to attack and undermine traditional notions of Revelation and ultimately lead to a new understanding of Christianity, religion, and scripture. Locke himself did not take as radical a view as more critical deists such as Matthew Tindal and John Toland. But he did lay part of the foundation for this critique of traditional religion. For an account of the Deist critique, see Manuel, *The Eighteenth Century*, and Eilberg-Schwartz, *The Savage*.

33. Otis, *Rights*, in Bailyn, *Pamphlets*, 423.

34. *Ibid.*, 419-420. De Vattel develops an extensive understanding of the rights and duties of nations based on natural rights philosophy.

35. Otis, *Rights*, in Bailyn, *Pamphlets*, 422.

36. See Bailyn, *Pamphlets*, 524-530.

37. Howard, *Halifax Letter*, in Bailyn, *Pamphlets*, 535.

38. Hopkins, *Rights*, in Bailyn, *Pamphlets*, 507.

39. Hopkins, *Rights*, in Bailyn, *Pamphlets*, 509.

40. See the discussion of the Stamp Act Congress below in this Chapter.

41. This comment appeared in the London *General Evening Post* on August 20, 1765 and reprinted in the *Newport Mercury*, October 28, 1765. Cited in Morgan, *Prologue*, 97.

42. Hopkins, *Rights*, quoted in Bailyn, *Pamphlets*, 509.

43. *Ibid.*, 511.

44. *Ibid.*, 512. Fitch makes a similar claim. Hopkins also writes that “These with all other matters of a general nature, it is absolutely necessary should have a general power to direct them; some supreme and overruling authority with power to make laws, and form regulations for the good of all, and to compel their execution and observation. It being necessary some such general power should exist somewhere, every man of the least knowledge of the British constitution will be naturally led to look for, and find it in the Parliament of Great Britain.”

45. Hopkins, *Rights*, quoted in Bailyn, *Pamphlets*, 518-519. Jensen, *Tracts*, says Otis and Steve Hopkins come out with early positions that Parliament is not completely sovereign but then retract those positions after the attack by the gentleman at Halifax.

46. Fitch, *Reasons Why*, in Bailyn, *Pamphlets*, 395.

47. Hopkins, *Rights*, in Bailyn, *Pamphlets*, 519.

48. See Merrill p. xxvi. "In effect, Hopkins was groping toward the conception of the British Empire as a commonwealth containing equal and independent legislatures, and yet one in which matters of a general nature had to be dealt with by a supreme legislature."

49. Howard, *Halifax Letter*, in Bailyn, *Pamphlets*, 534.

50. Actually, at one point Hopkins does say something that sounds like this but he says it after he has already said that Parliament has authority and right to regulate commerce. "Indeed, it must be absurd to support that the common people of Great Britain have a sovereign and absolute authority over their fellow subjects in America, or even any sort of power whatsoever over them" (Bailyn, *Pamphlets*, 519). Here Hopkins is making his argument that the House of Commons does not have power over the colonies as part of his hub and spoke view of the empire.

51. Howard, *Halifax Letter*, in Bailyn, *Pamphlets*, 537.

52. The quotes are from Howard, *Halifax Letter*, in Bailyn, *Pamphlets*, 537-538.

53. Background on Soame Jenyns can be found in Bailyn, *Pamphlets*, 600.

54. Jenyns's essay can be found at <http://odur.let.rug.nl/~usa/D/1751-1775/stampact/object.htm>.

55. Writing about how political decisions should represent the entire people, Locke (Second Treatise 8:92, 332) writes: "But such a consent is next impossible ever to be had, if we consider the Infirmities of Health, and Avocations of Business, which in a number though much less than that of a Commonwealth, will necessarily keep many away from the publick Assembly. To which if we add the variety of Opinions, and contrariety of Interests, which unavoidably happen in all Collections of Men, the coming into Society upon such terms, would be only like Cato's coming into the Theatre, only to go out again. For where the majority cannot conclude the rest, there they cannot act as on Body, and consequently will be immediately dissolved again."

56. The Cato letters in the early eighteenth century further develop the notion of representation arguing that "representatives...will always act for their country's interest; their own being so interwoven with the people's happiness, that they must stand and fall together. See Gordon and Trenchard, "Cato

Letters." Letter 24: "Of The Natural Honesty Of The People, to Consult Their Affections and Interest."

57. Otis, *Rights*, in Bailyn, *Pamphlets*, 423.

58. *Ibid.*, 423.

59. *Ibid.*, 425. In anchoring rights in human nature and sociability, Otis comes closer to the theory of rights of Grotius more than Locke but he only mentions Grotius once in his essay and not in a very favorable light.

60. See for example Otis, *ibid.*, 434.

61. *Ibid.*, 436-7. Speaking of the natural rights of the colonies Otis writes that "those who expect to find anything very satisfactory on this subject in particular or with regard to the law of nature in general in the writings of such authors as Grotius and Pufendorf will find themselves much mistaken. It is their constant practice to establish the matter of right on the matter of fact: . . . The sentiments on this subject have therefore been chiefly drawn from the purer foundations of one or two of our English writers, particularly from Mr. *Locke*, to whom might be added a *few* of other nations; for I have seen but a few of any country, and of all I have seen there were not ten worth reading."

62. It is problematic to simply characterize Otis as a Lockean as Morgan does: "Otis, while acknowledging the supremacy of Parliament, argued in terms derived from Locke that Parliament ought not to violate the nature rights of the subject."

63. Otis significantly contradicts his own theory later in the essay. After arguing essentially that there is no state of nature and no consent or social compact, he writes, "I say men for in a state of nature no man can take my property from me without my consent" taking for granted the notion of a state of nature. Otis, "Rights," 447.

64. On Locke's *Second Treatise* being aimed in part at Filmer's *Patriarcha*, see Laslett, *Locke*, 67-92.

65. Otis, *Rights*, in Bailyn, *Pamphlets*, 423.

66. *Ibid.*, 423.

67. See Zuckert, *Natural Rights*, who emphasizes this distinction between Locke and Grotius.

68. On the deist debates and changing view of religion in the eighteenth century, see Manuel, *The Eighteenth Century Confronts the Gods*, and Eilberg-Schwartz, *The Savage*.

69. Abraham Williams, "Election Sermon," 5.

70. *Ibid.*, 6.

71. The closest Locke comes to assigning this to God is the following passage: "God having made Man such a Creature, that, in his own Judgment, it was

not good for him to be alone, put him under strong Obligations of Necessity, Convenience, and Inclination to drive him into *Society*, as well as fitted him with Understanding and Language to continue to enjoy it." While this sounds like Otis, it is different. Locke here is explaining people's social inclination and in particular their desire to marry which he sees as the origin of the first societies. But Locke distinguishes these forms of social inclination from political societies. As Locke says "each of these, or all together, came short of as we shall see, of political society, if we consider the different ends, ties, and bounds of each of these" (Locke II 7, 77 in Laslett, 318). In Locke's view, God drives people to be social beings, but humans choose whether or not to enter political organizations.

72. Williams, "Election Sermon," 7.

73. Otis, *Rights*, in Bailyn, *Pamphlets*, 425.

74. *Ibid.*, 424.

75. The colonists tend to ignore important philosophical questions in splitting the question of government's "end" from its "beginning." For the "end" or "purpose" of government has to be grounded in some moral theory. If the colonists did not have agreement on government's origin, then on what basis did they agree on "its end"? The fact is the colonists had different and competing theories of where such rights came from and therefore concentrated on agreement about what those rights were ("the end of government") rather than moral source of those rights.

76. Otis, *Rights*, in Bailyn, *Pamphlets*, 444.

77. There was some understanding that the rights of "men" posed a particular issue for women, children and blacks. Locke and Otis both raise the question of women's place in the original contract and in natural rights. Abigail Adams sensed the discrepancy in a letter to her husband, John Adams, raising the question of women's rights as a problem of liberty.

78. Otis, *Rights*, in Bailyn, *Pamphlets*, 443.

79. *Ibid.*, 454.

80. Otis, *Vindication*, in Bailyn, *Pamphlets*, 545-579.

81. Morgan, *Prologue*, 46-49. 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 Burgesses, 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."

82. See Morgan, *Prologue*, 48. Online: <http://www.history.org/History/teaching/tchcrvar.cfm>.

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

84. Morgan, *Stamp Act*, 109.

85. See Morgan, *Prologue*, 62-63 and online. http://www.constitution.org/bcp/dor_sac.htm.

86. Morgan, *Stamp Act*, 113.

87. *Ibid.*, 113.

88. *Ibid.*, 113-114.

89. Morgan, *ibid.*, 118 notes this as well.

90. Morgan, *Prologue*, 51-52.

91. For the Massachusetts Resolves, see Morgan, *Prologue*, 56-59.

92. It is true 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 simpler expression "Law of Nature." 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. To be sure, 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. 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 natural rights 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. Use of the expression "God and nature" appears in Locke, *Second Treatise*, 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*.

93. 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."

94. *Massachusetts Gazette*, December 19, 1765. See, *The Avalon Project*. Online: http://avalon.law.yale.edu/18th_century/ct_resolutions_1765.asp.

Morgan, *Prologue*, 54 lists a different set of resolutions in October of that month.

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

96. See Morgan, *Prologue*, 114-117 for these published statements. No mention is made of natural rights in the Connecticut statement on January 13 1766, and in that of the New York Sons of Liberty on January 11, 1766. The New Jersey Sons of Liberty statement on February 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.

Chapter 4: Diverging Theories of American Rights Before Jefferson

1. See Dewey, *Thomas Jefferson Lawyer*, 1-17. Dewey challenges an understanding of Malone, *Jefferson*, Vol. 1, 95, Chinard *Jefferson*, 38, and others on when Jefferson was admitted to the bar.

2. Malone, *Jefferson*, Vol. 1 97-98.

3. Becker, *Declaration*; Morgan, *Stamp Act Crisis*.

4. 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.

5. Lewis, *A 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 the Bland/Jefferson view was a "more direct appeal to the ultimate source of sovereignty—natural law." (40). In my view, Wilson and Adams's views are more classically Lockean in character than the Bland/Jefferson view.

6. Dickinson, "Letters," in Jensen, *Tracts*, 127-163. See Letter II, Jensen, *Tracts*, 138. The second quote is from Letter VII, not published in Jensen's edition. Online: http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=690.

7. *Ibid.*, 133.

8. I disagree with Becker, *Declaration* (96-97) who cites Dickinson's statement here as the foundation for the idea that the 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.

9. End of Letter VII.

10. Letter IX. Jensen, *Tracts*, 147.

11. *Ibid.*, 154-155.

12. Hume, "The Original Contract," 199.

13. Letter IV. Jensen, *Tracts*, 141

14. See Locke, *Second Treatise*, 11:140 which deals with the responsibility of people to pay taxes towards government. Dickinson's only other reference to Locke is in a quote he cites approvingly of Lord Cambden at the end of Letter 7.

15. Letter V. Not quoted in Jensen. See online, Dickinson, *Empire and Nation*, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=690.

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

17. See Letter III. Not quoted in Jensen. See online, Dickinson, *Empire and Nation*, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=690. The quotation indicated by the asterisk in the original is from the New Testament, Galatians 5:1.

18. Letter III. Not quoted in Jensen. See Dickinson, *Empire and Nation*, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=690.

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

20. See Jensen, *Tracts*, 108 -126. On Bland's background, see *ibid.*, xxxiv-xxvi.

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

22. 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, *Second Treatise*, 73 and 120.

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