A Declaration of Independence Not Equality: Historians Tell the Truth About 1776 (quotes compiled by W. Kirk Wood, 2013).

“His deeply historicized reconstruction of its contemporary meanings makes it clear that liberty was still understood as a set of privileges distributed according to social rank rather than a universal right. In fact, it was because the Founders considered this assumption self-evident that they felt confident in publicizing a highly liberal, symbolic narrative of equal liberty to represent the Revolutionary endeavor. The uncontainable success of this narrative went far beyond the circumstances that gave birth to it because it put new cultural capital—a conceptual arsenal of rights and freedoms—at the disposal of ordinary people as well as political factions competing for their support, providing priceless legitimacy to all those who would insist that its nominal inclusiveness include them in fact.” (University of Virginia Press advertising blurb about Michal Jon Rozinski,

*Culture and Liberty in the Age of the American Revolution*, 2012.)

“In its original formulation, this principle [that all men are created equal] was not primarily advanced to support an equality of political and civil rights among individuals. Its true political purpose was to sustain the claim that Americans, as a people, or even as a collection of peoples . . . were entitled to exercise the same rights and liberties as their estranged former countrymen across the water in England . . .But in the nineteenth century, this original commitment to an equality among self-governing peoples was transformed into a belief into the legal and social equality of individuals. The Declaration’s terse statement of equality became easy to reinterpret and appropriate in the next century, for the obvious purpose of attacking slavery, and just as important to rebut.”

(Jack N. Rakove, “can We Know A Foundational Idea When We See One,” in James W. Ceaser, *Nature and History in American Political Development: A Debate [*Cambridge, Massachusetts: Harvard University Press, 2006], 91-112 quote on 101.)

“The Declaration of Independence is a special case [among manifestoes of the 1770;s], a document which grew in stature after the fact . . . . Unlike the state declaration of rights, Jefferson’s Declaration was a legally impotent document: a declaration of rights and grievances, a document of explanation, not terribly different from all the other manifestoes . . . .As a political document of extraordinary power, the Declaration of Independence was constructed not in 1776 but after the fact by uses other men would make for it.” (Daniel T. Rodgers, *Contested Truths: Keywords in American Politics Since Independence [*Cambridge, Massachusetts: Harvard University Press, 1998], 67-68.)

“The Revolution was not democratic, for example, but it had democratic implications, implications which were largely worked out during the first fifty years of nationhood.” (Duncan J. MacLeod, *Slavery, Race and the American Revolution* [Cambridge and New York: Cambridge University Press, 1974], 14.)

“The declaration that all men were created equal might mean for the moment that Americans should have the same independence as a nation that other peoples enjoyed. What else it might mean remained to be seen."(Edmund S. Morgan, *The Birth of the Republic, 1763-1789*, p. 76, quoted by Richard J. Behn , “Declaration of Independence,” at http://llehrmaninstitute.org//history/declaration-of-independence.asp).

“The impact of the Declaration was felt in Europe. Historian David Armitage wrote: "The Declaration of Independence first appeared in London newspapers in the second week of August 1776."206 Historian Pauline Maier wrote: "A document that cited the right of revolution in justifying American Independence and formally marked the end of monarchical authority could hardly have been designed primarily to awaken enthusiasm among the political servants of King Louis XVI. Within the United States, however, the Declaration of Independence had many practical uses: it provided a vehicle for announcing Independence to the American people, and, if properly framed, might evoke a deeply felt and widespread commitment to the cause of nationhood and, above all, inspire the soldiers who would have to win the Independence that Congress proclaimed."207 It would be another seven years until Britain officially recognized American dependence. Meeting in Paris with their British counterparts in the second half of 1782, American negotiators Benjamin Franklin, John Adams and John Jay wisely demanded that Britain acknowledge American independence at the outset of the negotiations and before any substantive discussions could take place. Independence itself was not negotiable. . . .

Historian David Armitage wrote: "In the early decades after 1776, the Declaration inspired more attention and commentary outside the United States than it did at home. Little of that attention was directed toward the Declaration's second paragraph; indeed, most of it either dealt with refuting the grievances against King George III or reflected more broadly on the implications of American independence for the emerging international order of late eighteenth-century world."208 The Declaration was explanatory as well as declaratory. Armitage wrote: "The primary intention behind the Declaration of Independence in 1776 had been to affirm before world opinion the rights of one people organized into thirteen states to enter the international arena on a footing equal to other, similar states. The authors of the Declaration had sought the admission of the United States of America to a pre-existing international order; accordingly, they had couched their appeal to the powers of the earth in terms that those powers would understand and, Congress hoped, also approve." Armitage wrote: "The Declaration of Independence has been call 'a document performed in the discourse of the *jus gentium* [the law of nations] rather than *jus civile* [the civil law].' Owing to its success in securing American independence, this fact has generally been overlooked. The document's opening and closing statements have been taken for granted because in retrospect that seemed to have enduringly confirmed that independence. Yet they are, after all, the most prominent sentences in the document, the statements of what the United States intended to become: 'to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them'; and of what they could do once they had achieved that goal: 'to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do.' The rest of the Declaration provided only a statement of the abstract principles upon which the assertion of such standing within the international order rested, and an accounting of the grievances that had compelled the United States to assume their independent station among 'the Powers of the Earth.'” (Richard J. Behn,

“Declaration of Independence,” at http://lehrmaninstitute.org/history/declaration-of-independence.asp).

“The sources and interpretation of the Declaration have been the subject of much scholarly inquiry. The Declaration justified the independence of the United States by listing colonial grievances against [King George III](http://en.wikipedia.org/wiki/George_III_of_the_United_Kingdom), and by asserting certain [natural and legal rights](http://en.wikipedia.org/wiki/Natural_and_legal_rights), including a [right of revolution](http://en.wikipedia.org/wiki/Right_of_revolution). Having served its original purpose in announcing independence, references to the text of the Declaration were few for the next four score years. [Abraham Lincoln](http://en.wikipedia.org/wiki/Abraham_Lincoln) made it the centerpiece of his rhetoric (as in the [Gettysburg Address](http://en.wikipedia.org/wiki/Gettysburg_Address) of 1863), and his policies. Since then, it has become a major statement on [human rights](http://en.wikipedia.org/wiki/Human_rights), particularly its second sentence:

We hold these truths to be self-evident, that [all men are created equal](http://en.wikipedia.org/wiki/All_men_are_created_equal), that they are endowed by their Creator with certain unalienable Rights, that among these are [Life, Liberty and the pursuit of Happiness](http://en.wikipedia.org/wiki/Life%2C_liberty_and_the_pursuit_of_happiness).

This has been called "one of the best-known sentences in the English language",[6] containing "the most potent and consequential words in American history."[7] The passage came to represent a moral standard to which the United States should strive. This view was notably promoted by [Abraham Lincoln](http://en.wikipedia.org/wiki/Abraham_Lincoln), who considered the Declaration to be the foundation of his political philosophy, and argued that the Declaration is a statement of principles through which the [United States Constitution](http://en.wikipedia.org/wiki/United_States_Constitution) should be interpreted.[8] It [provided inspiration](http://en.wikipedia.org/wiki/United_States_Declaration_of_Independence#Influence_in_other_countries) to numerous national [declarations of independence](http://en.wikipedia.org/wiki/Declaration_of_independence) throughout the world.” (Wikipedia, The Free Encyclopedia, 2013.)

“To us, Jefferson’s prose seems more refined, but at the time people seem to have preferred Mason’s more cumbersome wording. Four of the new constitutions (Pennsylvania, Massachusetts, New Hampshire, and Vermont) repeated Mason verbatim; none followed Jefferson. In fact, the exact wording of the Declaration of Independence meant little to Revolutionary Americans; it was the *fact* of independence they celebrated, not the explanation of it. Jefferson’s Declaration was rarely mentioned, much less quoted, at the Constitutional Convention or during the ratification debates. The two contemporary histories of the Revolution make no fuss over Jefferson’s authorship. David Ramsay (*The History of the American Revolution*, 1789) fails to mention it at all, while William Gordon (*The History of the Rise, Progress, and Establishment of the Independence of the United States of America*, 1788) simply includes Jefferson as one of a five-man committee.

That changed when Jefferson came to head a political party at the turn of the century. To highlight their patriotism, Jefferson’s Republicans cited the Declaration and touted the genius of its author, who happened to be their standard-bearer. While Federalists laid claim to the Constitution, which was indeed their handiwork, Republicans pronounced ownership of their own founding document.

Today, textbooks have started to shy away from the “unique genius” interpretation, but most pull back only modestly. Jefferson worked on a committee, they say, and his initial draft was slightly modified. But that misses the main point. The ideas set forth in the Declaration of Independence were not owned by any individual, committee of five, or even the Continental Congress. They were indeed “the American mind,” as Jefferson claimed.” (Ray Raphael, 2013/03, “Journal of the American Revolution” at http://allthingsliberty.com)

“Though the Declaration of Independence made some bold statements about the equality of all people, clearly, its promises have not held true for many Americans. This anthology describes the culture and controversies that were brewing at the time the document was written . . . .” (Mesa Valley School District 51, “The Declaration of Independence,” at <http://mcvsddlem.opac.marmot.org> downloaded 7/12/13.)

“Important elements of democracy existed in the infant American republic of the 1789s, but the republic was not democratic. Nor in the minds of those who governed it, was it supposed to be.” (Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* [New York and London: W. W. Norton and Company, 2005], xvii.)

“But what did those old words [‘liberty and freedom’] mean in the New World? To follow this line of inquiry is to find an astonishing variety of beliefs about liberty and freedom in early English settlements. Another inquiry, published as *Albion’s Seed* . . . found evidence of at least four distinct ideas of liberty and freedom in Puritan New England, Cavalier Virginia, Quakers in the Delaware Valley, and North British borders in the American backcountry . . . . All were spoken of as ‘liberty and freedom,’ but they drew differently on that complex heritage.” (David Hackett Fischer, *Liberty and Freedom: A Visual History of America’s Founding Ideas* [Oxford, New York, and other cities: Oxford University Press, 2005], 13.)

“Their ancestors [Thomas Jefferson, Richard Henry Lee, George Mason, and George Wythe] had been younger sons of English gentry and aristocracy, who emigrated to Virginia in the mid-seventeenth century. Their families were Anglican in religion, Royalist in politics during the English Civil War, and shared a pride of rank and ancestry, with coats of arms on file at the College of Heralds in London. In Virginia they became landowners, slavekeepers, and officeholders, and members of a close-linked cousinage who shared common interests and values. Even as much of their wealth rested on slavery, they had a highly developed sense of their own liberty and freedom . . . . But among the gentlemen of Virginia, and many others in their time, differences of social rank and condition were widely accepted and deeply believed. Similar ideas of hierarchy were widely shared by ruling elites throughout the Western world. In that respect, Virginia’s hierarchical idea of liberty was also very similar to Roman l*ibertas*. But it was very far removed from the Puritan heritage of town-born New Englanders, and from the restless pluralism of New Yorkers, and most of all from the reciprocal rights of the Quaker colonies . . . . The growth of slavery reinforced this hierarchical society and changed its vision of liberty and freedom to an idea of *laisser asservir* for slaveholders. It is certainly not correct, as some historians have written, that American freedom rose from American slavery, But it is true that one American version of liberty and freedom coexisted with slavery and even called it into being. ‘How is it,’ Doctor Samuel Johnson asked, ‘that we hear the loudest yelps for liberty among the drivers of negroes?’ Here is a question that continues to echo in American history even to our own time . . . . Burke believed that the existence of slavery made masters more conscious of their own liberty and freedom . . . .” These people of the southern colonies are much more strongly, and with a stubborn spirit, attached to liberty than those to the northward . . . . In such a people, the haughtiness of domination combines with the spirit of freedom, fortifies it, and renders it invincible.’ Slavery reinforced this idea of hierarchical liberty but did not create it. The temporal sequence is very clear. Hierarchy came first. Slavery followed . . . . Virginia’s idea of liberty remained an expression of inequality and hierarchy for many in its ruling class. John Randolph of Roanoke gave it a classic expression when he said, ‘I am an aristocrat; I love liberty, I hate equality.’ To those who did not share this way of thinking, Virginia’s hierarchical idea of hegemonic liberty seemed false and even hypocritical, increasingly so as it faded into the past. But in its time and place it was a genuine ideal.” (Fischer, 61, 64-65, 67.)

“From the start, Americans made Thomas Jefferson’s great text into a national icon, always with a double meaning. It was celebrated on public occasions as an instrument of national independence and reverently displayed in private homes as a symbol of the rights belonging to a free republic . . . . But what exactly did it mean? On one level, the answer was clear enough. The Declaration’s rejection of monarchy and its idea of national independence were self-evident from the start. But its ideas of liberty, freedom, and equality were open to interpretation . . . . To that end, the text of the Declaration was conceived in creative ambiguity, in the hope that most Americans could support it, even as their visions of a free America were in some ways far apart. In that process, the Declaration of Independence itself became a new vision of liberty and freedom, larger and more open than any that had preceded it. It was the first of many enlargements in a process that would become a central theme of American history.” (Fischer, 124.)

“The same creative ambiguity appeared in its idea of equality, Did the Declaration of Independence mean that ‘all men are created *equal*?’ Or did it mean, in the words of Yankee Nathaniel Ames, that ‘all men are *created* equal, but differ greatly in the sequel’? Was it a vision of equality before the law, or equality of social rank, or equality of material condition? . . . . Americans went a different way [in contrast to Europe where Jefferson was believed to have either gone too far or not far enough]. In 1776, most of them found a middling position. They understood Jefferson’s idea of ‘created equal’ to mean ‘equal liberty,’ or ‘equality of rights’ for all free men . . . . It is very interesting that conservative and radical Whigs both shared an idea of equal rights and rejected equality as a leveling of wealth. In the American Revolution, ‘created equal’ meant equal liberty, and a broad distribution of rights for all free men.” (Fischer, 124-125.)

“Jefferson, following Locke, thought that created equal meant ‘created as members of the same species,’ and that like Locke, Jefferson certainly did not mean to imply that all men are equal in size, strength, understanding, figure, moral accomplishments, or civil accomplishments.” (John H. Hazleton, *The Declaration of Independence: Its History* [New York: Dodd, Mead and Company, 1908], 75.)

“Principles announced in the Declaration of Independence were not fully implemented, American republicanism was not synonymous with radical egalitarianism, and the United States did not immediately become a democratic society.” (Colin Bonwick, *The American Revolution* [Charlottesville, Virginia: University of Virginia Press, 1991], 10.)

“By the time the Continental Congress had decided to declare independence from Great Britain, armed conflict had been raging for more than a year. Soldiers on both sides were dying, and it was becoming increasingly clear that Parliament would not accede to American colonists’ demands. Armed resistance would die out, however, without financial and material assistance—most prominently available from Britain’s old enemy, France. In order to secure such aid, and to solidify support among opponents of parliamentary authority in America, the Continental Congress determined to officially declare the independence of the thirteen colonies from Great Britain. Jefferson’s preamble to the Declaration, with its seemingly abstract statements of inalienable rights, is often quoted. Less quoted is the main body of the text, in which the Congress details the abuses committed by King George against his people in America. The charges are levelled against the king rather than Parliament. The principal reason for this is that Americans believed that their rights were secured through charters granted by the king. In the American view, it was the king alone, acting through colonial governments, through whom they were connected with the people and government of Great Britain.” (Bruce Frohnen, The Online Library of Liberty/Liberty Fund.)

“These key documents [the Declaration, the U. S. Constitution, and the Supreme Court decision in the *McCullough v. Maryland* case], White observes, not only expressed certain ideals, but also challenged Americans to reinterpret and reevaluate these ideals in light of their present needs. Thus they stimulated the development of communal discourse, a tradition which encouraged ‘the self-conscious reconstitution of language and community to achieve new possibilities for new life.’ A case in point is Lincoln’s use of the Declaration’s statement of equality in his defence of the Union.” (James Boyd White, *When Words Lose Their Meaning* [Chicago, 1984], 231 quoted in Paul Goetsch and Gerd Hurm, *The Fourth of July*, 8-9.)

“The belief that it is a charter of American democracy tends to obscure the purposes and functions it had in 1776.” (Goetsch and Hurm, *The Fourth of July*, 14.)

“What mattered to its contemporaries was the resolution adopted on July 2. The Declaration had its place as a statement of the reasons for independence from Britain and das an indictment of the British King exonerating the colonists of all responsibility. Thus, in the contest of 1776 the Declaration could not be seen as an expression of Jefferson’s personal philosophy but rather as ‘a committee document, the compromise of many minds.’ Nor could it be understood as a statement of political philosophy or political theory in general. Instead, it should be regarded as ‘a paper issued subsequent to an action in order to explain that action,’ that is, as a political and legal document in which the colonists state why they have claimed the right to dissolve their bonds with Britain. As Jefferson put it in 1825:

 All American whigs thought alike on these subjects. When

 forced therefore to resort to arms for redress, an appeal to the

 tribunal of the world was deemed proper for our justification.

 This was the object of the Declaration of Independence. Not to

 find out new principles, or new arguments, never before thought

 of, not merely to say things which had been said before; but to place

 before mankind the common sense of the subject; [in] terms so

 plain and firm as to command their assent, and to justify ourselves

 in the independent stand we were compelled to take.

(Goetsch and Hurm, *The Fourth of July*, 14-14.)

“In any case, the Declaration was not yet regarded as the charter of American democracy. For that people looked elsewhere: in the declarations of rights and the constitutions of the individual states and, later, in the Constitution of the United States.” (Goetsch and Hurm, *The Fourth of July*, 27.)

“In truth, it was more an expression of hope than a description of reality, but it marked the beginning of the journey toward becoming a truly American nation . . . . Audacious it was. It was certainly the most important and far-reaching decisions in the history of the Western world. It marked the first attempt by a colonial people to determine their own political destiny. It was the first revolution based on the principle of popular sovereignty, the notion that since governments are based on the consent of the people,, it is also ‘the right of the People to alter or abolish’ that government if it ceases to serve the purposes for which it was created. More expansively, but also more tentatively, Americans, in their Declaration of Independence, held out the hope of a democratic and egalitarian future.” (Richard R. Beeman, *Our Lives, Our Fortunes & Our Sacred Honor: The Forging of American Independence, 1774-1776* [New York: Basic Books, 2013], 9-10.)

“Many people at the time regarded the words of the preamble as having little substantive importance. John Lind, a Loyalist critic of the Declaration of Independence, claimed that ‘Of the preamble I have taken little or no notice,’ and the embittered former Massachusetts royal governor, Thomas Hutchinson, gave it only cursory attention in his critical dissection of the Declaration. But it was not Loyalists alone who ignored the preamble. For most American patriots, the heart and soul of the Declaration was the list of specific grievances, which, making up more than two-thirds of the document, were aimed at proving to the world that the king was indeed guilty of ‘repeated injuries and usurpations’ that justified independence.” (Beeman, 399.)

“To understand the radical nature⎯indeed, the audacity⎯of the Americans’ decision for independence, we need to put ourselves back into the minds and hearts of those delegates who traveled to Philadelphia for the opening of the First Continental Congress in September of 1774. That Congress was, in the words of John Adams, ‘a gathering of strangers,’ a group of men who brought with them widely differing interests and cultural perspectives, and very little sense of themselves as ‘Americans.’ Whether through their reading of their local newspapers or the most recently published and avidly sought-after fashion magazines from London, the residents of Massachusetts, Virginia, or South Carolina were much more familiar with the customs, fashions and contemporary happenings in their mother country than they were with the events in neighboring colonies. As South Carolinian John Drayton observed, the residents of his colony were ‘too much prejudiced in favor of British manners, customs, and knowledge, to imagine that elsewhere than in England, anything of advantage could be obtained’. . . .” (Beeman, 3.)

“”More bizarre still, Jefferson embarrassed American merchants and planters alike by blaming the British crown for the slave trade. Since he cannot possibly have believed this nonsense he must have been groping for some way to explain away the grotesquery of his postulate ‘All men are created equal.’ Congress retained that phrase for its ring, but otherwise saw the wisdom in taking a stand on the basis of Common Law, not embarrassing universals. So it deleted a full fourth of the draft, tweaked the rest, and inserted an appeal to Providence at the end⎯all to good effect. Jefferson maintained his text was ‘mangled’ and went into a funk that lasted all summer. But as Richard Henry Lee put it, so long as the declaration did not harm to the cause [independence], its wording was less important than ‘the Thing itself.’ Decades later the Declaration of Independence was canonized as American scripture, but in 1776 it was generally read once⎯in army camps, taverns, and village greens⎯cheered, and forgotten.” (Walter A. McDougall, *Freedom Just Around the Corner: A New American History, 1585-1828* [New York: HarperCollins Publishers, Inc., 2004], 245.\_

“Although the Declaration of Independence propounded a revolutionary and explosive philosophy, at the time its arguments excited little attention and almost no opposition. Even the Loyalists, unalterably opposed to independence and often embittered or outraged by American egalitarianism, had little to say in criticism of the philosophical argument set forth in the Declaration. We may assume, then, that what Jefferson announced was, indeed, the common sense of the matter, and that when he wrote that ‘I did not consider it as any part of my charge to invent new ideas’ he in a sense accepted the imputation that his ideas were familiar and commonplace.” (Henry Steele Commager and Richard B. Morris, eds., *The Spirit of ‘Seventy-Six: The Story of the American Revolution as Told by Its Participants [Edison*, New Jersey: Castle Books, 2002], 369.)

“First, I wished to focus on the establishment of the American Union. To one degree or another, nearly everyone saw advantages to confederating, but all perceived dangers as well. This book, therefore, has sought to inquire into who desired a Union? What did they seek from a Union? What were they prepared to do to maintain a Union? . . . . Ideas, in fact, may never have been more crucial in the struggle to create the United States, for the passionate factional battles of that day were fought over the shape and fabric of the new nation. Indeed, following independence the primal question that confronted political activists and an engaged publis was just how revolutionary the break with the Anglo-American past would be. In most instances, the answer lay at the very heart of one’s ideology.” (John Ferling, *A Leap in the Dark: The Struggle to Create the American Republic*, xi, xii-xiii.)

“His [Jefferson’s ] draft of the Declaration of Independence defined the American Revolution in a manner that resonated with most Americans, but at the same time it opened a window that permitted succeeding generations to give it new meaning.” (John Ferling, *A Leap in the Dark: The Struggle to Create the American Republic* [Oxford, New York, et al: Oxford University Press, 2003], 434.)

“Many of us believe [like Jamar Lee, a tenth grade student at the Olney School in Philadelphia, writing in an essay on the bicentennial] that it [“Thomas Jefferson’s dictum that ‘all men are created equal’. . . .”] is part of the United States Constitution. The hard fact is, of course, that the word ‘equality’ appears only once in the 1787 document, and it does not apply to individuals. Indeed, during most of American history, framers of constitutions, lawmakers, and judges avoided committing the nation to the protection of individual equality. They proclaimed neither formal equality (the appearance of equal treatment of individuals) nor substantive equality (the identical treatment of individuals, for legal equality was not generally acceptable as a social or political goal before the Civil War.” (Stanley N. Katz, “The Strange Birth and Unlikely History of Constitutional Equality,” *Journal of American History,* 75 [December 1988], 747-762, quote on 747-748.)

“Both [Bernard] Bailyn and [Gordon S.] Wood recognize, of course, that the potential radicalism of the Revolution was sharply tempered by the devotion of the men of the Revolution to the protection of private property. Almost twenty years ago, Edmund S. Morgan showed the great extent to which human rights and property rights were intertwined in Revolutionary thought, and Winthrop D. Jordan has illustrated how that devotion operated as ‘a serious and enduring impediment to compulsory abolition’ of chattel slavery. What has not been appreciated, and what, I would like to suggest here, served just as powerfully to limit the quality and extent of sociopolitical change during the Revolution was the deep and abiding commitment of the Revolutionary generation to political inequality.” (Jack P. Greene, “All Men Are Created Equal,” in *Imperatives, Behaviors & Identities: Essays in Early American Cultural History* [Charlottesville and London: University Press of Virginia, 2008], 236-267 quote on 237-238.).

“What precisely could such a phrase [all men are created equal] have meant in a society so riddled by inequalities as early America? For contemporaries, the meaning of the word equal was itself quite unequivocal. It meant, according to Dr. Samuel Johnson, being ‘upon the same terms,’ ‘not inferior or superior.’ But how could such a definition be applied to all men? Perhaps it could be said that all men were equal in the sense that all were mortal, that they all had to die, or, with the Levellers and Real Whigs in Britain, that all men were equal before God, that he ahd created them ‘spiritually equal’ in the sense that He had endowed each of them with the capacity ‘of knowing the dictates of virtue and conducting themselves in accordance with these dictates.’”

Greene, ibid., 238-239.)

“What the phrase clearly could not mean was that all men were equal by nature. One man differed ‘by nature’ from another, John Adams wrote, ‘almost as much as man from beast.’ ‘If this subject is considered even for a moment,’ wrote Edward Christian, professor of law at Cambridge . . .’the very reverse will appeat to be the truth’: ‘that all men are by nature unequal . . . .” (Greene, ibid., 239.)

“’When we say that all men are [created],’ wrote the Pennsylvania lawyer and legal theorist James Wilson just after the Revolution, ‘we mean not to apply this equality to their virtues, their talents, their dispositions, or their acquirements. In all these respects, there is, and it is for for the great purposes of society that there should be, great inequality among men.’ ‘Even the most racial [American] republicans in 1776,’ Wood tells us, ‘admitted the inevitability,’ even the utility, ‘of . . . natural distinctions: weak and strong, wise and foolish,’ and a host of others.” (Greene, ibid., 240.)

“Nor could a case be made for equality of social condition. Americans might not have had anywhere near the same extremes of wealth and poverty or the hereditary privileges and exclusions that characterized most Old World societies . . . . But, if in comparison with Europeans, Americans still lived ‘so near to the state of original equality,’ as Dr. Joseph Warren of Boston boasted in 1766, ‘they clearly did not, as Benjamin Rush pointed out in 1777, enjoy a state of ‘perfect equality, and an equal distribution of property . . . among the inhabitants.’ In ‘a new country’ such as America, said the Vermont historian Samuel Williams in 1794, ‘the nearest equality will take place, that can ever subsist among men . . . .But nothing ever did, or ever can produce an equality of power, capacity, and advantages, in the social or in any other state of man. By making men very unequal in their powers and capacities, nature has effectually prevented this.’” (Greene, ibid., 240.)

“Quite as much as the devotion to private property, the deep commitment to this conception of freedom [it was ‘not a gift to be conferred by governments’ but ‘sprang from the independence . . . of the individual’] and the concomitant revulsion against all forms of dependence . . . meant the spirit of ’76 could not immediately generate a sweeping movement in the direction of a more inclusive political society.” (Greene, ibid., 264.)

“Far, therefore, from being ‘perfectly clear that the principles for which Americans fought required the complete abolition of slavery,’ as Winthrop D. Jordan has argued, it can be contended from the perspective of the ideas and assumptions I have been describing here that those principles actually served to sustain an institution that merely functioned to preserve in an unfree status peoples who were thought to lack independence and virtue requisite for freedom.” (Greene, ibid., 264.)

“The philosophy of civil rights championed by the American Revolutionaries was thus not, as so many have charged, betrayed by their failures to abolish slavery and adopt a more inclusive definition of citizenship.” (Greene, ibid., 265-266.)

“Ever since the Continental Congress approved the Declaration of Independence on July 4, 1776, the noble sentiments expressed in the document have inspired people in the United States and around the world. The Founding Fathers conceived of the new nation in what we today would consider narrow terms—as a political community of white men of property. Gradually, as the generations unfolded, diverse racial and ethnic groups, as well as women of all backgrounds, cited the Declaration in their struggle to achieve a more inclusive definition of American citizenship. American history is the story of various groups of men and women, all “created equal” in their common humanity, claiming an American identity for themselves.

In fact, American history consists of many stories—the story of territorial growth and expansion, the story of the rise of the middle class, the story of technological innovation and economic development, and the story of U.S. engagement with the wider world. *Created Equal* incorporates these traditional narratives into a new and fresh interpretation of American history, one that includes the stories of diverse groups of people and explores expanding notions of American identity.” (Jacqueline Jones, Peter H. Wood, et al, *Created Equal: A Social and Political History of the United States* [Upper Saddle River, New Jersey: Pearson Education Group, 2008], preface.)

“In the context of 1776, the Declaration should chiefly be seen as a kind of legal brief.” At the time, “the declaration was not yet regarded as the charter of American democracy.” (Paul Goetsch and Gerd Hurm, eds., *The Fourth of July: Political Oratory and Literary Reactions, 1776-1876* [Tubingen, Germany: Gunter Narr Vertag, 1992], 18, 27.)

 “Here, Douglas came close to the majority opinion of Congress in 1776, whereas Lincoln, who was probably unaware of the textual history of the Declaration, echoed the early minority opinion [about equal rights including black Americans] . . . .” (Goetsch and Hurm, *The Fourth of July*, 30.)

“The basic purpose of the Declaration of Independence of 4 July 1776 was to make a formal statement that the authority of the British government over the former colonies had been dismissed.”

(Allen Jayne, *Jefferson’s Declaration of Independence: Origins, Philosophy, and Theology* [Lexington, Kentucky: University Press of Kentucky, 1998], 45.)

“Thus while the American Revolution apotheosized republican ideals, its transforming force [beginning in the early nineteenth century] also fed a ‘contagion of liberty’ that ultimately proved subversive. Over the next few decades, the republican world of the late colonial age changed radically, if almost imperceptibly.” (Steven Watts, *The Republic Reborn: War and the Making of Liberal America, 1790-1820* [Baltimore and London: Johns Hopkins University Press, 1987], 12.)

“Until the 1790s, the Declaration had been regarded as significant simply because it justified the separation of thirteen colonies from the jurisdiction of their mother country. Thereafter, ever so gradually, more attention was paid to the philosophical preamble than to the enumeration of grievances against George III. The Declaration, consequently, came increasingly to be perceived as having a more transcendent purpose, defining the rights of free men and the goals of civil government.” (Michael Kammen, *A Season of Youth: The American Revolution and the Historical Imagination* [Ithaca and London: Cornell University Press, 1978], 45-46.)

“American ambivalence about the concept of equality, as Perry Miller suggested in 1955, dates from Jacksonian days. For approximately a century thereafter, Americans of very different ideological dispositions were far more concerned about the inevitability of friction than persuaded of the possible compatibility between liberty and equality. A conservative like Arthur Twining Hadley, the president of Yale, interpreted liberty as life without governmental intervention. Because men were naturally unequal, to alter the relationship would necessitate an active role for government. Hence, in Hadley’s view, liberty and equality were natural enemies. A great many Americans, shared this attitude during the first third of the twentieth century.” (Michael Kammen, *Spheres of Liberty: Changing Perceptions of Liberty in American Culture* [Madison, Wisconsin: University of Wisconsin, 1986; Jackson, Mississippi: University Press of Mississippi, 2001], 164.)

“[T]he primary purpose of the Declaration was not to declare independence [done on July 2] , tut to proclaim to the world the reasons for declaring independence.” (Carl Becker, *The Declaration of Independence*: [New York, 1922, 1942], 5.)

“By modern standards, this declaration and these claims of equal rights smack of hypocrisy, or worse, given the severe unequal status of women, the treatment of native peoples, and the fact that one-fifth of the American population was enslaved. To be sure, ‘we should not forget the restrictions placed on rights by eighteenth-century men, but to stop there, cautions historian Lynn Hunt, ‘patting ourselves on the back for our own comparative advancement,’ is to miss the point. How did these men, living in societies built on slavery, subordination, and seemingly natural subservience, ever come to imagine men not at all like them, and in some cases, women too as equals?” (Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* [Oxford and New York: Oxford University Press, 2009], 9-10.)

“Equality has become a fundamental principle of American democracy. Although we are frequently reminded that Americans fail to practice altogether what they preach, still the concept of equality is as much a part of the democratic ideal as manhood suffrage and public education. But the Spirit of ’76, although not aristocratic, was not egalitarian either. Despite Thomas Jefferson’s eloquent declaration that all men are created equal, most Americans of the Revolutionary generation showed little interest in the broad aspects of human equality which since that time have helped to direct the course of American history . . . .What inequality did exist among people in the colonies, whether it was political or social, economic or religious, was secondary to another kind of inequality which took the colonists’ attention in the 1760s and which became a compelling force driving them toward revolution in the years following. This was inequality not among Americans but between Americans and Englishmen as subjects of the same empire, and when Americans became aware of it, they were grateful to the English for pointing it out to them . . . . Ambitions Americans regarded Parliamentary taxation as conduct becoming a stepmother’s severity rather than parental kindness, and they stubbornly refused to accept it. In justification, they argued a theory of empire which denied Parliament’s right to tax them without their consent, and more important, they maintained that Americans were as good as Englishmen and had claim to the same kind of treatment from government . . . . What he [John Adams] meant was that the inferior status forced upon the American colonists was an important cause⎯maybe to Adams . . . the most important cause⎯of the Revolution, which, in his mind, was a struggle for equality between American and Englishman.” (David S. Lovejoy, “’Rights Imply Equality’: The Case Against Admiralty Jurisdiction in America, 1764-1776,” in Jack P. Green, ed., *The Reinterpretation of the American Revolution, 1763-1789* [New York, Evanston, and London: Harper & Row Publishers, 1968], 181-182.)

“Equality was thus not directly conceived of by most Americans in 1776, including even a devout republican like Samuel Adams, as a social leveling . . . . By republicanism the Americans meant only to change the origin of social and political preeminence, not to do away with such preeminence altogether . . . . Certainly most Revolutionaries had no intention of destroying the gradations of the social hierarchy by the introduction of republicanism.” (Gordon S. Wood, *The Creation of the American Republic, 1776-1787* [Chapel Hill: University of North Carolina Press, 1969], 70-71.)

“Even the most radical republicans in 1776 admitted the inevitability of all natural distinctions: weak and strong, wise and foolish⎯and even of incidental distinctions: rich and poor, learned and unlearned. Yet, of course, in a truly republican society [of free men] the artificial subsidiary distinctions would never be extreme, not as long as they were based solely on natural distinctions. It was widely believed that equality of opportunity would necessarily result in a rough equality of station, that as long as the social channels of ascent and descent were kept open it would be impossible for any artificial aristocrats or overgrown rich men to maintain themselves for long.” (Wood, *Creation of the American Republic*, 72).

“More to the point, politically today the Declaration of Independence has no open enemies; it is the touchstone of our political arguments rather than an object of advocacy any more. Even those who dismiss the American founders as racist or sexist want to keep the Declaration. They accuse the founders of hypocrisy rather than mistaken principle. It is not only that no one wants to be on the wrong side of the Declaration, but that even the charges made against the Declaration’s authors seem to be anchored in the Declaration’s own principle of equality. Whether or not that principle and the other purported truths that accompany it are true, they would seem in fact to be the first principles of our regime . . . .

Suppose the Declaration had been written as it is usually read today. It would be only about a page in length, edited down to the first two paragraphs and then the last, where the actual declaration of independence is made. No one would deny that these paragraphs—especially the famous second one, with its elegantly simple account of the first principles of natural rights and just government—contain the most memorable phrases in the document, indeed precisely the phrases that have fired the imagination of generations of Americans and of reformers and revolutionaries around the globe. Nor is it only frequent repetition that gives these phrases their ring of self-evidence, even several centuries after they were penned. Jefferson crafted them with care, and he drew upon a rich tradition of political theory that had developed in the previous century or so in England, most especially as conveyed in the *Two Treatises of Government* by John Locke.

Though echoes of Locke’s phraseology can be heard in Jefferson’s language, Jefferson claimed that the Declaration did not reflect any single man’s ideas but rather “the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc.”3 Insisting that political reflection must begin with equal natural rights, that government is itself not naturally given but rather is formed through the consent of those who acknowledge it, that government has the limited purpose of securing rights, and that abusive government can be cashiered, the theoretical paragraph of the Declaration sketches a political doctrine that today we recognize as classically liberal—in contradistinction, I might add, despite Jefferson’s claim, to Aristotle’s teaching that the polis exists by nature and has the promotion of virtue as its highest end. Whether out of personal conviction or because liberty cannot be secure unless the people believe—remember his famous remark a decade later, “can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God?”4— Jefferson states more clearly than Locke that what I have called equal natural rights are an endowment of the Creator, presumably the same “Nature’s God” mentioned in the Declaration’s first sentence. But that government itself has a human rather than a divine origin is clear. Indeed, in a sense, that is the whole point—for the Declaration is written to justify political change . . . .

The Declaration justifies a political revolution, to be sure, but the constitutional dispute with England gave our revolution its distinctive form and contributed to its success. That revolution was not without its lawless moments, but on the whole its spirit was to reinvigorate old forms of self-governance and to reinforce protection for property and social order. Its self-evident first principles were soon to challenge some of these forms—restrictions on the suffrage, for example, and in some of the states, slavery, itself unknown at common law—but it is no more an accident that these challenges were approached in a spirit of constitutional compromise than that the revolution culminated in a Constitution. There, after all, in the middle division of the middle part of the Declaration, is mention of an unwritten “Constitution” which the Americans *already* assert to be their own . . . .

In asserting a right of self-government, the Americans in the Declaration appealed to a universal principle, political liberty, which against the fictions of the time had a radical meaning, but which they themselves knew from actual experience, as Marshall’s letter makes plain. Even when Lincoln suggests its radical potential, in the passage I quoted above, he implicitly clings to its specifically political connotation. The founders, he adds, “knew the propensity of prosperity to breed tyrants, and they meant that when such should reappear in this fair land and commence their vocation, they should have at least one hard nut to crack.”6 At least in the nineteenth and early twentieth centuries, every extension of the principle of equality in American constitutionalism—from the extension of the franchise coupled with an attack on politically entrenched economic privilege in Jacksonian times, to the extension of basic economic and then political rights to blacks and to women—involved an expansion of the class who could claim political liberty, not its replacement with a contrary ideal.

Read in the light of the document as a whole, then, the self-evident truths of the Declaration of Independence constitute an understanding of political liberty that is the basis of our constitutional order. Precisely because they commit us to liberty on political questions, they swear us to no allegiance to a political creed beyond a willingness to support the Constitution. Because the political things are not the whole of things, or even the noblest things, the truths about the political things cannot pretend to capture the whole of truth: political liberty can be a good, even a noble good, without being the comprehensive good.

But the whole truth is more complex than these Aristotelian propositions alone would indicate. Under the theory of the Declaration, politics is instrumental in its origin and limited in its ends, but this is precisely what makes it possible for us to act freely in political life, to bring truth as we understand it and goods and interests as we experience them into the public square. In other words, political liberty is good *because* it is not the comprehensive good. Since human beings are limited beings, we can only be just if we are also moderate.

(James R. Stoner, “Is There a Political Philosophy in the Declaration of Independence?,” *Intercollegiate Review*)

“The doctrines are essentially those of John Locke, in which the more radical of the patriots were steeped. Jefferson himself did not believe in absolute human equality, and, though he had no fears of revolution, he preferred that the "social compact" be renewed by periodical, peaceful revisions. That government should be based on popular consent and secure the "inalienable" rights of man, among which he included the pursuit of happiness rather than property, that it should be a means to human well-being and not an end in itself, he steadfastly believed. He gave here a matchless expression of his faith. The charges against the King, who is singled out because all claims of parliamentary authority are implicitly denied, are in general an improved version of those that had already been drawn up by Jefferson and adopted as the preamble of the Virginia constitution of 1776. Relentless in their reiteration, they constitute a statement of the specific grievances of the revolting party, powerfully and persuasively presented at the bar of public opinion.” (Dumas Malone in the *Dictionary of American Biography* posted by Prof. Richard Jensen at………………)

“Equality . . . meant simply equal liberty, not equality of condition⎯what has recently been called ‘equality of results’⎯or equality in any other sense differentiated from personal liberty.” (Rowland Berthoff, *Republic of the Dispossessed: The Exceptional Old-European Consensus in America* [Columbia, Missouri and London: University of Missouri Press, 1997, 40-41).

“The assertion that ‘all men are created equal’ was of no practical use in effecting our separation from Great Britain, and it was placed in the Declaration not for that but for its future use.” (Abraham Lincoln quoted by Mortimer J. Adler in source cited below).

“Is there then any respect in which all human beings, without a single exception, can be declared equal? Yes, there is only one. It is that they are all human, all members of one species, called Homo sapiens, and all having the same natural and thereby the same specific attributes that differentiate them from the members of all other species . . . .When this is understood, it will be seen that there is no conflict or contradiction between saying (1) that all human beings are equal in respect of their common humanity, and (2) that all human beings are also unequal, one with another, in a wide variety of respects . . . .” (“Mortimer J. Adler on Human Equality” at <http://www.bookofjob.org>).

“The Americans of 1776 were among the first men in modern society to defend rather than to seek an open society and constitutional liberty . . . . However radical the principles of the Revolution may have seemed to the rest of the world, in the minds of the colonists they were thoroughly preservative and respectful of the past.” (Clinton Rossiter, *Seedtime of the Republic* [1953] at “Clinton Rossiter Quotes” at <http://quotes.liberty-tree.ca/quote/clinton_rossiter_quote_5857>).

“Serious history is the critique of myths, however, not the embodiment of them. Neither is it the destruction of myths. One of the great national myths is the equality of man, embodied in the Declaration of Independence.” (C. Vann Woodward, *The Future of the Past*[Oxford and New York: Oxford University Press, 1989], 278.)

“As a practical matter, the Declaration of Independence publicly announced to the world the unanimous decision of the American colonies to declare themselves free and independent states, absolved from any allegiance to Great Britain. But its greater meaning-then as well as now-is as a statement of the conditions of legitimate political authority and the proper ends of government, and its proclamation of a new ground of political rule in the sovereignty of the people. "If the American Revolution had produced nothing but the Declaration of Independence," wrote the great historian Samuel Eliot Morrison, "it would have been worthwhile."

Although Congress had appointed a distinguished committee-including John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston-the Declaration of Independence is chiefly the work of Thomas Jefferson. By his own account, Jefferson was neither aiming at originality nor taking from any particular writings but was expressing the "harmonizing sentiments of the day," as expressed in conversation, letters, essays, or "the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc." Jefferson intended the Declaration to be "an expression of the American mind," and wrote so as to "place before mankind the common sense of the subject, in terms so plain and firm as to command their assent." (Matthew Spalding, “Independence Forever: Why America Celebrates the Fourth of July,” June 28, 2007, The Heritage Foundation at http://www.heritage.org.)

It is has long been conventional wisdom that The Declaration of Independence is the official and most important American endorsement of natural rights theory. According to this view, the Declaration unequivocally endorses natural rights theory although there is substantial debate about whether it represents a specifically “Lockean view” of rights and government in particular, a point to which we return below. This reading of the Declaration provides support for the argument that natural rights are the foundation of the American tradition and the basis of rights in the Constitution and the Bill of Rights. Interestingly enough, neither of those other two critical founding documents explicitly endorses natural rights or provides a statement outlining a general philosophy of government.1 The Declaration of Independence contrasts with these later documents, in articulating an explicit philosophy of rights and government. It also represents the culmination of American thinking for the decade leading up to the American Revolution. For all of these reasons, the Declaration has become the source par excellence justifying the view that American constitutional tradition is founded on natural rights philosophy, even though the Declaration’s primary purpose was to justify American independence from Great Britain rather than to serve as a founding document for the new United States. (From Howard I. Schwartz, The Declaration of Independence of Independence and Natural Rights: Thomas Jefferson’s Alternative Theory of American Rights (Part I). First published December 2007 on www.freedomandcapitalism.com. V.30

“The ‘Declaration’ heralded our nation’s birth and shaped its beliefs but neither Jefferson, nor Congress, intended it to offer freedom to slaves. Jefferson’s God-given universal rights applied only to free men . . . . Lincoln redefined Jefferson’s words in his ‘Gettysburg Address’ to alter the course of the Civil War and give the North deeper reason to fight.” (George Vos, “All Men Are Created Equal,” Norwalk Community College at <http://norwalk.digication.com>, accessed on June 26, 2013).

“The most famous speech in American history begins this way: ‘Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.’ Lincoln’s eloquence at Gettysburg was lyrical but historically accurate. For no such thing as a ‘new nation’ had been proposed in 1776, only a temporary union of sovereign states, declaring their independence from Britain, then presumably going their separate ways. Indeed, the magic words in the Declaration of Independence to which Lincoln referred, Thomas Jefferson’s words starting with ‘We hold these truths to be self-evident,’ located sovereignty in neither the national or state governments but in the souls of individual citizens . . . .

During the summer of 1776, then, the libertarian and anti-government values currently embraced by the tea party conservatives were, in fact, central features of the founding moment of the United States. While evangelicals will have a very hard time claiming Jefferson as one of their own, the original ethos of the American Revolution, is, at least rhetorically, compatible with the political agenda of the contemporary conservative movement.” (Joseph J. Ellis, “America May Be Ready for a New Narrative,” quoted in the Dallas Morning News, May 11, 2012.)

“The first American Revolution was a political revolution asserting the right of American citizens to be their own sovereign. It had an element of equality in its rhetoric.” (Philip B. Kurland, Ruminations on the Quality of Equality,” *Brigham Young University Law Review*, i(1979), 1-23 , quote on 3).

“The doctrine that all men are, in any sense, or have been, at any time, free and equal, is an utterly baseless fiction.” (T. H. Huxley, *On the Natural Inequality of Man* quoted in Philip B. Kurland, “Ruminations on the Quality of Equality,” *Brigham Young University Law Review*, I [1979], 1-23, quote on 6).

**On Lberty**

“The Revolutionary era gave birth to contradictory definitions of freedom and equality . . . . This singular event helped define American notions of identity, nationality, citizenship, and entitlement that we continue to debate in the twenty-first century . . . . [F]or many people in England and American subjects of Britain, freedom and equality entailed the right to own property, and slaves were defined as chattel property. For an outspoken minority, however, freedom and equality were universal rights that applied to all individuals, male and female, English and American, and this larger definition included slaves.” (Monica R. Gisolfi, “The American Revolution and the Meaning of Equality,” Columbia American History Online at http://caho-test.cc.columbia.edu).

“While significant differences abound today concerning the theoretical underpinnings of the Declaration and its purpose . . . this was not the case during the revolutionary period. Indeed, there was a substantial consensus in this earlier period concerning the document’s status and meaning. From the time of its drafting, the Declaration of Independence was almost universally viewed by the colonists as, first and foremost, a proclamation and justification of independence.” (George W. Carey, “Natural Rights, Equality, and the Declaration of Independence,” *Ava Maria Law Review*, 3 (Spring 2005, 45-68.

“In the generations between the Revolution and the Civil War, black people struggled with the weevils in interpretations of the Constitution which denied them citizenship rights. Most blacks believed that their citizenship was protected by the Constitution and by the ideals expressed in the Declaration of Independence. The founding fathers did not specifically mention race as they set out the self-evident truths by which they justified national independence. Although they certainly did not include slaves among those referred to as "the people," they were ambiguous on the status of the free people of color.

**Black Citizenship**

There were several early indications that the federal government did not consider free blacks full citizens. Despite their significant presence in the American Revolutionary forces, the post-war national militia excluded blacks and early naturalization laws limited the process to white aliens. In the first two decades of the nineteenth century, blacks could not carry the federal mail or hold elective office in the District of Columbia.

Nor did the Constitution protect free blacks from limitations imposed by the individual states. From 1819, when Maine joined the union, until after the Civil War, every new state denied the vote to free blacks and many did not allow them to serve on juries or even to testify in court cases involving whites. Constitutional protections did not prevent states like Ohio, Illinois, Indiana, and Oregon or the territory of Michigan from barring free blacks or from requiring substantial bonds as a prerequisite to their emigration. The Northwest Ordinance, adopted by Congress in 1787, forbade slavery in this Northcentral region, but it did not assure the civil rights of free blacks in the area. Even in states like Massachusetts and Pennsylvania, which did not restrict black emigration, there was serious discussion of such action. Save for two votes in its constitutional convention of 1850, California would have barred blacks. Clearly weevils abounded.

The question of black citizenship was further complicated by the fact that although many states obviously precluded it, others did not. Before 1820, free black men in Massachusetts, New Jersey, Pennsylvania, New York, Maine, Vermont, Connecticut, Rhode Island, and New Hampshire voted on an equal basis with white men. Ironically, they lost. that right in New Jersey, Connecticut, and Pennsylvania before the Civil War. In New York, black voters had to meet property ownership requirements that were removed for whites during the democratic reforms of the Jacksonian era.” (James Oliver Horton, *Weevils in the Wheat: Free Blacks and the Constitution, 1787-1860*)

Standing before an Iowa religious convention in the 1850s, Sojourner Truth, women's rights advocate and antislavery speaker, delighted her audience with her analysis of the American Constitution. With a dry wit that was her trademark on the abolitionist circuit, this former slave, the first black woman antislavery speaker in the nation, compared the Constitution to the mid-western wheat which during the 1850s was suffering from the boll weevil blight. From a distance the countryside looked deceptively beautiful but on a closer look one might see the ravishes of the blight. The Constitution was much the same, said Sojourner--21 feel for my rights, but there ain't any there." As weevils besieged the wheat, prejudice and bigotry threatened to undermine constitutional guarantees. As Sojourner saw it, American civil rights and liberties were endangered. The Constitution had "a little weevil in it."

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**ABOUT THE**

**AUTHOR**

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“The place of the Declaration in world history has far transcended the circumstances of its birth. Its immediate purpose was to provide the patriots with an effective justification for the war against Britain. In 1776 the Declaration was a propaganda document based upon the national needs of the new nation addressed to a ‘candid world’ to gain its support. But the founding fathers built better then they knew. What was a nationalist manifesto listing grievances against King George III became recognized over time as a constitutional document of global significance. The famous preamble came into its own as a ringing affirmation of human rights.” (George A. Billias, “The Declaration of Independence: A Constitutional Document,” in This Constitution: A Bicentennial Chronicle [1985] ).

“One of the first principles articulated in the Declaration is that of equality . . . .The rule of equality is tied to the creation of mankind by God. This proposition is not the incantation of a religious establishment. It is a legal fact acknowledged to be ‘self-evident.’ The Declaration is a legal instrument. It is intended for a legal object. It speaks of equality in a legal sense. The Declaration asserts that mankind is created and that as far as the law is concerned, mankind is created equally human by God.

There are at least two consequences of this proposition. The first is that all human being are endowed with the right to enjoy equal legal rights, legal opportunity, and legal protection. The second consequence of the rule of legal equality is that it neither mandates nor permits the civil government to ensure equal social position, economic well-being or political power. “ (Kerry L. Morgan, “Unalienable Rights, Equality and the Free Exercise of Religion,” June 28, 2013, at <http://www.lonang.com/conlaw> (The Laws of Nature and Nature’s God).

“In his introduction, Rakove presents a history of the two texts. At

the outset, he rightly notes that the adoption of the Constitution

left the "embarrassing" issue of slavery to be settled by the Civil

War amendments. He begins with the colonial controversy in the decade preceding the Declaration. He gives a short summary of the events leading up to the declaration of separation in June 1776. Rakove accepts that Jefferson was the original author of the Declaration (though John Adams claimed some participation in his later works). The majority vote by congressional members on June 2, expressly by Adams, was then followed by two days of rewriting. Jefferson opposed the "mutilations" of the document, which Rakove suggests resulted in "a leaner, tighter, less severe, and arguably more eloquent conclusion" (p. 21). He also posits that the phrase "all men are created equal" did not mean an equality of individuals, but a "collective right of revolution and self-government that the Declaration was written to justify" (p. 23). It was later accepted by Lincoln and most individuals that this was the proposition to which the entire nation was "dedicated." (Joel Fishman, review of Jack N. Rakove, *The Annotated U. S. Constitution and Declaration of Independence* [Cambridge, Massachusetts: Harvard University Press, 2009], H-Law, H-Net Reviews, March 13, 2012 at http://hnet.msu.edu.)

“Where Tsesis recounts that history, he has little new to say. His narrative comes alive only when the Declaration makes its appearance, on the remarkably numerous occasions when it was invoked, co-opted, or criticized by politicians and advocates. In a sense, the Declaration of Independence is the book’s main character. There are moments when one wonders whether it could somehow become the narrator.

Tsesis has a different purpose. Justice William Brennan once described the Constitution as “a sublime oration on the dignity of man,” but he must have meant that metaphorically, not literally. No one walks around quoting the Constitution—even its Preamble—for literary effect. Not so with the Declaration. Its preamble contains phrases that we immediately recognize, respect, and revere. Its truths have become “self-evident,” not in the colloquial meaning that we now give to that phrase, but in their philosophical sense, their original axiomatic quality, as the founding truths of the polity. Who would we be as a people if we rejected the principle that “all men are created equal” or denied that all are endowed with a birthright to “life, liberty, and the pursuit of happiness”?

Part of that underlying American faith may be a tribute to Thomas Jefferson’s literary economy, a talent that helps to explain why his fellow delegates in the Continental Congress ranked him first among the members of the drafting committee for the Declaration. Compare Jefferson’s phrasing with other corresponding documents of 1776 and one gets a sense of his quotable genius. The corresponding first article in the original draft of the Virginia Declaration of Rights of May 1776 stated the same principles in a more rotund form: “That all men are created equally free and independent, and have certain inherent natural rights, of which they cannot, by any compact, deprive or divest their posterity; among which are, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” Nor was this statement quite enough, once the Virginia provincial convention started worrying about how far their equality principle could go—say to cover their slaves. Accordingly the convention made two changes, amending the clause to say that “all men are by nature equally free,” but that the enjoyment of those rights operates only “when they enter into a state of society.” That last condition effectively excluded slaves. Essential as they were to Virginia economy and society, they had never entered it as rights-bearing individuals, being the mere chattel objects of slave law.

Jefferson’s economy—his knack for an eighteenth-century sound bite—was a stroke of genius. It made his phrasing memorable and quotable by anyone, and less in his own time, when Americans already knew why they were revolting, than in generations to come. Jefferson’s phrasing quickly entered into popular culture, becoming an independent and universal source of political values to which anyone could appeal. Much of Tsesis’s story is simply a history of how often those appeals have been made, a record of how the core ideas of an equal natural right to liberty has played out, not only in the obvious cases of anti-slavery and the call for women’s rights, but in a whole array of other episodes as well. Time and again, as Tsesis documents, these ideas and Jefferson’s simple phrases were deployed either to attack some form of inequality or to ask how new patterns of behavior unknown to the revolutionary generation should be viewed in terms of Americans’ original commitment to equality.

Somewhat regrettably, this creates a predictable narrative that makes the book somewhat desultory. Once one sees how Tsesis operates, it is easy to imagine how later chapters will unfold, and the absence of surprise can weaken a historical narrative as much as it saps a good novel. Still, the record that Tsesis traces offers a remarkable example of the way in which this single text has acted as an independent force in our history. For in his view, the history of the Declaration is more than a case study in the uses of political rhetoric. It is also an argument about the independent influence of the document’s ideals. Americans did not appeal to the Declaration merely because they could make such obvious use of its phrases. Rather, the existence of those key concepts is what has inspired the proponents of equality to seek their goals.

But Tsesis’s appeal to the Declaration goes beyond his account of its many uses after the Revolution. This appeal rests on two further complementary convictions. One is that the Declaration’s commitments to equality and universal liberty embody not only the objectives for which later generations struggled, but the authentic original principles of the American republic established in 1776. Tsesis gives Jefferson’s concise statements an extraordinarily authoritative sweep. The Declaration’s “message of universal freedoms,” he asserts early on, remains “the national manifesto of representative democracy and fundamental rights.” Or again, “The Declaration created a unified national government”; it “established a national polity composed of states, while the original Constitution granted states the authority to run their own day-to-day operations.” The Constitution, in this view, remains a partial and less-than-perfect instrument for achieving the ends of the Declaration. The “disparities” that the Constitution accepted between the Declaration’s promise and its accommodations of American political and social realities should be seen as defects to be corrected by narrowing the distance between universal values of rights and equality and lived practice.

These are powerful moral claims, but as statements of history they are highly problematic. The Declaration was the act of a national government that already existed, in the form of the Continental Congress, but the question of how unified its authority would be was left open, to be settled first by the Articles of Confederation and then significantly amplified and restructured by the Constitution. Nor did the Constitution “grant” the states any authority. That authority already existed. The Constitution only modified it by giving the national government independent legal powers of its own while imposing some restrictions on the legislative power of the states. The Continental Congress did decide that the independent states should be governed as republics—whatever choice was there?—but it did this not through the Declaration of July 4, but in another resolution approved seven weeks earlier.

In short, Tsesis collapses into the Declaration a host of claims that text and context simply cannot support, assigning to it qualities and purposes it was not originally intended or understood to possess. His most basic misunderstanding goes to the great equality principle that Jefferson condensed into “all men are created equal.” Americans have long read that to mean that we are or should become equal to one another as citizens. That, in effect, is how we have democratized the Constitution since 1776—as Tsesis ably demonstrates. When inequalities are perceived and become objectionable, we cite the Declaration in support of our leveling claims. Often we do that not merely because the inequalities are unjust in themselves, but also because we believe that the Declaration instructs us to oppose them. But the intended meaning of 1776 was never about inequality within American society. It was instead a statement that Americans as a people, as a collective whole, were equally endowed with other peoples with the right to oppose tyranny, to “alter and abolish” unjust governments and establish new governments in their stead. This form of equality means little to us now, but in the revolutionary circumstances of 1776, that was the equality Americans needed to assert.” (Jack N. Rakove, “Fitly Spoken,” review of Alexander Tsesis, For Liberty and Equality: The Life and Times of the Declaration of Independence [Oxford and New York: Oxford University Press, 2012], *New Republic*, August 9, 2012 at http://www.newrepublic.com/book/review/liberty-equality-alexander-tsesis.)

“It was an impossible dream [‘the equality of generations’]. No one escapes from the past without bearing some of its burdens. As Jefferson acknowledged in that other Declaration for which he is best known, ‘maknkind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.’ But the possibility of escape from inherited social evils is what drives revolution and reform. Reformers may sometimes state their goals as restoration of a distant past, but only where its contours can be imagined to fit a present ideal . . . .But Jefferson did not think that the government he helped to found, the forms he helped to establish, the evils he was willing to suffer, should inhibit future Americans. He could not as president of the United States, establish the equality of generations any more than the equality of races. He did not even succeed in getting rid of the national debt (or his personal debts). But he never ceased believing that future generations would do better . . . .” (Edmund S. Morgan, review of Vincent crapanzano, *Serving the Word: Literalism in American from the Pulpit to the Bench*, *New York Review of Books*, July 20, 2000.)

“The idea of a substantive social and political equality of indoviduals is not, and cannot be, either a scientific thesis or a philosophical thesis.” (Cornelius Castoradis, quoted in Martin Sicker, The Orthocratic State, p. 77.)”

“Equalites in certain respects between members of the same society are quite compatible with inequalities in other respects.” (R. G. Collingwood, quoted in Martin Sicker, *The Orthocratic State*, p. 76.)

“Are women equal to men? Are Jews equal to gentiles? Are blacks equal to Italians, Irigh, Polish, and other white people? The answer is probably a big fat no, and the pretense or assumption that we are equal⎯or should be equal⎯is foolhardy and creates mischief. Soft-minded and sloppy-thinking academics, lawyers and judges harbor the silly notion that but for the fact of discrimination, we’d be proportionally distributed by race (and gender) across incomes, education, occupations, and other outcomes. There is absolutely no evidence anywhere, at any time, that proportionality is the norm anywhere on earth; however, much of our thinking, many of our laws and much of our public policy are based upon proportionality being the norm. Maybe the vision is held because people believe that equality in fact is necessary for equality before the law. But the only requirement for equality before the law is that one is a human being.” (Walter Williams, “Are We Equal?,” March 28, 2013 at <http://www.aei.org>, American Enterprise Institute, Quote of the Day.)

“The Declaration was not only legalistic, but practical too. Americans hoped to get financial or military support from other countries that were traditional enemies of the British. However, these legal and pragmatic purposes, which make up the bulk of the actual document, are not why the Declaration is remembered today as a foremost expression of the ideals of the Revolution . . . .This ideal of equality [from ‘all Men are created Equal’] has certainly influenced the course of American history . . . .The ideal of full human equality has been a major legacy (and ongoing challenge) of the Declaration of Independence. But the signers of 1776 did not have quite that radical an agenda. The possibility for sweeping social changes was certainly discussed . . . . While the signers of the Declaration thought of ‘the people’ more narrowly than we do today, they articulated principles that are still vital markers of American ideals. And while the Declaration did not initially lead to equality for all, it did provide an inspiring start on working toward equality.” (“The Declaration of Independence and its Legacy” at <http://www.ushistory.org>, June 30, 2013.)

“But what does it mean to invoke “liberty” or “the pursuit of happiness,” or to say that ‘all men are created equal’? Over our history, different speakers have argued for different meanings of these words, and there can be little question that, for all of us, they have dramatically changed in meaning since 1776 . . . .Many of those who voted for independence, including the man who wrote the Declaration itself, Thomas Jefferson, owned slaves. Thus, they surely did not mean to encompass African-American slaves when they wrote in the Declaration that all men were created equal (nor did they mean to encompass women, of course).” (Ian Mylchreest, “The Influence of the Declaration of Independence Through History: How American Politicians, and the Supreme Court, Have Invoked It,” July 4,2002,http://www.news.findlaw.com/commentary.)

“Although the 1776 Declaration of Independence proclaimed that ‘All Men are created equal’ with certain basic rights including “life, Liberty, and the Pursuit of Happiness,’ the goal of liberty from England was stronger that striving for equality among the colonists. As a result, some classes of people enjoyed more rights than others. For example, in the first years of the nation only white male adult citizens who owned property could vote. Excluded were women, people of color, and the poor who held no property to speak of. Slavery was recognized as an important part of the nation’s economy. In fact, nowhere did the term equality appear in the U. S. Constitution adopted in 1789 or the Bill of Rights of 1791.” (“Civil Rights and Equal Protection, ” June 30, 2013, at <http://www.enotes.com/civil-rights-equal-protection-reference/civil-rights-equal-protection>.

“Equality. So conceived, American government is fundamentally about rights or liberty. But these rights follow from the equality of all men. This precedence of equality obviously does not mean an equality of strength, character, batting averages, or writing skill; nor does it demand a communistic equality of results or condition. In fact the Declaration’s idea of equality would forbid such an arbitrary leveling of the naturally diverse human condition. Whatever our differences, there exists a fundamental human identity⎯that no one is born to rule or to be ruled. Equality in this sense therefore requires that legitimate government be based on ‘the consent of the governed.’” (The Heritage Foundation, “The Declaration of Independence,” , June 29, 2013, at http://www.heritage.org/initiatives/first-principles/primary-sources/the-declaration-of-independence.

“The Declaration of Independence was precisely what the title suggested. It severed forever allegiance to the crown and vested sovereignty with thirteen independent American states. And it forged the basic constitutional value that government owes its existence to the consent of the governed. This was and continues to be the foundation of what Americans have believed to be the stewardship of citizenship [and ‘there was a great deal that America was not: namely, a unified state with a single constitutional head, permanently in place . . .’].” George M. Curtis III, “The Measure of Remembrance: The Declaration of Independence and the American Future,” July 4, 2013 in Library of Law and Liberty).

“The ideas of equality . . . in the era of the American Revolution . . .thus bore an ancient lineage, but a lineage which had never provided them with more than a minority position. Writers who proposed theories of equality seldom made them into programmes for reform.” (J. R. Pole, *The Pursuit of Equality in American History* [Berkeley and Los Angeles: University of California Press, 1978], 10.)

“”The general reception of these [English] ideas may well have been a necessary condition of the American Revolution; they provided Americans with a common legal discourse. That discourse, however, was not based on assumptions of social equality, and can only in a limited sense be thought to have laid foundations for an egalitarian social order.” (Ibid., 11.)

“Equality [is] in the sight of God and in the eyes of nature.” (Henry S. Commager, *Commager on Tocqueville* [1993], 35.

“”Democracy and the Tyranny of the Majority,” in ibid., 18-32 and “The Price of a Just Society,” in ibid., 33----? (Commager also concerned with the danger of a leviathan state and uniformity of opinion a la George Orwell.)

“With respect to these rights, all men are created equal (even though they are obviously unequal in their intellectual, moral, and physical endowments).” (Paul Eidelberg, “Karl Marx and the Declaration of Independence: The Meaning of Marxism,” *Intercollegiate Review* [Spring/Summer 1984], 3-13 quote on 5.)

“It is widely believed that the American republic is ultimately based on the principle that all men are created equal. Contrary to universal opinion, however, this principle, far from being wholly democratic, is a precondition for any genuine aristocracy! Needless to say, so shocking or paradoxical an assertion requires supportive argument, for which purpose consider the argument of my book On the Silence of the Declaration of Independence.

The statement of the Declaration that all men are created equal was intended to inform mankind in general, and the British government in particular, that Americans belong to the same species as Englishmen, hence that they are endowed by nature with certain unalienable rights peculiar to homo sapiens.

Since man did not create his own nature, he did not create the rights he possesses by virtue of his nature. Hence, he cannot be justly divested of those rights so long as he does not violate his nature or that which distinguishes man and beasts. Of the qualities that distinguish men from beasts, suffice to mention philosophical reason and moral sensibility or the sense of shame. Thus, only because man is homo *rationalis et civilis* does he possess (or can he seriously claim) the unalienable rights to Life, Liberty, and the pursuit of Happiness.

Notice that while the statesmen of the Declaration claimed that Americans possess these rights as species, they were being prevented from fully exercising those rights as individuals. This implicit distinction between the possession and exercise of rights is of profound significance. For nothing in the Declaration suggests that all men as individuals are entitled to the actual exercise of their rights without qualification.

In proof of this, it is sufficient to point out that the Declaration of Independence was incorporated into most of the state constitutions, many of which prescribed proper­ty and other qualifications for voting and for office. An implicit dis­tinction was therefore made between men’s rights and privileges. Whereas the rights men possess as species are defined by nature, the privileges they exercise as individuals are defined by law, whether written or customary.

Accordingly, the equality spoken of in the Declaration does not extend to privileges. Nevertheless, and strange as it may seem, the notion of privilege is a logical consequence of the Declaration’s principle of equality! For the principle that all men are created equal should be understood as a moral prohibition against any and all privileges based on race, nationality, class, or parentage. The only moral title to any privilege which society may confer must be based on individual merit.

In other words, what the equality of the Declaration requires is that no person be precluded by law from earn­ing any established privilege on the basis of factors extrinsic to human nature or to those intellectual and moral qualities that dis­tinguish the human from the sub-human. Examined in this light, the principle that all men are created equal—which does not mean they are born equal in their intellectual, moral, and physical en­dowments—may be regarded as the precondition of a genuine aristocracy!

As Jefferson wrote to John Adams: “I agree with you that there is a natural aristocracy among men. The grounds of this are virtue and talents. . . . The natural aristocracy I consider as the most precious gift of nature for the instruction, the trusts, and government of society.” It thus appears that the American polity had its origin in a syn­thesis of democratic and aristocratic principles. This synthesis is con­sistent with the notion of government based on the consent of the governed, provided the governed consist of an enlightened and public-spirited body of citizens—citizens who possess the capacity to discern, select, and defer to men of merit.

This democratic-aristocratic synthesis underlies The Federalist Papers and is most clearly evident in its recurring theme of deference to merit. In Federalist 36, Alexander Hamilton declares: “There are strong minds in every walk of life that will rise superior to the dis­advantages of situation, and will command the tribute due to their merit, not only from the classes to which they particularly belong, but from society in general. The door ought to be equally open to all.”

To be sure, James Madison admits (the obvious) in Federalist 10 that “Enlightened statesmen will not always be at the helm.” Nevertheless he expects that the popularly elected members of the House of Representatives will more often than not be of such caliber as “to refine and enlarge the public views,” representatives “whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to tem­porary or partial considerations.”

As for the (original) Senate, in­asmuch as the “State legislatures who appoint the senators, will in general be composed of the most enlightened and respectable citizens, there is reason to presume, says John Jay in Federalist 64, “that their attention and their votes will be directed to those men only who have become the most distinguished by their abilities and virtue, and in whom the people perceive just grounds for confidence.”

Finally, in Federalist 68, after analyzing the advantages of the electoral college method of choosing a President, Hamilton concludes: “It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters preeminent for abilities and virtue.”

Thus, even in this brief sketch (developed at great length in my Philosophy of the American Constitution) we see that the government established by America’s Founding Fathers exemplifies a synthesis of democratic and aristocratic principles. This will be made even more apparent in my forthcoming book Toward a Renaissance of Israel and America in which I develop a Judaic understanding of how America’s great founders combined the protection of economic interests and the cultivation of virtue. “ (Prof. Paul Eidelberg, posted by Daniel Downs at <http://thestateofamerica.wordpress.com>, August 31, 2009. See also Eidelberg, *The Philosophy of the American Constitution* [New York: The Free Press, 1968] and *On the Silence of the Declaration of Independence [*Amherst: University of Massachusetts Press, 1976]).

To quote another liberal and mainstream historian, Gordon S. Wood, “We know it [the Declaration] did not mean that blacks and women were equal to white men although it would be in time used to justify these equalities too.” In an editorial on July 4, 1997, discerning syndicated columnist William Raspberry (now deceased) observed that “We know the celebration wasn’t planned with us [African Americans] in mind. But then, there are lots of other Americans who weren’t on the minds of the authors of the Declaration of Independence.”

Writing thirty years earlier, Bernard Bailyn underscored the reality of inequality in the context of a more limited meaning of liberty. “The leaders of the Revolutionary movement . . . were eighteenth-century radicals concerned, like the eighteenth-century English radicals, not with the need to recast the social order nor the problems of economic inequality and the injustices of stratified societies but with the need to purify a corrupt constitution and fight off the apparent growth of prerogative power.”10

 Reviewing *For Liberty and Equality: The Life and Times of the Declaration of Independence* by Alexander Tsesis for *The New Republic*, Prof. Jack N. Rakove of Stanford University observes that the author’s “premise and his story is profoundly Lincolnian.” “In short, Tsesis collapses into the Declaration a host of claims that text and context simply cannot support, assigning to it qualities and purposes it was not originally intended or understood to possess [i. e., the authentic principles of the American republic and the creation of a unified national government].” “Americans have long read that [‘all men are created equal’] to mean that we are or should become equal to one another as citizens. That, in effect, is how we have democratized the Constitution since 1776 as Tsesis ably demonstrates not merely because the inequalities are unjust in themselves, but also because we believe that the Declaration instructs us to oppose them.” Yet “the intended meaning of 1776 was never about inequality within American society. It was instead a statement that Americans as a people, as a collective whole, were equally endowed with other peoples with the right to oppose tyranny, to ‘alter and abolish’ unjust governments and establish new governments in their stead. This form of equality means little to us now, but in the revolutionary circumstances of 1776, that was the equality Americans needed to assert.”11

For her part, Prof. Maier again makes the critical distinction that the equal rights of man “had originally referred to men in a state of nature, that is, before government existed.” Later on, after noting many “state and local declarations of Independence,” these together with the one of 1776 “suggested enough different meanings of the word ‘equality’—equal rights, equal access to office, equal voting power —to keep Americans busy sorting them out and fighting over practices that seemed inegalitarian far into the future.” For that matter, “The Declaration of Independence was, in fact, a peculiar document to be cited by those championed the cause of equality. Not only did its reference to men’s equal creation concern people in a state of nature before government was established, but the document’s original function was to end the previous regime, not to lay down principles to guide and limit its successor.”12

No “Glittering Generalities” and No Great Reaction

 Quite simply, there was no “Great Reaction” in the South or the other North before the Civil War. There was not because those “glittering generalities” of the equal rights of men were not present at the birth of the republic for them to deny. Put another way, it was not the South that changed its beliefs before 1860; rather, the principles of 1776 and 1787 were themselves reinterpreted for other intentions (perfecting the Republic by abolishing slavery and above all making it a nation united). About America’s most famous state paper, the South was right after all. It was not about equal rights for all men (neither white or black and most certainly not for women). “Convinced that their democracy was, in Abraham Lincoln’s words, ‘the last, best hope on earth,’ northerners could no more allow the secession of the southern states in 1861 than they could permit the South to remain in the Union unchanged.” If the “North came increasingly to interpret the Declaration of Independence as the nation’s ‘mission statement’ . . . . ,” for the South it became “an insurance policy against the encroachments of centralized power.” The right of revolution against a government about to become contrary to their welfare and rights was “more important . . . than the ‘life, liberty, and the pursuit of happiness’ philosophy that, Lincoln argued, informed America’s national doctrine.”13

How interesting, then, to discover these beliefs uttered in late 18th and early 19th century America, North and South.14

“I know . . . that the people talk about the liberty of nature, and assert that we divest ourselves of a portion of it, when we enter into society. This is declamation against matter of fact. We cannot live without society, and as to liberty, how can I be said to enjoy that which another may take from me when he pleases.” (Nathaniel Ames of Massachusetts, January 15, 1788, in Elliot, ed., *Debates*, II, 39.)

“A society . . . existing in a state of nature . . . must necessarily be in perpetual anarchy or despotism. But no such state of society can exist. The very act of associating destroys the mutual freedom and independence of each member of the society. . . . It is needless to discuss questions of natural rights as distinct from a social state . . . .” (Noah Webster, *An Oration on the Anniversary of the Declaration of Independence* [New Haven, 1802].)

“. . . diversity of genius, which is independently the gift of providence, plainly indicates the necessity of those distinctions in life, which are implied in government . . . .The signature of subordination are legible in the human form.” (Peres Forbes, *An Election Sermon* [Boston, 1795].)

“Man was no sooner born, than he was associated under some common tie, which bound the human race together . . . . Nature implanted the ties, habit confirmed them and experience proved them. Man knew his powers and his rights, before the fancy of philosophers ever engendered this ideal state.” (Timothy Ford, as “Americanus,” in *The Constitutionalist* [Charleston, S. C., 1794].)

“The term equality has of late been chanted with so much delight, and echoed from all quarters with so much fervor, that it has become almost the only *Carmen necessarium*; the center and substance of all that is precious . . . .” (Timothy Ford, ibid.)

Back to John Locke and Natural Rights: No Equality

Beyond a State of Nature

 Far from rejecting John Locke, as the above quotes might suggest, I would submit that the writers above knew Locke’s philosophy of government much better than many later scholars like Prof. Tewell with this or that bias in favor of equal rights for all constituting the end and purpose of government in America since 1776. Locke did not write his *Two Treatises of Government* (1690) to proclaim the equal rights of all men. Nor was this the sole purpose of our Declaration of Independence either. A state of nature, for Locke, was a beginning point not a final destination. His aim in *Two Treatises of Government* was first to dispel the conjoined myths of Divine Right monarchy and absolute government as most recently defended by Sir Robert Filmer in his *Patriarcha* (1680). For these purposes, Locke had to become an early Bible scholar and textual critic in order to challenge Adam’s claim to sovereignty by donation from God including the subjection of Eve and their posterity through “the conveyance of Adam’s sovereign monarchial power” through Biblical times and beyond. According to Filmer’s “short system of politics,” Locke writes, “Men are not born free, and therefore could never have the liberty to choose either governors, or forms of government. Princes have their power absolute, and by divine right; for slaves could never have a right to compact or consent. Adam was an absolute monarch, and so are all princes ever since.” To Locke, “Scripture or reason, I am sure, do not any where say so, notwithstanding the noise of divine right, as if divine authority hath subjected us to the unlimited will of another,” which “admirable state of mankind . . . they have had not wit enough to find out till this later age!15

 “By whom this doctrine came at first to be broached, and brought in fashion amongst us, and what sad effects it gave rise to, I leave to historians to relate, or to the memory of those who were contemporaries with Sibthorp and Manwaring to recollect. My business at present is only to consider what sir Robert Filmer, who is allowed to have carried this argument farthest, and is supposed to have brought it to perfection, has said in it.” If his “foundation fails, all his fabric falls with it, and governments must be left again to the old way of being made y contrivance and the consent of men

. . . making use of their reason to unite together into society.”16

 With the Biblical basis of Divine Right Monarchy effectively destroyed in his *First Treatise*, Locke next turned his attention to rediscovering “the old way” of government by consent. Thus his *Second Treatise: An Essay Concerning the True Original, Extent and End of Civil Government.* Note the emphasis in the title on “civil government” and the absence of “equality.” Equality was confined to a state of nature only and that only for a brief time.17

Garry Wills, *Lincoln at Gettysburg: the Words That Remade America*. New York, London, et al.: Simon & Schuster, 1992.

“Everett succeeded with his audience by being thoroughly immersed in the details of the event he was celebrating. Lincoln eschews all local emphasis. His speech overs far above the carnage. He lifts the battle to a level of abstraction that purges it of grosser matter - - - even ‘earth’ is mentioned as the thing from which the tested form of government shall not perish. More than William Saunders himself, Lincoln has aligned the dead in ranks in an ideal order. The nightmare realities have been etheralized in the crucible of his language. But that was just the beginning of the complex transformation. Lincoln did for the whole Civil War what he accomplished for the single battlefield. He has prescinded from messy squabbles over constitutionality, sectionalism, property, states. Slavery is not mentioned, any more than Gettysburg is. The discussion is driven back and back, beyond the historical particulars, to great ideals that are made to grapple naked in an airy battle of the mind. Lincoln derives a new, a transcendental, significance from this bloody episode. Both North and South strove to win the battle for *interpreting* Gettysburg as soon as the physical battle had ended. Lincoln is after even larger game - - - he means to ‘win’ the whole Civil War in ideological terms as well as military ones.” (37)

“Lincoln is here not only to sweeten the air of Gettysburg, but to clear the infected atmosphere of American history itself, tainted with official sins and inherited guild. He would cleanse the Constitution --- not, as William Lloyd Garrison had, by burning an instrument that countenanced slavery. He altered the document from within, by appeal from its letter to the spirit, subtly changing the recalcitrant stuff of that legal compromise, bringing it to its own indictment. By implicitly doing this, he performed one of the most daring acts of open-air sleight-of-hand ever witnessed by the unsuspecting. Everyone in that vast throng of crowd departed with a new thing in its ideological luggage, that new constitution Lincoln had substituted for the one they brought there with them. They walked off, fro those curving graves on the hillside, under a changed sky, into a different America. Lincoln had revolutionized the Revolution, giving people a new past to live with that would change their future indefinitely.” (38)

“Some people, looking on from a distance, saw that a giant (if benign) swindle had been performed. The Chicago *Times* quoted the letter of the Constitution to Lincoln - - -noting its lack of reference to equality, its tolerance of slavery - - - and said that Lincoln was betraying the instrument he was on oath to defend, traducing the men who *died* for the letter of that fundamental law:

 It was to uphold this constitution, and the Union

 created by it, that our officers and soldiers gave

 their lives at Gettysburg. How dare he, then,

 Ssanding on their graves, misstate the cause for

which they dies, and libel the statesmen who founded the government? They were men possessing too much self-respect to declare that

negroes were their equals, or were entitled to

equal privileges.” (38-39)

“Heirs to this outrage still attack Lincoln for subverting the Constitution at Gettysburg - - -suicidally frank conservatives like M. E. Bradford or the late Willmoore Kendall. But most

conservatives are understandably unwilling to challenge a statement now so hallowed, so literally sacrosanct, as Lincoln’s clever assault on the constitutional past. They would rather hope or pretend, with some literary critics, that Lincoln’s emotionally moving address had no discernible intellectual content, that ‘the sequence of ideas is commonplace to the point of banality, the ordinary coin of funeral oratory.’

 People like Kendall and the Chicago *Times* editors might have wished this were true, but they knew better. They recognized the audacity of Lincoln’s undertaking. Kendall rightly says Lincoln undertook a new founding of the nation, to correct things felt to be imperfect in the founders’ own achievement.

 Abraham Lincoln and, in considerable degree,

 the authors of the post-Civil War amendments,

 attempted a new act of founding, involving

concretely a startling new interpretation of the principle of the founders which declared ‘all men

are created equal.’

Edwin Meese and other ‘original intent’ conservatives also want to go back before the Civil War amendments (particularly

The Fourteenth) to the original founders. Their job would be

Comparatively easy if they did not have to work against the values created by the Gettysburg Address.” (39)

“The actual life of Washington seems not to have interested Lincoln⎯in fact, biographies in general bored him. His references to Washington are as few as one can reasonably expect from a politician of that time ⎯by contrast with, for instance, Everett’s marathon performance of his eulogy to the Father of His Country. Lincoln’s most striking reference to Washington is in his attack on the integrity of Polk: ‘Let him remember he sits where Washington sat, and, so remembering, let him answer as Washington would answer’ . . . . When he refers to the fathers, it is usually to call them the authors of the Declaration of Independence. And of course the pre-eminent father in this context is Jefferson . . . the man who enunciated the proposition to which the country is dedicated. The act of bringing forth a new nation conceived in liberty is always an *intellectual act* for Lincoln.” (84-85)

“And it was Jefferson’s framing of the *ideal* of the nation that made him its begetter:

 The principles of Jefferson are the definitions and

 Axioms of free society . . . . All honor to Jefferson ⎯

to the man who, in the concrete pressure of a struggle

for national independence by a single people, had the

coolness, forecast, and capacity to introduce into a

merely revolutionary document, an abstract truth,

applicable to all men and all times, and so to embalm

it there, that today, and in all coming days, it shall be a

rebuke and a stumbling block to the very harbingers of

reappearing tyranny and oppression. . . .” (85)

“Even Washington’s soldiers crossing the Delaware were animated by Jefferson’s ideal. The New Jersey remarks that began with Parson Weems quickly moved to the real point of the father’s greatness:

 I recollect thinking then, boy even though I was, that

 There must have been something more than common that

 Those men struggled for, that something even more than

National Independence, that something that held out a great promise to all the people of the world to all time tocome⎯I am exceedingly anxious that this Union, this Constitution, and the liberty of the people shall be perpetuated in accordance with the original idea for which that struggle was made.’” (85)

“One cannot intelligently discuss Lincoln’s attitude toward ‘the fathers’ unless one grasps this most basic fact about his use of the term: for him, the fathers are always the begetters of the national idea. The founders of the nation founded it on that. The fighters for the nation fought for that. The drafters of the Constitution tried to embody as much as they could of that idea. The sons of the fathers are sons only so far as they accept and perpetuate that idea. The fathers are relevant because the idea is never old. It is life-giving every time new Americans are begotten out of it. Americans are intellectually autochthonous, having no pedigree except that of the idea.” (86; see also Lincoln, July 4, 1858 speech quoted by Wills, 86-87.)

“There is no longer, in that Gettysburg Address, the assumption of Lincoln’s 1838 speech, that the only job is to preserve and hand on what the fathers accomplished. They did not accomplish the political equality they professed. They did not end slavery. They did not make self-government stable and enduring. They could not do that” (87)

“Since Lincoln thinks of America’s claim as intellectual, the Gettysburg is highly abstract in its thought and language. But if the argument of Lincoln is abstract, generalizing, and intellectual, his imagery is organic and familial.” (87-88)

“[A]t the time of his appearance at Gettysburg Lincoln was not advocating, even eventually, the suffrage for African Americans. The Gettysburg Address, for all its artistry and eloquence, does not directly address the prickliest issues of its historic moment.” (90)

Lincoln and “the Fathers”:

“’the fathers’ are even more emphatically honored in Lincoln’s speech [Young Men’s Lyceum speech, 1838]; but modern scholars have found something false or insincere in Lincoln’s constant invocation of the nation’s founding father’s. True, he referred to them insistently, repeatedly, in his debates with. Yet a vast literature now claims that Lincoln was hostile to ‘the fathers.’ This has colored some recent treatments of the Address.” (79)

Jonathan Scott, Algernon Sidney and the English Republic, 1623-1677.Step

“Sidney’s politics was thus premised on a central belief, not in the basic equality, but rather in the inequality ⎯ the variety⎯of men. Men were not equally ‘good,’ or equally capable of providing for the good of mankind.” (193; Aristotle quoted on the natural inequality among men.)

“Sidney would have regarded the modern conjunction of ‘liberty, equality, and fraternity’ as a contradiction of terms. It was inequality which made liberty necessary; and it was liberty which gave that inequality true expression.” (194; Sidney, Locke, the Cambridge Platonists had as their object not the achievement of equality for all, but to remove ‘impediments to the advance of the best’, ibid.)

Independence not Equality:

Gordon S. Wood, The Radicalism of the American Revolution (New York: Alfred A. Knopf, 1992).

“In embracing the idea of civic equality, however, the revolutionaries had not intended to level their society. They knew that any society, however republican and however devoted to the principles of equality, would still have ‘some Distinctions and Gradations of Rank arising from education and other accidental Circumstances,’ though none of these distinctions and gradations would be as great as those of a monarchial society. By equality they meant most obviously equality of opportunity, inciting genius to action and opening up careers to men of talent and virtue while at the same time destroying kinship and patronage as sources of leadership. With social movement both up and down founded on individual ability and character, however, it was assumed that no distinctions would have time to harden or to be perpetuated across generations. Thus equality of opportunity would help to encourage a rough equality of condition.”

(233-234).

“Equality was in fact the most radical and most powerful ideological force let loose in the Revolution. Its appeal was far more potent than any of the revolutionaries realized. Once invoked, the idea of equality could not be stopped, and it tore through American society and culture with awesome power. It became what Herman Melville called ‘the great God absolute! The centre [sic] and circumference of all democracy!’ The ‘Spirit of Equality’ did not merely cull the ‘selectest champions from the kingly commons,’ but it spread ‘the royal mantle of humanity over all Americans and brought ‘democratic dignity’ to even ‘the arm that wields a pick or drives a spike.’ Within decades following the Declaration of Independence, the United States became the most egalitarian nation in the history of the world, and it remains so today, regardless of its great disparities of wealth.” (232-233).

“Equality was related to independence; indeed, Jefferson’s original draft of the Declaration of Independence stated that ‘all men are created free & independent.’ Men were equal in that no one of them should be dependent on the will of another, and property made this independence possible.” (234)

Inequality in Early America:

Ronald Schultz, “A Class Society? The Nature of Inequality in Early America,” in Pestana and Salinger, eds., *Inequality in Early America*, 203-221.

“Inequality pervaded the early modern Atlantic world. From the centralizing monarchies of northwestern Europe, through the caliphates of northern and western Africa to the indigenous

empires of Central and South America, the Atlantic world presented a vast complex panorama of domination and subordination. Taking a variety of forms, complex systems of inequality divided people throughout the Atlantic world and placed them in hierarchical relations of wealth, power, and social prestige.” (203)

“Boston, New York City, and Philadelphia were the most unequal places in the Northeast. Dominated economically by a class wealthy import/export merchants, the northern seaport cities supported a diverse society made of independent artisans, retail merchants, laborers, mariners, indentured and hired servants, and slaves.” (210)

Social Levelling Threat:

Thomas N. Ingersoll, “’Riches and Honour Were Rejected by them as Loathsome Vomit’: The Fear of Leveling in New England,” in Pestano and Salinger, eds., Inequality in Early America, 46-46-66.

“Egalitarian ideology was given a stimulus by the American Revolution, however, and after the war with Great Britain was over, the charge of leveling was resurrected by socially conservative republicans in the service of conformity of thought and hostility to radical innovation.” (59)

“No national discourse on equality and the nature of a just society could emerge in early America because the slightest effort to address the issues was greeted by the accusations of leveling. Anyone who questioned the fairness of the distribution of wealth was incriminated as a fanatic hostile to private property itself.” (61)

**Declaration of Independence**

**(***Bruce Frohnen* *- 12/27/11, First Principles/Intercollegiate Institute, Web Journal*

The official document by which the thirteen American colonies broke with the English monarchy and seceded from the British Empire, the Declaration of Independence is an object of significant debate within the conservative movement because of the central and unique role some would give it within the American tradition of ordered liberty. Some, particularly neoconservative, commentators have sought to portray the Declaration as a statement of radically new principles, binding the American people together into a single union dedicated above all to protecting the rights of individuals against governmental intrusion. Central to this thesis is a heavy emphasis on the second paragraph of the Declaration, wherein the Continental Congress stated on behalf of the American people: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.” The Congress went on to state (in a final version that was radically different from the first draft submitted by Thomas Jefferson) that men have the right to alter or abolish governments violating these rights.

From these words some within the conservative movement (perhaps most tenaciously, Harry Jaffa) construct what conservative critics refer to as a civil theology or political religion according to which the great men who secured America’s freedom from Great Britain also reformulated the Western tradition of political thought, building on the work of English liberal thinker John Locke so as to secure individual rights as the ultimate end of government. The Founders are deemed to have based these rights in an equality that, while given by the creator of the universe, is superior in importance to duties imposed by that creator, other than the duty to recognize one another’s inherent and individual equality. The result, on this reading, is a philosophical statement of limited government and individualism, secured by a belief that these primary goods are demanded by God.

Traditional conservatives generally reject this view of the Declaration as excessively abstract, antihistorical, and lacking in philosophical or political context. Pointing out the pragmatic origins of the Declaration in the colonists’ need to make their break with Great Britain official in order to secure French aid, traditional conservatives (including George W. Carey and Russell Kirk, among others) further note the relative lack of importance assigned the document at the time of its promulgation (for example, it was signed by delegates only over the course of several weeks). Moreover, Jefferson himself noted the intentionally uncontroversial nature of the Declaration’s preamble; the initial paragraphs on which such great emphasis is placed were intended to merely restate commonly accepted truisms. The Declaration is more properly seen as one in a long line of declarations within the Anglo- American tradition, intended to defend the inherited and chartered rights of Englishmen against attempted usurpations by the monarchy.

Traditional conservatives tend to see the Declaration as part of a tradition going back at least as far as the Magna Carta of 1215. In that document the English barons forced King John to agree that he would abide by a number of rights traditionally accorded to the Catholic Church, the English nobility, and landowners in general. Rights such as habeas corpus (no detention without legal authority), trial by a jury of one’s peers, and consent to taxation were secured by this charter; these rights also were declared to have been the traditional law of the land stretching back to time immemorial. This historical view of rights was carried forward in other charters and declarations, including the English Bill of Rights, which resulted from the dethroning of James II in 1688. It was to that document and to the principles of the Glorious Revolution of 1688 that Americans had looked for many decades in detailing the rights they were guaranteed as British subjects.

The bulk of the Declaration is made up of charges leveled against the king. George III is charged with violating a number of important customary and chartered rights of the colonists, including the right to trial by jury, the right of the people not to be taxed without their consent, freedom from excessive interference with local lawmaking, and prohibitions against maintaining a standing army and quartering it in the people’s homes. In both style and substance this list of charges closely mirrors that of the English Bill of Rights and, like that earlier document, the Declaration claims that, by violating these long-established rights, the king has become a tyrant to whom the people can no longer look as a legitimate ruler. These charges bind the Declaration, and the United States, to a historical vision of rights and of their necessary place within a long tradition of ordered liberty, rather than to a vision of rights as mere rational deductions supported only by abstract reason.

Moreover, the Declaration’s prefatory language regarding equality and rights, so often examined in and of itself, must be read in context. The opening paragraph, and the document as a whole, is a declaration of political independence of one people from another, not an abstract statement of universal rights. It begins by stating that it will detail the causes for the separation of one people from another—not of one set of individuals from another, or of individuals from their government. Through the Declaration, the people of America dissolved the political bands connecting them with the people of Great Britain. As a people they assumed “among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature’s God entitle them.”

It was to defend and maintain the rights historically developed and accepted by and for Englishmen that the former colonists declared independence, fought their mother country, and established a new republic. And these rights were not so much those of each individual, atomistic person as of the people. Americans, being as good as Britons in the eyes of God, and having always lived according to traditions spelling out and protecting rights such as that of habeas corpus and representative government, were entitled to maintain those same rights for themselves by forming, if necessary, a separate nation. And it is the character of that nation, as presaged by the Declaration, that is most affected by differing interpretations of the Declaration. Thirteen separate colonies came together to state their grievances and to declare their status as “free and independent states”—the document uses the plural, “states”—from thence forward. Here was the point of tension that would both bless and plague America until a unitary state was finally established over the course of the twentieth century: Americans were one people, existing in several different, sovereign states. The Constitution would seek to bind these states together into a more perfect union in order to address pressing problems in foreign affairs, taxation, and internal trade. But it would do so in keeping with the same principles on which the Declaration was based—principles emphasizing the importance of inherited rights, of the primacy of representative government, and of the continuing sovereignty of each state over its own affairs, save where it had specifically ceded power to the mechanism of federal government, aimed at achieving limited, common ends.

Opponents of the conservative reading of the Declaration argue that it is, in essence, ethnocentric, or rooted only in the history of a particular people, and that it leaves conservatives unable to argue against moral enormities like slavery. But it is central to the conservative understanding that all men have a right to the protections of family and local social life. Thus, chattel slavery, which strips individuals of their fundamental social ties by reducing them to commodities that can be traded away at will, is wrong no matter what form of government a people may have, and no matter what ideological abstraction may be popular at the time. Not wishing to trust the possibility of a good life to any single political document or ideology, conservatives look to the broader tradition of natural law for general principles like ordered liberty and to a people’s history for the means by which those principles can best be put into action.

**Further Reading**

* Kendall, Willmoore, and George W. Carey. *The Basic Symbols of the American Political Tradition*. Washington, D.C.: Catholic University of America Press, 1995.
* Schwoerer, Lois G. *The Declaration of Rights: 1688–89*. Baltimore, Md.: Johns Hopkins University Press, 1981.

Shain, Barry Alan. *The Myth of American Individualism*. Princeton, N.J.: Princeton

University Press, 1994.

The Principles of 1776 and 1787

“The spirit of 1787 was an English spirit, and therefore a conservative . . . .The American constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its deep roots in the past, and that the more slowly every institution has grown, so much the more enduring is it likely to prove . . . .There is a hearty puritanism in the view of human nature which pervades the instrument of 1787 . . . . No men were less revolutionary in spirit than the heroes of the American Revolution. They made a revolution in the name of Magna Charta and the Bill of Rights [English] . . . .” (Lord Acton quoting James Bryce from *The American Commonwealth* ).

“He [James Bryce\ writes in the spirit of John Adams when he said that the French and the American Revolution had nothing in common.” (Lord Acton on James Bryce)

“Even though we are all equal in God’s sight and are as valuable to Him as anyone else, we are not created with equal attributes, either physical, mental, or emotional.  There is great diversity among human beings and no two are exactly alike.  If you stop and think about this, this a blessing, for if all people were created perfectly equal in every way we would be nothing but robotic automatons.  Created differences will mean that some people will have talents and abilities that others don’t; it will mean that some will excel through hard work and perseverance, while others won’t; it will mean that some will be favored for specific jobs or vocations while others are excluded.   The founders of the American nation realized this was true.  John Adams, in an effort to refute the French philosopher Jean Jacques Rousseau who taught that all people were created to be equal in every way, said,

*“That all men are born to equal rights is true.  Every being has a right to his own, as clear, as moral, as sacred, as any other being has…But to teach that all men are born with equal powers and faculties, to equal influence in society, to equal property and advantages through life, is as gross a fraud, as glaring an imposition on the credulity of the people, as ever was practiced by monks, by Druids, by Brahmins, by priests of the immortal Lama, or by the self-styled philosopher of the French Revolution [3].”*

This distinction between equal rights and equal faculties and power has tremendous implications for how people live and where they place their worth and value as humans beings.” (“We’re All Created Equal, Aren’t We?,” July 25, 2012, at <http://faithfulpolitics.org>.)

**chapter 113**

Equality

The United States are deemed all the world over to be preeminently the land of equality. This was the first feature which struck Europeans when they began, after the peace of 1815 had left them time to look beyond the Atlantic, to feel curious about the phenomena of a new society. This was the great theme of Tocqueville’s description, and the starting point of his speculations; this has been the most constant boast of the Americans themselves, who have believed their liberty more complete than that of any other people, because equality has been more fully blended with it. Yet some philosophers say that equality is impossible, and others, who express themselves more precisely, insist that distinctions of rank are so inevitable, that however you try to expunge them, they are sure to reappear. Before we discuss this question, let us see in what senses the word is used.

First there is legal equality, including both what one may call passive or private equality, i.e., the equal possession of civil private rights by all inhabitants, and active or public equality, the equal possession by all of rights to a share in the government, such as the electoral franchise and eligibility to public office. Both kinds of political equality exist in America, in the amplest measure, and may be dismissed from the present discussion.

Next there is the equality of material conditions, that is, of wealth, and all that wealth gives; there is the equality of education and intelligence; there is the equality of social status or rank; and there is (what comes near to, but is not exactly the same as, this last) the equality of estimation, i.e., of the value which men set upon one another, whatever be the elements that come into this value, whether wealth, or education, or official rank, or social rank, or any other species of excellence. In how many and which of these senses of the word does equality exist in the United States?

Not as regards material conditions. Till about the middle of last century there were no great fortunes in America, few large fortunes, no poverty. Now there is some poverty (though only in a few places can it be called pauperism), many large fortunes, and a greater number of gigantic fortunes than in any other country in the world. The class of persons who are passably well off but not rich is much larger than in the great countries of Europe. Between the houses, the dress, and the way of life of these persons, and those of the richer sort, there is less difference than in Europe. The very rich do not (except in a few places) make an ostentatious display of their wealth, because they have no means of doing so, and a visitor is therefore apt to overrate the extent to which equality of wealth, and of material conditions generally, still prevails. The most remarkable phenomenon of the last half century has been the appearance, not only of those few colossal millionaires who fill the public eye, but of a crowd of millionaires of the second order, men with fortunes ranging from $5,000,000 to $20,000,000. At a seaside resort like Newport, where one sees the finished luxury of the villas, and counts the well-appointed equipages, with their superb horses, which turn out in the afternoon, one gets some impression of the vast and growing wealth of the Eastern cities. But through the country generally there is little to mark out the man with an income of $100,000 a year from the man of $20,000, as he is marked out in England by his country house with its park, or in France by the opportunities for display which Paris affords. The number of these fortunes seems likely to go on increasing, for they are due not merely to the sudden development of the West, with the chances of making vast sums by land speculation, or in railway construction, but to the field for doing business on a great scale, which the size of the country presents. Where a merchant or manufacturer in France or England could realize thousands, an American, operating more boldly, and on this far wider theatre, may realize tens of thousands. We may therefore expect these inequalities of wealth to grow; nor will even the habit of equal division among children keep them down, for families are often small, and though some of those who inherit wealth may renounce business, others will pursue it, since the attractions of other kinds of life are fewer than in Europe. Politics are less exciting, there is no great landholding class with the duties towards tenants and neighbours which an English squire may, if he pleases, usefully discharge; the pursuit of collecting pictures or other objects of curiosity implies frequent visits to Europe, and although the killing of birds prevails in the Middle states and the killing of deer in the West, this rather barbarous form of pleasure is likely in time to die out from a civilized people. Other kinds of what is called “sport” no doubt remain, such as horse racing, eagerly pursued in the form of trotting matches,**1** “rushing round” in an automobile, and the manlier amusements of yacht racing, rowing, and baseball, but these can be followed only during part of the year, and some of them only by the young. To lead a life of so-called pleasure gives much more trouble in an American city than in Paris or Vienna or London. Accordingly, while great fortunes will continue to be made, they will be less easily and quickly spent than in Europe, and one may surmise that the equality of material conditions, almost universal in the eighteenth century, still general in the middle of the nineteenth will more and more diminish by the growth of a very rich class at one end of the line, and of a very poor class at the other end.**2**

As respects education, the profusion of superior as well as elementary schools tends to raise the mass to a somewhat higher point than in Europe, while the stimulus of life being keener and the habit of reading more general, the number of persons one finds on the same general level of brightness, keenness, and a superficially competent knowledge of common facts, whether in science, history, geography, or literature, is extremely large. This general level tends to rise. But the level of exceptional attainment in that small but increasing class who have studied at the best native universities or in Europe, and who pursue learning and science either as a profession or as a source of pleasure, rises faster than does the general level of the multitude, so that in this regard also it appears that equality has diminished and will diminish further.

So far we have been on comparatively smooth and easy ground. Equality of wealth is a concrete thing; equality of intellectual possession and resource is a thing which can be perceived and gauged. Of social equality, of distinctions of standing and estimation in private life, it is far more difficult to speak, and in what follows I speak with some hesitation.

One thing, and perhaps one thing only, may be asserted with confidence. There is no rank in America, that is to say, no external and recognized stamp marking one man as entitled to any social privileges, or to deference and respect from others. No man is entitled to think himself better than his fellows, or to expect any exceptional consideration to be shown by them to him. Except in the national capital, there is no such thing as a recognized order of precedence, either on public occasions or at a private party, save that yielded to a few official persons, such as the governor and chief judges of a state within that state, as well as to the president and vice-president, the Speaker of the House, the federal senators, the judges of the Supreme Federal Court, and the members of the president’s cabinet everywhere, through the Union. In fact, the idea of a regular “rule of precedence” displeases the Americans,**3** and one finds them slow to believe that the application of such rules in Europe gives no offence to persons who possess no conventional rank, but may be personally older or more distinguished than those who have it.

What, then, is the effect or influence for social purposes of such distinctions as do exist between men, distinctions of birth, of wealth, of official position, of intellectual eminence?

To be sprung from an ancient stock, or from a stock which can count persons of eminence among its ancestors, is of course a satisfaction to the man himself. There is at present almost a passion among Americans for genealogical researches. A good many families can trace themselves back to English families of the sixteenth or seventeenth century, and of course a great many more profess to do so. For a man’s ancestors to have come over in the Mayflower is in America much what their having come over with William the Conqueror used to be in England and is often claimed on equally flimsy grounds. The descendants of any of the revolutionary heroes, such as John Adams, Edmund Randolph, Alexander Hamilton, and the descendants of any famous man of colonial times, such as the early governors of Massachusetts from William Endicott downwards, or of Jonathan Edwards, or of Eliot, the apostle of the Indians, are regarded by their neighbours with a certain amount of interest, and their legitimate pride in such an ancestry excites no disapproval.**4** In the Eastern cities, and at fashionable summer resorts one begins to see carriages with armorial bearings on their panels, but most people appear to disapprove or ridicule this as a piece of Anglomania, more likely to be practised by a parvenu than by the scion of a really old family. Virginians used to set much store by their pedigrees, and the letters F.F.V. (First Families of Virginia) had become a sort of jest against persons pluming themselves on their social position in the Old Dominion.**5** Since the war, however, which shattered old Virginian society from its foundations, one hears little of such pretensions.**6**

The fault which Americans are most frequently accused of is the worship of wealth. The amazing fuss which is made about very rich men, the descriptions of their doings, the speculation as to their intentions, the gossip about their private life, lend colour to the reproach. He who builds up a huge fortune, especially if he does it suddenly, is no doubt a sort of hero, because an enormous number of men have the same ambition. Having done best what millions are trying to do, he is discussed, admired, and envied in the same way as the captain of a cricket eleven is at an English school, or the stroke of the university boat at Oxford or Cambridge. If he be a great financier, or the owner of a great railroad or a great newspaper, he exercises vast power, and is therefore well worth courting by those who desire his help or would avert his enmity. Admitting all this, it may seem a paradox to observe that a millionaire has a better and easier social career open to him in England than in America. Nevertheless there is a sense in which this is true. In America, if his private character be bad, if he be mean, or openly immoral, or personally vulgar, or dishonest, the best society will keep its doors closed against him. In England great wealth, skilfully employed, will more readily force these doors to open. For in England great wealth can, by using the appropriate methods, practically buy rank from those who bestow it; or by obliging persons whose position enables them to command fashionable society, can induce them to stand sponsors for the upstart, and force him into society, a thing which no person in America has the power of doing. To effect such a stroke in England the rich man must of course have stopped short of positive frauds, that is, of such frauds as could be proved in court. But he may be still distrusted and disliked by the elite of the commercial world, he may be vulgar and ill-educated, and indeed have nothing to recommend him except his wealth and his willingness to spend it in providing amusement for fashionable people. All this will not prevent him from becoming a baronet, or possibly a peer, and thereby acquiring a position of assured dignity which he can transmit to his offspring. The existence of a system of artificial rank enables a stamp to be given to base metal in Europe which cannot be given in a thoroughly republican country.**7** The feeling of the American public towards the very rich is, so far as a stranger can judge, one of curiosity and wonder rather than of respect. There is less snobbishness shown towards them than in England. They are admired as a famous runner or a jockey is admired, and the talents they have shown, say, in railroad management or in finance, are felt to reflect lustre on the nation. But they do not necessarily receive either flattery or social deference, and sometimes, where it can be alleged that they have won their wealth as the leading spirits in monopolistic combinations, they are made targets for attack, though they may have done nothing more than what other businessmen have attempted, with less ability and less success.

The persons to whom official rank gives importance are very few indeed, being for the nation at large only about one hundred persons at the top of the federal government, and in each state less than a dozen of its highest state functionaries. For these state functionaries, indeed, the respect shown is extremely scanty, and much more official than personal. A high federal officer, a senator, or justice of the Supreme Court, or cabinet minister, is conspicuous while he holds his place, and is of course a personage in any private society he may enter; but less so than a corresponding official would be in Europe. A simple member of the House of Representatives is nobody. Even men of the highest official rank do not give themselves airs on the score of their position. Long ago, in Washington, I was taken to be presented to the then head of the United States Army, a great soldier whose fame all the world knows. We found him standing at a desk in a bare room in the War Department, at work with one clerk. While he was talking to us the door of the room was pushed open, and there appeared the figure of a Western sightseer belonging to what Europeans would call the lower middle class, followed by his wife and sister, who were “doing” Washington. Perceiving that the room was occupied they began to retreat, but the commander in chief called them back. “Walk in, ladies,” he said. “You can look around. You won’t disturb me; make yourselves at home.”

Intellectual attainment does not excite much notice till it becomes eminent, that is to say, till it either places its possessor in a conspicuous position, such as that of president of one of the greatest universities, or till it has made him well known to the world as a preacher, or writer, or scientific discoverer. When this kind of eminence has been reached, it receives, I think, more respect than anywhere in Europe, except possibly in Italy, where the interest in learned men, or poets, or artists, seems to be greater than anywhere else in Europe.**8** A famous writer or divine is known by name to a far greater number of persons in America than would know a similar person in any European country. He is one of the glories of the country. There is no artificial rank to cast him into the shade. He is possibly less famous than the railroad kings or manipulators of the stock markets; but he excites a different kind of sentiment; and people are willing to honour him in a way, sometimes distasteful to himself, which would not be applied to the millionaire except by those who sought to gain something from him.

Perhaps the best way of explaining how some of the differences above mentioned, in wealth or official position or intellectual eminence, affect social equality is by reverting to what was called, a few pages back, equality of estimation—the idea which men form of other men as compared with themselves. It is in this that the real sense of equality comes out. In America men hold others to be at bottom exactly the same as themselves.**9** If a man is enormously rich, or if he is a great orator, like Daniel Webster or Henry Ward Beecher, or a great soldier like Ulysses S. Grant, or a great writer like R. W. Emerson, or president, so much the better for him. He is an object of interest, perhaps of admiration, possibly even of reverence. But he is deemed to be still of the same flesh and blood as other men. The admiration felt for him may be a reason for going to see him and longing to shake hands with him, a longing frequent in America. But it is not a reason for bowing down to him, or addressing him in deferential terms, or treating him as if he was porcelain and yourself only earthenware.**10** In this respect there is, I think, a difference, slight but perceptible, between the sentiment of equality as it exists in the United States, and as one finds it in France and Switzerland, the countries of the Old World where (if we except Norway, which has never had an aristocracy) social equality has made the greatest progress. In France and Switzerland there lingers a kind of feeling as if the old noblesse were not quite like other men. The Swiss peasant, with all his manly independence, has in many cantons a touch of instinctive reverence for the old families; or perhaps, in some other cantons, a touch of jealousy which makes him desire to exclude their members from office, because he feels that they still think themselves better than he is. Nothing like this is possible in America, where the very notion of such distinctions excites a wondering curiosity as to what sort of creature the titled noble of Europe can be.

The total absence of rank and the universal acceptance of equality do not however prevent the existence of grades and distinctions in society which, though they may find no tangible expression, are sometimes as sharply drawn as in Europe. Except in the newer parts of the West, those who deem themselves ladies and gentlemen draw just the same line between themselves and the multitude as is drawn in England, and draw it in much the same way. The nature of a man’s occupation, his education, his manners and breeding, his income, his connections, all come into view in determining whether he is in this narrow sense of the word “a gentleman,” almost as they would in England,**11** though in most parts of the United States personal qualities count for rather more than in England, and occupation for hardly anything. The word is equally indefinable in both countries, but in America the expression “not quite a lady” seems to be less frequently employed . . . . (James Bryce, “Equality,” Chap. 113 in The American Commonwealth The American Commonwealth, with an Introduction by Gary L. McDowell (Indianapolis: Liberty Fund, 1995). Vol. 2.

**Revolution Without Dogma**

We are accustomed to think of the Revolution as the great age of American political thought. It may therefore be something of a shock to realize that it did not produce in America a single important treatise on political theory. Men like Franklin and Jefferson, universal in their interests, active and spectacularly successful in developing institutions, were not fertile as political philosophers.

We have been slow to see some of the more obvious and more important peculiarities of our Revolution because influential scholars on the subject have cast their story in the mold of the French Revolution of 1789. Some of our best historians have managed to empty our Revolution of much of its local flavor by exaggerating what it had in common with that distinctively European struggle. This they have done in two ways.

First, they have stressed the international character of the intellectual movement of which the French Revolution was a classic expression-the so-called "Enlightenment." They speak of it as a "climate of opinion" whose effects, like the barometric pressure, could no more be escaped in America than in Europe. As Carl Becker put it in his *Heavenly City of the Eighteenth-Century Philosophers*: "The Enlightenment . . . is not a peculiarly French but an international climate of opinion ... and in the new world Jefferson, whose sensitized mind picked up and transmitted every novel vibration in the intellectual air, and Franklin of Philadelphia, printer and friend of the human race--these also, whatever national or individual characteristics they may have exhibited, were true children of the Enlightenment. The philosophical empire was an international domain of which France was but the mother country and Paris the capital."

Second, they have treated ours as only a particular species of the genus "Revolution"--of what should perhaps more properly be called *revolutio Europaensis*. Since the French Revolution has been made the model, from that European revolution historians have borrowed the vocabulary in which ours is discussed and the calendar by which it is clocked. "Thermidor," for example, is the name used in one of our best college textbooks to introduce its chapter on the federal Constitution. It goes on: "There comes a time in every revolutionary movement when the people become tired of agitation and long for peace and security. They then eliminate the radicals, troublemakers and warmongers, and take measures to consolidate their government hoping to secure what has already been gained through turmoil and suffering. "Thermidor " time is called in leftist language, from the counter-revolution in France that overthrew Robespierre and ended the reign of terror. Thus, the establishment of Cromwell as Lord Protector was the Thermidor of the English Revolution in the seventeenth century; and the Stalin dictatorship and exile of Trotsky marks the Thermidor of the Russian Revolution. Every taking of the Bastille, it may be said, is inevitably followed by Thermidor, since human nature craves security, and the progress of a revolution must be stopped somewhere short of anarchy." (Morison and Commager, *Growth of the American Republic)*.

The effect of all this has been to emphasize-or rather exaggerate-the similarity of ours to all other modern revolutions. In so doing, historians have exaggerated the significance of what is supposed to have been the ideology of the Revolution. Such an emphasis has had the further attraction to some "liberal' historians of seeming to put us in the main current of European history. It has never been quite clear to me why historians would not have found our revolution significant enough merely as a victory of constitutionalism.

The most obvious peculiarity of our American Revolution is that, in the modern European sense of the word, it was hardly a revolution at all. The Daughters of the American Revolution, who have been understandably sensitive on this subject, have always insisted in their literature that the American Revolution was no revolution but merely a colonial rebellion. The more I have looked into the subject, the more convinced I have become of the wisdom of their naivete. "The social condition and the Constitution of the Americans are democratic," De Tocqueville observed about a hundred years ago. "But they have not had a democratic revolution." This fact is surely one of the most important of our history. A number of historians (J. Franklin Jameson and Merrill Jensen, for example) have pointed out the ways in which a social revolution, including a redistribution of property, accompanied the American Revolution. These are facts which no student of the period should neglect. Yet it seems to me that these historians have by no means succeeded in showing that such changes were so basic and so far-reaching as actually in themselves to have established our national republican institutions. When we speak of the Revolution therefore, we are still fully justified in referring to something other than what Jameson's disciples mean by "the American Revolution as a social movement." If we consider the American Revolution in that sense, it would not be a great deal more notable than a number of other social movements in our history, such as Jacksonianism, populism, progressivism, and the New Deal. Moreover, in so far as the American Revolution was a social movement, it was not much to be distinguished from European revolutions; and the increasing emphasis on this aspect of our history is but another example of the attempt to assimilate our history to that of Europe.

The Revolution, as the birthday of our nation, must mean something very different from all this. It is the series of events by which we separated ourselves from the British Empire and acquired a national identity. Looking at our Revolution from this point of view, what are some features which distinguish it from the French Revolution of 1789 or the other revolutions to which western European nations trace their national identity? And, especially, what are those peculiarities which have affected the place of theory in our political life?

1. First, and most important, the United States was born in a colonial rebellion. Our national birth certificate is a Declaration of Independence and not a Declaration of the Rights of Man. The vast significance of this simple fact is too often forgotten. Compared even with other colonial rebellions, the American Revolution is notably lacking in cultural self-consciousness and in any passion for national unity. The more familiar type of colonial rebellion--like that which recently occurred in India--is one in which a subject people vindicates its local culture against foreign rulers. But the American Revolution had very little of this character. On the contrary, ours was one of the few conservative colonial rebellions of modem times.

We should recall several of the peculiar circumstances (most of them obvious) which had made this kind of revolution possible. At the time of the Revolution, the major part of the population of the American colonies was of British stock. Therefore, no plausible racial or national argument could be found for the superiority either of the inhabitants of the mother-country or of the continental American colonies. Even when Jefferson, in his Notes on Virginia, went to some trouble to refute Buffon and the Abbe Raynal and others who had argued that all races, including man, deteriorated on the American continent, he did not go so far as to say that the American races were distinctly superior. Since the climate and topography of substantial parts of the American colonies were similar to those of the mother-country (and for a number of other reasons), there had been a pretty wholesale transplantation of British legal and political institutions to North America. Unlike the Spanish colonies in South America, which were to rebel, at least in part, because they had had so little home rule, the British colonies in North America were to rebel because, among other reasons, they had had so much. Finally, the North American continent was (except for sparse Indian settlements) empty of indigenous populations, hence barren of such local institutions and traditions as could have competed with what the colonists had brought with them. All these facts were to make it easy, then, for the American Revolution to seem in the minds of most of its leaders an affirmation of the tradition of British institutions.

The argument of the best theorists of the Revolution--perhaps we should call them lawyers rather than theorists--was not, on the whole, that America had institutions or a culture superior to that of the British. Rather their position, often misrepresented and sometimes simply forgotten, was that the British by their treatment of American colonies were being untrue to the ancient spirit of their own institutions. The slogan "Taxation without Representation Is Tyranny" was clearly founded on a British assumption. As James Otis put it in his pamphlet, The Rights of the British Colonies (1764), he believed "that this [British] constitution is the most free one, and by far the best, now existing on earth: that by this constitution, every man in the dominions is a free man: that no parts of His Majesty's dominions can be taxed without their consent: that every part has a right to be represented in the supreme or some subordinate legislature: that the refusal of this would seem to be a contradiction in practice to the theory of the constitution." According to their own account, then, the Americans were to have forced on them the need to defend the ancient British tradition; to be truer to the spirit of that tradition than George III and Lord North and Townshend knew how to be. They were fighting not so much to establish new rights as to preserve old ones: "for the preservation of our liberties . . . in defence of the freedom that is our birthright, and which we ever enjoyed till the late violation of it" (Declaration of Causes of Taking up Arms, July 6, 1775). From the colonists' point of view, until 1776 it was Parliament that had been revolutionary, by exercising a power for which there was no warrant in English constitutional precedent. The ablest defender of the Revolution--in fact, the greatest political theorist of the American Revolution--was also the great theorist of British conservatism, Edmund Burke.

2. Second, the American Revolution was not the product of a nationalistic spirit. We had no Bismarck or Cavour or any nationalist philosophy. We were singularly free from most of the philosophical baggage of modem nationalism. Perhaps never was a new nation created with less enthusiasm. To read the history of our Revolution is to discover that the United States was a kind of pis aller. This fact explains many of the difficulties encountered in conducting the Revolution and in framing a federal constitution. The original creation of a United States was the work of doubly reluctant men: men reluctant, both because of their local loyalties--to Virginia, Massachusetts, Rhode Island, and New York--and because of their imperial loyalty. The story of the "critical period" of American history, of the Articles of Confederation and the Constitution, tells of the gradual overcoming of this reluctance. It was overcome not by any widespread conversion to a nationalist theory--even the Federalist papers are conspicuously lacking in such a theory-but by gradual realization of the need for effective union.

In the period of the American Revolution we do discover a number of enthusiasms: for the safety and prosperity of Virginia or New York, for the cause of justice, for the rights of Englishmen. What is missing is anything that might be called widespread enthusiasm for the birth of a new nation: the United States of America. Until well into the nineteenth century, Jefferson--and he was not alone in this--was using the phrase "my country' to refer to his native state of Virginia.

3. Our Revolution was successful at the first try. This is equally true whether we consider it as a revolt against British rule or as a movement for republican federalism. There was no long-drawn-out agitation, no intellectual war of attrition, of the sort which breeds dogmas and intransigence. Thomas Paine's Common Sense, which is generally considered "the first important republican tract to be issued in America, the first to present cogent arguments for independence," did not appear until January 10, 1776. Down to within six months of the break, few would have considered independence; and even then the colonists had only quite specific complaints.

There had been no considerable tradition in America either of revolt against British institutions or of republican theorizing. The political objective of the Revolution, independence from British rule, was achieved by one relatively short continuous effort. More commonly in modem history (take, for example, the European revolutions of the nineteenth century) any particular revolt has been only one in a long series. Each episode, then, ends on a note of suspense which comes from the feeling that the story is "to be continued." Under those circumstances, challenges to constituted authority follow one another, accumulating their ideological baggage. In France, for example, 1789 was followed by 1830 and 1848 and 1870; a similar list could be made for Italy, Germany, and perhaps Russia. Such repetition creates a distinctive revolutionary tradition, with continued agitation keeping alive certain doctrines. Repeated efforts provide the dogmatic raw material for a profusion of later political parties, each of which rallies under the banner of one or another of the defeated revolutions or of a revolution yet to be made. But, properly speaking, 1776 had no sequel, and needed none. The issue was separation, and separation was accomplished.

The student who comes for the first time to the literature of our Revolution is liable to be disappointed by the dull and legalistic flavor of what he has to read. Although the American Revolution occurred in an age which throughout Europe was laden with philosophic reflection and important treatises, our Revolution was neither particularly rich nor particularly original in its intellectual apparatus. Orators, textbook-writers, and other tradition-makers have been hard put to find those ringing phrases, the battle-cries and philosophical catchwords, which slip smoothly off the tongue, remain fixed in the memory, and uplift the soul. This helps explain why a few phrases and documents have been overworked and why even these have always been read only in part or out of context. The first two paragraphs of the Declaration of Independence have been worn thin; few bother to read the remaining thirty. People have grasped at 'life, liberty, and the pursuit of happiness," forgetting that it was two-thirds borrowed and, altogether, only part of a preamble. We have repeated that "all men are created equal," without daring to discover what it meant and without realizing that probably to none of the men who spoke it did it mean what we would like it to mean. Or we have exploited passages in the "speeches" of Patrick Henry, which were actually composed less by Henry than by his biographers.

The proper slogan of the Revolution--if, indeed, there was a slogan--was "No Taxation without Representation." Such words are far too polysyllabic, far too legalistic, to warm the popular heart. But if we compare them with the "Liberty, Equality, Fraternity" of the French Revolution and the "Peace, Bread and Land," of the Russian, we have a clue to the peculiar spirit of the American Revolution. It is my view that the major issue of the American Revolution was the true constitution of the British Empire, which is a pretty technical legal problem. This notion is supported by Professor Charles H. McIlwain, who, in his admirable little book on the American Revolution, comes closer than any other recent historian to the spirit of our Revolutionary age.

In that age men were inclined to take their opponents at their word; the Revolutionary debate seems to have been carried on in the belief that men meant what they said. But in this age of Marx and Freud we have begun to take it for granted that, if people talk about one thing, they must be thinking about something else. Ideas are treated as the apparatus of an intellectual sleight-of-hand, by which the speaker diverts the audience's attention to an irrelevant subject while he does the real business unobserved. To study the Revolutionary debate is then to try to see (in the phrase of one historian) how "the colonists modified their theory to suit their needs." From such a point of view, there is perhaps never much political or legal thought worth talking about; to be realistic we should focus our discussion on hormones and statistics. But such an approach would bleach away the peculiar tone of our history and empty our Revolution of its unique significance. Therefore, even at the risk of seeming naive, I should like to consider the outlandish possibility that men like Jefferson and Adams all along meant what they were saying, that is, that the Revolution had something to do with the British constitution.

The feature to which I want to direct your attention might be called the "conservatism" of the Revolution. If we understand this characteristic, we will begin to see the Revolution as an illustration of the remarkable continuity of American history. And we will also see how the attitude of our Revolutionary thinkers has engraved more deeply in our national consciousness a belief in the inevitability of our particular institutions, or, in a word, our sense of "givenness."

The character of our Revolution has nourished our assumption that whatever institutions we happened to have here (in this case the British constitution) had the self-evident validity of anything that is "normal." We have thus casually established the tradition that it is superfluous to the American condition to produce elaborate treatises on political philosophy or to be explicit about political values and the theory of community.

I shall confine myself to two topics. First, the manifesto of the Revolution, namely, the Declaration of Independence; and, second, the man who has been generally considered the most outspoken and systematic political philosopher of the Revolution, Thomas Jefferson. Of course, I will not try to give a full account of either of them. I will attempt only to call your attention to a few facts which may not have been sufficiently emphasized and which are especially significant for our present purpose. Obviously, no one could contend that there is either in the man or in the document nothing of the cosmopolitan spirit, nothing of the world climate of opinion. My suggestion is simply that 'we do find another spirit of at least equal, and perhaps overshadowing, importance and that this spirit may actually be more characteristic of our Revolution.

First, then, for the Declaration of Independence. Its technical, legalistic, and conservative character, which I wish to emphasize, will appear at once by contrast with the comparable document of the French Revolution. Ours was concerned with a specific event, namely, the separation of these colonies from the mother-country But the French produced a "Declaration of the Rights of Man and the Citizen." When De Tocqueville, in his *Ancien Regime* sums up the spirit of the French Revolution, he is describing exactly what the American Revolution was not: "The French Revolution acted, with regard to things of this world, precisely as religious revolutions have acted with regard to things of the other. It dealt with the citizen in the abstract, independent of particular social organizations, just as religions deal with mankind in general, independent of time and place. It inquired, not what were the particular rights of the French citizens, but what were the general rights and duties of mankind in reference to political concerns. It was by thus divesting itself of all that was peculiar to one race or time, and by reverting to natural principles of social order and government, that it became intelligible to all, and susceptible of simultaneous imitation in a hundred different places. By seeming to tend rather to the regeneration of the human race than to the reform of France alone, it roused passions such as the most violent political revolutions had been incapable of awakening. It inspired proselytism, and gave birth to propagandism; and hence assumed that quasi religious character which so terrified those who saw it, or, rather, became a sort of new religion, imperfect, it is true, without God, worship, or future life, but still able, like Islamism, to cover the earth with its soldiers, its apostles, and its martyrs." In contrast to all this, our Declaration of Independence is essentially a list of specific historical instances. It is directed not to the regeneration but only to the "opinions" of mankind. It is closely tied to time and place; the special affection for "British brethren" is freely admitted; it is concerned with the duties of a particular king and certain of his subjects. Even if we took only the first two paragraphs or preamble, which are the most general part of the document, and actually read them as a whole, we could make a good case for their being merely a succinct restatement of the Whig theory of the British revolution of 1688. Carl Becker himself could not overlook this fact. "In political theory and in political practice," he wrote parenthetically, "the American Revolution drew its inspiration from the parliamentary struggle of the seventeenth century. The philosophy of the Declaration was not taken from the French. It was not even new; but good old English doctrine newly formulated to meet a present emergency." To be understood, its words must be annotated by British history. This is among the facts which have led some historians (Guizot, for example) to go so far as to say that the English revolution succeeded twice, once in England and once in America. The remaining three-quarters--the unread three-quarters--of the document is technical and legalistic. That is, of course, the main reason why it remains unread. For it is a bill of indictment against the king, written in the language of British constitutionalism. "The patient sufferance of these Colonies" is the point of departure. It deals with rights and franchises under British charters. It carefully recounts that the customary and traditional forms of protest, such as "repeated Petitions," have already been tried.

The more the Declaration is reread in context, the more plainly it appears a document of imperial legal relations rather than a piece of high-flown political philosophy. The desire to remain true to the principles of British constitutionalism up to the bitter end explains why, as has been often remarked, the document is directed against the king, despite the fact that the practical grievances were against Parliament; perhaps also why at this stage there is no longer an explicit appeal to the rights of Englishmen. Most of the document is a bald enumeration of George III's failures, excesses, and crimes in violation of the constitution and laws of Great Britain. One indictment after another makes sense only if one presupposes the framework of British constitutionalism. How else, for example, could one indict a king "for depriving us in many cases, of the benefits of Trial by jury"?

We can learn a great deal about the context of our Revolutionary thought by examining Jefferson's own thinking down to the period of the Revolution. We need not stretch a point or give Jefferson a charismatic role, to say that the flavor of his thought is especially important for our purposes. He has been widely considered the leading political philosopher of the Revolution. Among other things, he was, of course, the principal author of the Declaration of Independence itself; and the Declaration has been taken to be the climax of the abstract philosophizing of the revolutionaries. Because he is supposed to be the avant-garde of revolutionary thought, evidence of conservatism and legalism in Jefferson's thought as a whole is especially significant.

[Looking at] Jefferson's papers, which is one of the richest treasures ever amassed for the historian of a particular period. This helps us use Jefferson's thought as a touchstone. Neither in the letters which Jefferson wrote nor in those he received do we discover that he and his close associates--at least down to the date of the Revolution--showed any conspicuous interest in political theory. We look in vain for general reflections on the nature of government or constitutions. The manners of the day did require that a cultivated gentleman be acquainted with certain classics of political thought; yet we lack evidence that such works were read with more than a perfunctory interest. To be sure, when Jefferson prepares a list of worthy books for a young friend in 1771, he includes references to Montesquieu, Sidney, and Bolingbroke; but such references are rare. Even when he exchanges letters with Edmund Pendleton on the more general problems of institutions, he remains on the level of legality and policy, hardly touching political theory. Jefferson's papers for the Revolutionary period (read without the hindsight which has put the American and the French revolutions in the same era of world history) show little evidence that the American Revolution was a goad to higher levels of abstract thinking about society. We miss any such tendency in what Jefferson and his associates were reading or in what they were writing. On the other hand, we find ample evidence that the locale of early Jeffersonian thought was distinctly colonial; we might even say provincial. And we begin to see some of the significance of that fact in marking the limits of political theorizing in America. By 1776, when the irreversible step of revolution was taken, the colonial period in the life of Jefferson and the other Revolutionary thinkers was technically at an end; but by then their minds had been congealed, their formal education completed, their social habits and the cast of their political thinking determined. The Virginia society of the pre-Revolutionary years had been decidedly derivative, not only in its culture, its furniture, its clothes, and its books, but in many of its ideas and--what is more to our purpose--in perhaps most of its institutions.

The importance of this colonial framework in America, as I have already suggested, was to be enormous, not only from the point of view of Revolutionary thought, but its long-run effect on the role of political theory in American life. The legal institutions which Americans considered their own and which they felt bound to master were largely borrowed. Jefferson and John Adams, both lawyers by profession, like their English contemporaries, had extracted much of their legal knowledge out of the crabbed pages of Coke's Institutes. We begin to see how far we would be misled, were we to cast American events of this era in the mold of European history. The American Revolution was in a very special way conceived as both a vindication of the British past and an affirmation of an American future. The British past was contained in ancient and living institutions rather than in doctrines; and the American future was never to be contained in a theory. The Revolution was thus a prudential decision taken by men of principle rather than the affirmation of a theory. What British institutions meant did not need to be articulated; what America might mean was still to be discovered. This continuity of American history was to make a sense of "givenness" easier to develop; for it was this continuity which had made a new ideology of revolution seem unnecessary.

The experience of our Revolution may suggest that the sparseness of American political theory, which has sometimes been described as a refusal of American statesmen to confront their basic philosophical problems, has been due less to a conscious refusal than to a simple lack of necessity. As the British colonists in America had forced on them the need to create a nation, so they had forced on them the need to be traditional and empirical in their institutions. The Revolution, because it was conceived as essentially affirming the British constitution, did not create the kind of theoretical vacuum made by some other revolutions.

The Revolution itself, as we have seen, had been a kind of affirmation of faith in ancient British institutions. In the greater part of the institutional life of the community the Revolution thus required no basic change. If any of this helps to illustrate or explain our characteristic lack of interest in political philosophy, it also helps to account for the value which we still attach to our inheritance from the British constitution: trial by jury, due process of law, representation before taxation, habeas corpus, freedom from attainder, independence of the judiciary, and the rights of free speech, free petition, and free assembly, as well as our narrow definition of treason and our antipathy to standing armies in peacetime. (Daniel J. Boorstin, “The American Revolution Without Dogma,” from *The Genius of American Politics* [Chicago: University of Chicago Press, 1953], Chap. 3, 67-99.)

The Commonwealth of America as a Federal Republic

The American federal republic corresponds to neither of these two forms, but may be said to stand between them. Its central or national government is not a mere league, for it does not wholly depend on the component communities which we call the states. It is itself a commonwealth as well as a union of commonwealths, because it claims directly the obedience of every citizen, and acts immediately upon him through its courts and executive officers. Still less are the minor communities, the states, mere subdivisions of the Union, mere creatures of the national government, like the counties of England or the departments of France. They have over their citizens an authority which is their own, and not delegated by the central government. They have not been called into being by that government. They—that is, the older ones among them—existed before it. They could exist without it.

The central or national government and the state governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other. It is a combination sometimes seen where a great church has been erected over more ancient homes of worship. First the soil is covered by a number of small shrines and chapels, built at different times and in different styles of architecture, each complete in itself. Then over them and including them all in its spacious fabric there is reared a new pile with its own loftier roof, its own walls, which may perhaps rest on and incorporate the walls of the older shrines, its own internal plan.**1** The identity of the earlier buildings has however not been obliterated; and if the later and larger structure were to disappear, a little repair would enable them to keep out wind and weather, and be again what they once were, distinct and separate edifices. So the American states are now all inside the Union, and have all become subordinate to it. Yet the Union is more than an aggregate of states, and the states are more than parts of the Union. It might be destroyed, and they, adding a few further attributes of power to those they now possess, might survive as independent self-governing communities.

This is the cause of that immense complexity which startles and at first bewilders the student of American institutions, a complexity which makes American history and current American politics so difficult to the European who finds in them phenomena to which his own experience supplies no parallel. There are two loyalties, two patriotisms; and the lesser patriotism, as the incident in the Episcopal convention shows, is jealous of the greater. There are two governments, covering the same ground, commanding, with equally direct authority, the obedience of the same citizen.

The casual reader of American political intelligence in European newspapers is not struck by this phenomenon, because state politics and state affairs generally are seldom noticed in Europe. Even the traveller who visits America does not realize its importance, because the things that meet his eye are superficially similar all over the continent, and that which Europeans call the machinery of government is in America conspicuous chiefly by its absence. But a due comprehension of this double organization is the first and indispensable step to the comprehension of American institutions: as the elaborate devices whereby the two systems of government are kept from clashing are the most curious subject of study which those institutions present.

How did so complex a system arise, and what influences have moulded it into its present form? This is a question which cannot be answered without a few words of historical retrospect. I am anxious not to stray far into history, because the task of describing American institutions as they now exist is more than sufficiently heavy for one writer and one book. But a brief and plain outline of the events which gave birth to the federal system in America, and which have nurtured national feeling without extinguishing state feeling, seems the most natural introduction to an account of the present Constitution, and may dispense with the need for subsequent explanations and digressions.

**chapter 3**

The Origin of the Constitution

When in the reign of George III troubles arose between England and her North American colonists, there existed along the eastern coast of the Atlantic thirteen little communities, the largest of which (Virginia) had not much more than half a million of free people, and the total population of which did not reach three millions. All owed allegiance to the British Crown; all, except Connecticut and Rhode Island, received their governors from the Crown;**1** in all, causes were carried by appeal from the colonial courts to the English Privy Council. Acts of the British Parliament ran there, as they now run in the British colonies, whenever expressed to have that effect, and could overrule such laws as the colonies might make. But practically each colony was a self-governing commonwealth, left to manage its own affairs with scarcely any interference from home. Each had its legislature, its own statutes adding to or modifying the English common law, its local corporate life and traditions, with no small local pride in its own history and institutions, superadded to the pride of forming part of the English race and the great free British realm. Between the various colonies there was no other political connection than that which arose from their all belonging to this race and realm, so that the inhabitants of each enjoyed in every one of the others the rights and privileges of British subjects.

When the oppressive measures of the home government roused the colonies, they naturally sought to organize their resistance in common.**2** Singly they would have been an easy prey, for it was long doubtful whether even in combination they could make head against regular armies. A congress of delegates from nine colonies held at New York in 1765 was followed by another at Philadelphia in 1774, at which twelve were represented, which called itself Continental (for the name American had not yet become established),**3** and spoke in the name of “the good people of these colonies,” the first assertion of a sort of national unity among the English of America. The second congress, and the third which met in 1775 and in which thereafter all the colonies were represented, was a merely revolutionary body, called into existence by the war with the mother country. But in 1776 it declared the independence of the colonies, and in 1777 it gave itself a new legal character by framing the “Articles of Confederation and Perpetual Union,” **4** whereby the thirteen states (as they then called themselves) entered into a “firm league of friendship” with each other, offensive and defensive, while declaring that “each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled.”

This Confederation, which was not ratified by all the states till 1781, was rather a league than a national government, for it possessed no central authority except an assembly in which every state, the largest and the smallest alike, had one vote, and this assembly had no jurisdiction over the individual citizens. There was no federal executive, no federal judiciary, no means of raising money except by the contributions of the states, contributions which they were slow to render, no power of compelling the obedience to Congress either of states or of individuals. The plan corresponded to the wishes of the colonists, who did not yet deem themselves a nation, and who in their struggle against the power of the British Crown were resolved to set over themselves no other power, not even one of their own choosing. But it worked badly even while the struggle lasted, and after the immediate danger from England had been removed by the peace of 1783, it worked still worse, and was in fact, as Washington said, no better than anarchy. The states were indifferent to Congress and their common concerns, so indifferent that it was found difficult to procure a quorum of states for weeks or even months after the day fixed for meeting. Congress was impotent, and commanded respect as little as obedience. Much distress prevailed in the trading states, and the crude attempts which some legislatures made to remedy the depression by emitting inconvertible paper, by constituting other articles than the precious metals legal tender, and by impeding the recovery of debts, aggravated the evil, and in several instances led to seditious outbreaks.**5** The fortunes of the country seemed at a lower ebb than even during the war with England.

Sad experience of their internal difficulties, and of the contempt with which foreign governments treated them, at last produced a feeling that some firmer and closer union was needed. A convention of delegates from five states met at Annapolis in Maryland in 1786 to discuss methods of enabling Congress to regulate commerce, which suffered grievously from the varying and often burdensome regulations imposed by the several states. It drew up a report which condemned the existing state of things, declared that reforms were necessary, and suggested a further general convention in the following year to consider the condition of the Union and the needed amendments in its Constitution. Congress, to which the report had been presented, approved it, and recommended the states to send delegates to a convention, which should “revise the Articles of Confederation, and report to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union.”

The Convention thus summoned met at Philadelphia on the 14th May 1787, became competent to proceed to business on May 25th, when seven states were represented, and chose George Washington to preside. Delegates attended from every state but Rhode Island, and among these delegates was to be found nearly all the best intellect and the ripest political experience the United States then contained. The instructions they had received limited their authority to the revision of the Articles of Confederation and the proposing to Congress and the state legislatures such improvements as were required therein.**6** But with admirable boldness, boldness doubly admirable in Englishmen and lawyers, the majority ultimately resolved to disregard these restrictions, and to prepare a wholly new Constitution, to be considered and ratified neither by Congress nor by the state legislatures, but by the peoples of the several states.

This famous assembly, which consisted of fifty-five delegates, thirty-nine of whom signed the Constitution which it drafted, sat nearly five months, and expended upon its work an amount of labour and thought commensurate with the magnitude of the task and the splendour of the result. The debates were secret, and fortunately so, for criticism from without might have imperilled a work which seemed repeatedly on the point of breaking down, so great were the difficulties encountered from the divergent sentiments and interests of different parts of the country, as well as of the larger and smaller states.**7** The records of the Convention were left in the hands of Washington, who in 1796 deposited them in the State Department. In 1819 they were published by J. Q. Adams. In 1840 there appeared the very full and valuable notes of the discussions kept by James Madison (afterwards twice president), who had been one of the most useful members of the body. From these records and notes**8** the history of the Convention has been written.

It is hard today, even for Americans, to realize how enormous those difficulties were. The Convention had not only to create de novo, on the most slender basis of preexisting national institutions, a national government for a widely scattered people, but they had in doing so to respect the fears and jealousies and apparently irreconcilable interests of thirteen separate commonwealths, to all of whose governments it was necessary to leave a sphere of action wide enough to satisfy a deep-rooted local sentiment, yet not so wide as to imperil national unity.**9** Well might Hamilton say: “The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is a prodigy to the completion of which I look forward with trembling anxiety.” **10** And well he might quote the words of David Hume (Essays, “The Rise of Arts and Sciences”): “To balance a large State or society, whether monarchical or republican, on general laws, is a work of so great difficulty that no human genius, however comprehensive, is able by the mere dint of reason and reflection to effect it. The judgments of many must unite in the work; experience must guide their labour; time must bring it to perfection; and the feeling of inconveniences must correct the mistakes which they inevitably fall into in their first trials and experiments.”

It was even a disputable point whether the colonists were already a nation or only the raw material out of which a nation might be formed.**11** There were elements of unity, there were also elements of diversity. All spoke the same language. All, except a few descendants of Dutchmen and Swedes in New York and Delaware, some Germans in Pennsylvania, some children of French Huguenots in New England and the Middle states, belonged to the same race.**12** All, except some Roman Catholics in Maryland, professed the Protestant religion. All were governed by the same English common law, and prized it not only as the bulwark which had sheltered their forefathers from the oppression of the Stuart kings, but as the basis of their more recent claims of right against the encroachments of George III and his colonial officers. In ideas and habits of life there was less similarity, but all were republicans, managing their affairs by elective legislatures, attached to local self-government, and animated by a common pride in their successful resistance to England, which they then hated with a true family hatred, a hatred to which her contemptuous treatment of them added a sting.

On the other hand their geographical position made communication very difficult. The sea was stormy in winter; the roads were bad; it took as long to travel by land from Charleston to Boston as to cross the ocean to Europe, nor was the journey less dangerous. The wealth of some states consisted in slaves, of others in shipping; while in others there was a population of small farmers, characteristically attached to old habits. Manufactures had hardly begun to exist. The sentiment of local independence showed itself in intense suspicion of any external authority; and most parts of the country were so thinly peopled that the inhabitants had lived practically without any government, and thought that in creating one they would be forging fetters for themselves. But while these diversities and jealousies made union difficult, two dangers were absent which have beset the framers of constitutions for other nations. There were no reactionary conspirators to be feared, for everyone prized liberty and equality. There were no questions between classes, no animosities against rank and wealth, for rank and wealth did not exist.

It was inevitable under such circumstances that the Constitution, while aiming at the establishment of a durable central power, should pay great regard to the existing centrifugal forces. It was and remains what its authors styled it, eminently an instrument of compromises; it is perhaps the most successful instance in history of what a judicious spirit of compromise may effect.**13** Yet out of the points which it was for this reason obliged to leave unsettled there arose fierce controversies, which after two generations, when accumulated irritation and incurable misunderstanding had been added to the force of material interests, burst into flame in the War of Secession.

The draft Constitution was submitted, as its last article provided, to conventions of the several states (i.e., bodies specially chosen by the people**14** for the purpose) for ratification. It was to come into effect as soon as nine states had ratified, the effect of which would have been, in case the remaining states, or any of them, had rejected it, to leave such states standing alone in the world, since the old Confederation was of course superseded and annihilated. Fortunately all the states did eventually ratify the new Constitution, but two of the most important, Virginia and New York,**15** did not do so till the middle of 1788, after nine others had already accepted it; and two, North Carolina and Rhode Island, at first refused, and only consented to enter the new Union more than a year later, when the government it had created had already come into operation.

There was a struggle everywhere over the adoption of the Constitution, a struggle which gave birth to the two great parties that for many years divided the American people. The chief source of hostility was the belief that a strong central government endangered both the rights of the states and the liberties of the individual citizen. Freedom, it was declared, would perish, freedom rescued from George III would perish at the hands of her own children.**16** Consolidation (for the word centralization had not yet been invented) would extinguish the state governments and the local institutions they protected. The feeling was very bitter, and in some states, notably in Massachusetts and New York, the majorities were dangerously narrow. Had the decision been left to what is now called “the voice of the people,” that is, to the mass of the citizens all over the country, voting at the polls, the voice of the people would probably have pronounced against the Constitution, and this would have been still more likely if the question had been voted on everywhere upon the same day, seeing that several doubtful states were influenced by the approval which other states had already given. But the modern “plebiscital” method of taking the popular judgment had not been invented. The question was referred to conventions in the several states. The conventions were composed of able men, who listened to thoughtful arguments, and were themselves influenced by the authority of their leaders. The counsels of the wise prevailed over the prepossessions of the multitude. Yet these counsels would hardly have prevailed but for a cause which is apt to be now overlooked. This was the dread of foreign powers.**17** The United States had at that time two European monarchies, Spain and England, as its neighbours on the American continent. France had lately held territories to the north of them in Canada, and to the south of them in Louisiana.**18** She had been their ally against England, she became in a few years again the owner of territories west of the Mississippi. The fear of foreign interference, the sense of weakness, both at sea and on land, against the military monarchies of Europe, was constantly before the mind of American statesmen, and made them anxious to secure at all hazards a national government capable of raising an army and navy, and of speaking with authority on behalf of the new republic. It is remarkable that the danger of European aggression or complications was far more felt in the United States from 1783 down till about 1820, than it has been during the last half century when steam has brought Europe five times nearer than it then was.

Several of the conventions which ratified the Constitution accompanied their acceptance with an earnest recommendation of various amendments to it, amendments designed to meet the fears of those who thought that it encroached too far upon the liberties of the people. Some of these were adopted, immediately after the original instrument had come into force, by the method it prescribes, viz., a two-thirds majority in Congress and a majority in three-fourths of the states. They are the amendments of 1791, ten in number, and they constitute what the Americans, following a venerable English precedent, call a Bill or Declaration of Rights.

The Constitution of 1789**19** deserves the veneration with which the Americans have been accustomed to regard it. It is true that many criticisms have been passed upon its arrangement, upon its omissions, upon the artificial character of some of the institutions it creates. Recognizing slavery as an institution existing in some states, and not expressly negativing the right of a state to withdraw from the Union, it has been charged with having contained the germ of civil war, though that germ took seventy years to come to maturity. And whatever success it has attained must be in large measure ascribed to the political genius, ripened by long experience, of the Anglo-American race, by whom it has been worked, and who might have managed to work even a worse drawn instrument. Yet, after all deductions, it ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity, and precision of its language, its judicious mixture of definiteness in principle with elasticity in details.**20** One is therefore induced to ask, before proceeding to examine it, to what causes, over and above the capacity of its authors, and the patient toil they bestowed upon it, these merits are due, or in other words, what were the materials at the command of the Philadelphia Convention for the achievement of so great an enterprise as the creation of a nation by means of an instrument of government. The American Constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its roots deep in the past, and that the more slowly every institution has grown, so much the more enduring is it likely to prove. There is little in that Constitution that is absolutely new. There is much that is as old as Magna Charta.

The men of the Convention had the experience of the English Constitution. That Constitution, very different then from what it is now, was even then not quite what they thought it. Their view was tinged not only by recollections of the influence exercised by King George III, an influence due to transitory causes, but which made them overrate its monarchical element,**21** but also by the presentation of it which they found in the work of Mr. Justice Blackstone. He, as was natural in a lawyer and a man of letters, described rather its theory than its practice, and its theory was many years behind its practice. The powers and functions of the cabinet, the overmastering force of the House of Commons, the intimate connection between legislation and administration, these which are to us now the main characteristics of the English Constitution were still far from fully developed. But in other points of fundamental importance they appreciated and turned to excellent account its spirit and methods.

They had for their oracle of political philosophy the treatise of Montesquieu on the spirit of laws, which, published anonymously at Geneva forty years before, had won its way to an immense authority on both sides of the ocean. Montesquieu, contrasting the private as well as public liberties of Englishmen with the despotism of continental Europe, had taken the Constitution of England as his model system, and had ascribed its merits to the division of legislative, executive, and judicial functions which he discovered in it, and to the system of checks and balances whereby its equilibrium seemed to be preserved. No general principle of politics laid such hold on the constitution-makers and statesmen of America as the dogma that the separation of these three functions is essential to freedom. It had already been made the groundwork of several state constitutions. It is always reappearing in their writings; it was never absent from their thoughts. Of the supposed influence of other continental authors, such as Rousseau, or even of English thinkers such as Burke, there are few direct traces in the federal Constitution or in the classical contemporaneous commentary on and defence of it**22** which we owe to the genius of Hamilton and his hardly less famous coadjutors, Madison and Jay. But we need only turn to the Declaration of Independence and the original constitutions of the states, particularly the Massachusetts Constitution of 1780, to perceive that abstract theories regarding human rights had laid firm hold on the national mind. Such theories naturally expanded with the practice of republican government, and have at various times been extremely potent factors in American history. But the influence of France and her philosophers belongs chiefly to the years succeeding 1789, when Jefferson, who was fortunately absent in Paris during the Constitutional Convention, headed the democratic propaganda.

Further, they had the experience of their colonial and state governments, and especially, for this was freshest and most in point, the experience of the working of the state constitutions, framed at or since the date when the colonies threw off their English allegiance. Many of the Philadelphia delegates had joined in preparing these instruments: all had been able to watch and test their operation. They compared notes as to the merits, tested by practice, of the devices which their states had respectively adopted. They had the inestimable advantage of knowing written or rigid constitutions in the concrete; that is to say, of comprehending how a system of government actually moves and plays under the control of a mass of statutory provisions defining and limiting the powers of its several organs. The so-called Constitution of England consists largely of customs, precedents, traditions, understandings, often vague and always flexible. It was quite a different thing, and for the purpose of making a constitution for the American nation an even more important thing, to have lived under and learnt to work systems determined by the hard and fast lines of a single document having the full force of law, for this experience taught them how much might safely be included in such a document and how far room must be left under it for unpredictable emergencies and unavoidable development.

Lastly, they had in the principle of the English common law that an act done by any official person or lawmaking body beyond his or its legal competence is simply void, a key to the difficulties which the establishment of a variety of authorities not subordinate to one another, but each supreme in its own defined sphere, necessarily involved. The application of this principle made it possible not only to create a national government which should leave free scope for the working of the state governments, but also so to divide the powers of the national government among various persons and bodies as that none should absorb or overbear the others. By what machinery these objects were attained will appear when we come to consider the effect of a written or rigid constitution embodying a fundamental law, and the functions of the judiciary in expounding and applying such a law.**23**

**chapter 4**

Nature of the Federal Government

The acceptance of the Constitution of 1789 made the American people a nation. It turned what had been a league of states into a federal state, by giving it a national government with a direct authority over all citizens. But as this national government was not to supersede the governments of the states, the problem which the Constitution-makers had to solve was twofold. They had to create a central government. They had also to determine the relations of this central government to the states as well as to the individual citizen. An exposition of the Constitution and criticism of its working must therefore deal with it in these two aspects, as a system of national government built up of executive powers and legislative bodies, like the monarchy of England or the republic of France, and as a federal system linking together and regulating the relations of a number of commonwealths which are for certain purposes, but for certain purposes only, subordinated to it. It will conduce to clearness if these two aspects are kept distinct; and the most convenient course will be to begin with the former, and first to describe the American system as a national system, leaving its federal character for the moment on one side.

It must, however, be remembered that the Constitution does not profess to be a complete scheme of government, creating organs for the discharge of all the functions and duties which a civilized community undertakes. It presupposes the state governments. It assumes their existence, their wide and constant activity. It is a scheme designed to provide for the discharge of such and so many functions of government as the states did not, and indeed could not, or at any rate could not adequately, possess and discharge. It is therefore, so to speak, the complement and crown of the state constitutions, which must be read along with it and into it in order to make it cover the whole field of civil government, as do the constitutions of such countries as France, Belgium, Italy.

The administrative, legislative, and judicial functions for which the federal Constitution provides are those relating to matters which must be deemed common to the whole nation, either because all the parts of the nation are alike interested in them, or because it is only by the nation as a whole that they can be satisfactorily undertaken. The chief of these common or national matters are:**1**

* War and peace: treaties and foreign relations generally
* Army and navy
* Federal courts of justice
* Commerce, foreign and between the several states
* Currency
* Copyright and patents
* The post office and post roads
* Taxation for the foregoing purposes, and for the general support of the government
* The protection of citizens against unjust or discriminating legislation by any state**2**

This list includes the subjects upon which the national legislature has the right to legislate, the national executive to enforce the federal laws and generally to act in defence of national interests, the national judiciary to adjudicate. All other legislation and administration is left to the several states, without power of interference by the federal legislature or federal executive.

Such then being the sphere of the national government, let us see in what manner it is constituted, of what departments it consists.

The framers of this government set before themselves four objects as essential to its excellence, viz.:

* Its vigour and efficiency
* The independence of each of its departments (as being essential to the permanency of its form)
* Its dependence on the people
* The security under it of the freedom of the individual

The first of these objects they sought by creating a strong executive, the second by separating the legislative, executive, and judicial powers from one another, and by the contrivance of various checks and balances, the third by making all authorities elective and elections frequent, the fourth both by the checks and balances aforesaid, so arranged as to restrain any one department from tyranny, and by placing certain rights of the citizen under the protection of the written Constitution.

They had neither the rashness nor the capacity necessary for constructing a constitution a priori. There is wonderfully little genuine inventiveness in the world, and perhaps least of all has been shown in the sphere of political institutions. These men, practical politicians who knew how infinitely difficult a business government is, desired no bold experiments. They preferred, so far as circumstances permitted, to walk in the old paths, to follow methods which experience had tested.**3** Accordingly they started from the system on which their own colonial governments, and afterwards their state governments, had been conducted. This system bore a general resemblance to the British Constitution; and in so far it may with truth be said that the British Constitution became a model for the new national government. They held England to be the freest and best-governed country in the world, but were resolved to avoid the weak points which had enabled King George III to play the tyrant, and which rendered English liberty, as they thought, far inferior to that which the constitutions of their own states secured. With this venerable mother, and these children, better in their judgment than the mother, before their eyes, they created an executive magistrate, the president, on the model of the state governor, and of the British Crown. They created a legislature of two houses, Congress, on the model of the two houses of their state legislatures, and of the British Parliament. And following the precedent of the British judges, irremovable except by the Crown and Parliament combined, they created a judiciary appointed for life, and irremovable save by impeachment.**4**

In these great matters, however, as well as in many lesser matters, they copied not so much the Constitution of England as the constitutions of their several states, in which, as was natural, many features of the English Constitution had been embodied. It has been truly said that nearly every provision of the federal Constitution that has worked well is one borrowed from or suggested by some state constitution; nearly every provision that has worked badly is one which the Convention, for want of a precedent, was obliged to devise for itself. To insist on this is not to detract from the glory of that illustrious body, for if we are to credit them with less inventiveness than has sometimes been claimed for them, we must also credit them with a double portion of the wisdom which prefers experience to a priori theory, and the sagacity which selects the best materials from a mass placed before it, aptly combining them to form a new structure.**5**

Of minor divergences between their work and the British Constitution I shall speak subsequently. But one profound difference must be noted here. The British Parliament had always been, was then, and remains now, a sovereign and constituent assembly. It can make and unmake any and every law, change the form of government or the succession to the Crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people’s rights and powers resides in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory it is the nation, being the historical successor of the Folk Moot of our Teutonic forefathers. Both practically and legally, it is today the only and the sufficient depository of the authority of the nation; and is therefore, within the sphere of law, irresponsible and omnipotent.

In the American system there exists no such body. Not merely Congress alone, but also Congress and the president conjoined, are subject to the Constitution, and cannot move a step outside the circle which the Constitution has drawn around them. If they do, they transgress the law and exceed their powers. Such acts as they may do in excess of their powers are void, and may be, indeed ought to be, treated as void by the meanest citizen. The only power which is ultimately sovereign, as the British Parliament is always and directly sovereign, is the people of the states, acting in the manner prescribed by the Constitution, and capable in that manner of passing any law whatever in the form of a constitutional amendment.

This fundamental divergence from the British system is commonly said to have been forced upon the men of 1787 by the necessity, in order to safeguard the rights of the several states, of limiting the competence of the national government.**6** But even supposing there had been no states to be protected, the jealousy which the American people felt of those whom they chose to govern them, their fear lest one power in the government should absorb the rest, their anxiety to secure the primordial rights of the citizens from attack, either by magistrate or by legislature, would doubtless have led, as happened with the earlier constitutions of revolutionary France, to the creation of a supreme constitution or fundamental instrument of government, placed above and controlling the national legislature itself. They had already such fundamental instrument in the charters of the colonies, which had passed into the constitutions of the several states; and they would certainly have followed, in creating their national constitution, a precedent which they deemed so precious.

The subjection of all the ordinary authorities and organs of government to a supreme instrument expressing the will of the sovereign people, and capable of being altered by them only, has been usually deemed the most remarkable novelty of the American system. But it is merely an application to the wider sphere of the nation, of a plan approved by the experience of the several states. And the plan had, in these states, been the outcome rather of a slow course of historical development than of conscious determination taken at any one point of their progress from petty settlements to powerful republics. Nevertheless, it may well be that the minds of the leaders who guided this development were to some extent influenced and inspired by recollections of the English Commonwealth of the seventeenth century, which had seen the establishment, though for a brief space only, of a genuine supreme or rigid constitution, in the form of the famous Instrument of Government of 1653, and some of whose sages had listened to the discourses in which James Harrington, one of the most prescient minds of that great age, showed the necessity for such a constitution, and laid down its principles, suggesting that, in order to give it the higher authority, it should be subscribed by the people themselves . . . .(James Bryce, The American Commonwealth, 2 vols., at Liberty Online)