

Paul Rand



The Declaration of Independence

by Carl L. Becker

*A Study in
the History of
Political Ideas*

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THE DECLARATION OF INDEPENDENCE

A STUDY IN THE HISTORY OF
POLITICAL IDEAS

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ever, differ much from the way suggested by Van Doren. I still thought of my subject as being the Declaration of Independence regarded as a document, as a classic in American literature, "using that term in its broadest sense." But it seemed to me obvious that the document had acquired fame less because of its literary qualities than because of its political philosophy; and I decided, therefore, that it would be more relevant to the subject, as well as more in my line, to take the Declaration as the point of departure for discussing the natural rights philosophy in its historical setting. This gave me a title and a sub-title: *The Declaration of Independence: An Essay in the History of Political Ideas*.

A book on this subject would naturally begin, I thought, by noting with some precision what the famous document purported to be. It turned out not to be the formal act of separation from Great Britain, voted by Congress on July 2, but "A Declaration by the Representatives of the United States of America," designed to convince a "candid world" that the separation was necessary and right — in short, an argument in support of an action. Analyzing the argument, I found that, in the history of political ideas, its conclusions were less important than its premises: (1) that all men have imprescriptible natural rights; (2) that the British empire is a

voluntary federation of independent states. Since it seemed unlikely that Jefferson invented these premises for the occasion, the next step was to find out where he got them and why they seemed valid to him and his compatriots. The doctrine of natural rights I found to be, in the eighteenth century, so commonly accepted as the foundation of all social philosophy that Jefferson could defend his formulation of it by saying that he was only expressing "the common sense of the matter." The federal theory of the British empire was more novel, and in its origin more closely related to particular events. It emerged, so to speak, as a dialectical necessity from the ten-year dispute with Great Britain over colonial rights. In order to find a logical defense of their activities, American patriots were forced, in successive stages of the controversy, to restrict the authority of Parliament over the colonies more and more, until the act of separation made it necessary for them to deny that it had any authority over them at all. Thus the major premise of the Declaration was derived from the dominant social philosophy of the century, the minor premise from the crucial political events that gave birth to it.

Thus far, taking the document in its final form, I was concerned with the purpose of the Declaration, its logical structure, and the rela-

tion of its philosophy to the political and intellectual history of its time. But the final form of the Declaration was not the same as Jefferson's first draft; and it seemed to me obvious that a book on the Declaration should contain some account of the changes made in the original text and the reasons for making them. I found that, first and last, a good many changes were made. Some of them were merely verbal, intended to improve the form; others, and these the more drastic, designed to ease the document through Congress — something added to please, something omitted to avoid giving offense to, this or that section of public opinion. The most notable instance was the deletion of Jefferson's famous "philippic" against the slave trade. Jefferson himself thought this long paragraph one of the best parts of the Declaration; and certainly nothing could have been more relevant in an argument based upon the natural rights of man than some reference to slavery — that "cruel war against human nature itself." But Congress struck it out. There were many slaveholders in Congress (Jefferson being one), and although none of them objected to the abstract doctrine of natural rights, many of them were naturally (human nature being what it is) sensitive to a concrete example of its violation so pointedly relevant as to be invidious.

None of the alterations of Jefferson's draft is of importance for understanding the philosophy of the Declaration, since none of them touches either the premises or the logical structure of Jefferson's argument. Yet they are not without significance for understanding the influences that determine the form in which political ideas are transmitted to us. They serve to remind the historian that political ideas of the past are transmitted to us through documents — documents for the most part prepared, not to facilitate the researches of future historians, but for an immediate practical end; so that if such documents, and therefore the political ideas they transmit, owe much to the abstract speculation and the concrete political events of their time, they owe something also to the personal temperament, the prejudices, the interests and ambitions of the men who framed them. It is not unimportant, even from the point of view of the history of political ideas, to know that the framers of the Declaration, denouncing George III to a "candid world" for his violation of the natural rights of man, carefully refrained from alluding to the fact that they themselves were slaveholders.

Having defended (although not, for reasons I shall presently indicate, any too confidently) the chapter on drafting the Declaration, I now

visible, essentially devoid of mystery because so eager to yield its secret to common-sense questions? If "style is the man himself," then man is, in this sense, what he knows and thinks; and if Jefferson and his fellows cultivated a certain kind of felicity, it was because the world they knew revealed itself to them with a felicity of the same order.

An examination of the literary qualities of the Declaration would then, as I thought, be another way of apprehending its political philosophy. In that examination, I attempted, whether successfully is another matter, to demonstrate that the virtues and defects of Jefferson's style are essentially the same as the virtues and defects of the political ideas that, to him and his contemporaries, seemed but "the common sense of the matter." The Declaration, in both form and substance, has the virtues (and great virtues they are) of simplicity, clarity, logical order: the thought, no less than the style, is characterized by a "peculiar felicity." But the Declaration, in both substance and form, has perhaps a little too much felicity — that is its essential defect; and if the style is always a bit fragile, and sometimes in danger of becoming precious, is it not because the thought is a bit fragile also, too easily satisfied with what is open and visible, and therefore lacking in depth

and subtlety, ignoring all that must be ignored if the life of man is to be understood and described, even with the felicity of genius, at the level of common sense?

The defense now rests — with but one additional comment. I think that in noting the virtues and defects of the political philosophy of the Declaration, the chapter on its literary qualities, so far from breaking the continuity of the theme, serves as a natural transition to the final chapter, which traces the declining prestige of that philosophy in the nineteenth century.

What then can Mr. Adams say in rebuttal? Well, something; more than I like to admit. Pointing an accusing finger at the offending fourth chapter, he could say this: "Admitting that the subject called for 'some account' of the drafting of the Declaration, did it really call for an elaborate dissertation in textual criticism?" The only answer to that, I'm afraid, is no. All that was strictly relevant to the main theme of the book could have been put in a short chapter of ten or fifteen pages. The dissertation in textual criticism, if included at all, should have been relegated to an appendix — one of the two receptacles always conveniently at hand for the use of authors who have more information on their subject than they know what to do with.

Congress, incorporates in its final paragraph the resolution of July 2; and so the Declaration may be said to be a declaration of independence, inasmuch as in it Congress once more declared what it had already declared two days before. Nevertheless, the primary purpose of the Declaration was not to declare independence, but to proclaim to the world the reasons for declaring independence. It was intended as a formal justification of an act already accomplished.

The purpose of the Declaration is set forth in the first paragraph — a striking sentence, in which simplicity of statement is somehow combined with an urbane solemnity of manner in such a way as to give that felicitous, haunting cadence which is the peculiar quality of Jefferson's best writing.

When in the course of human events, it becomes necessary for one people to dissolve the political bands, which have connected them with another, and 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 a decent respect to the Opinions of mankind requires that they should declare the causes which impel them to the separation.¹

¹ There are three texts of the Declaration which may be called official. One is the text in what is called the 'rough' Journal; a second

to clear the colonists of all responsibility and to throw all the blame on the king. From whatever causes, the colonists were in rebellion against established and long recognized political authority. The Declaration was not primarily concerned with the causes of this rebellion; its primary purpose was to present those causes in such a way as to furnish a moral and legal justification for that rebellion. The Declaration was essentially an attempt to prove that rebellion was not the proper word for what they were doing.

Rebellion against established authority is always a serious matter. In that day kings were commonly claiming to rule by divine right, and according to this notion there could be no 'right' of rebellion. The framers of the Declaration knew very well that however long their list of grievances against the king of Great Britain might be, and however oppressive they might make out his acts to have been, something more would be required to prove to the world that in separating from Great Britain they were not really engaged in rebellion against a rightful authority. What they needed, in addition to many specific grievances against their particular king, was a fundamental presupposition against kings in general. What they needed was a theory of government that provided a

ization of foreigners; refusing to pass others to encourage their migrations hither & raising the conditions of new appropriations of lands.

He has obstructed the administration of Justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us in times of peace standing armies, without the consent of our legislatures.

He has affected to render the military independent of & superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws, giving his assent to their acts of pretended legislation

for quartering large bodies of troops¹ among us;

for protecting them by a mock trial from punish-

¹ All other copies read "armed troops." Hazelton, *The Declaration of Independence*, 321.

ment for any murders, which they should commit on the inhabitants of these states.

for cutting off our trade with all parts of the world;

for imposing taxes on us without our consent;

for depriving us in many cases of the benefits of trial by jury;

for transporting us beyond seas to be tried for pretended offences;

for abolishing the free system of english laws in a neighboring province, establishing therein an arbitrary government and enlarging its boundaries, so as to render it at once an example & fit instrument for introducing the same absolute rule into these colonies.

for taking away our charters, abolishing our most valuable laws and altering fundamentally the forms of our governments.

for suspending our own legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts burnt our towns & destroyed the lives of our people.

lution. These two parts of the Declaration, apparently quite distinct, are nevertheless intimately related in the logic and purpose of the Declaration. Superficially, the Declaration seems chiefly concerned with the causes of the Revolution, with the specific grievances; but in reality it is chiefly, one might say solely, concerned with a theory of government — with a theory of government in general, and a theory of the British empire in particular. The theory of government in general is explicitly formulated; the theory of the British empire is not explicitly formulated but is implicitly taken for granted; and the second part of the Declaration was carefully phrased so that no assertion or implication might appear as a contradiction or a denial of the assumed theory.

The Declaration thus becomes interesting for what it omits as well as for what it includes. For example, it does not, in its final form, contain the word 'Parliament' — a most significant omission, considering that the controversy of the preceding decade was occasioned, not by the acts of the king, who plays the leading part in the Declaration, but by the acts of the British Parliament. In all the controversy leading up to the Revolution the thing chiefly debated was the authority of the British Parliament. What is the nature, and what pre-

not on any account to pronounce the word Parliament. "Of course," we seem to hear them saying, "our British brethren have their legislature, as we have ours. But with their legislature we have nothing to do, God forbid! The very name of the thing escapes us! At least, let us pretend so."

Another significant omission is the term 'rights of British subjects.' Throughout the controversy the colonists had commonly protested against parliamentary taxation precisely on the ground that they possessed the rights of British subjects. They said that the British Parliament could not constitutionally tax British subjects without their consent, and that British subjects in the colonies were not, and in the nature of the case could not well be, represented in the British Parliament. For ten years the colonists had made the 'rights of British subjects' the very foundation of their case. Yet this is just what the framers of the Declaration carefully refrain from doing: the term 'rights of British subjects' does not appear in the Declaration. Trial by jury is mentioned, but not as a right of British subjects. 'The system of free English laws' is mentioned, but it is not stated, or even implied, that the validity of these laws arises from the fact that they are English laws. Nowhere does the Declaration

ence in the best light possible, it was convenient to assume that the connection between the colonies and Great Britain had never been a very close connection, never, strictly speaking, a connection binding in positive law, but only a connection voluntarily entered into by a free people. On this ground the doctrine of the rights of man would have a free field and no competitors.

The specific grievances enumerated in the Declaration were accordingly presented from the point of view of a carefully considered and resolutely held constitutional theory of the British empire. The essence of this theory, nowhere explicitly formulated in the Declaration, but throughout implicitly taken for granted, is that the colonies became parts of the empire by their own voluntary act, and remained parts of it solely by virtue of a compact subsisting between them and the king. Their rights were those of all men, of every free people; their obligations such as a free people might incur by professing allegiance to the personal head of the empire. On this theory, both the Parliament and the rights of British subjects could be ignored as irrelevant to the issue.

The specific grievances complained of in the Declaration are grievances no longer. As concrete issues they are happily dead. But the

have been more futile than an attempt to justify a revolution on principles which no one had ever heard of before.

In replying to Adams' strictures, Jefferson had only to state this simple fact.

Pickering's observations, and Mr. Adams' in addition, that it contained no new ideas, that it is a commonplace compilation, its sentiments hacknied in Congress for two years before . . . may all be true. Of that I am not to be the judge. Richard H. Lee charged it as copied from Locke's treatise on Government. . . . I know only that I turned to neither book nor pamphlet while writing it. I did not consider it as any part of my charge to invent new ideas altogether and to offer no sentiment which had ever been expressed before.¹

In writing to Lee, in 1825, Jefferson said again that he only attempted to express the ideas of the Whigs, who all thought alike on the subject. The essential thing was

Not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject, in terms so plain and firm

¹ *The writings of Thomas Jefferson* (Ed. 1869), VII, 304.

CHAPTER II

HISTORICAL ANTECEDENTS OF THE DECLARATION: THE NATURAL RIGHTS PHILOSOPHY

WHETHER the political philosophy of the Declaration of Independence is "true" or "false" has been much discussed. In the late eighteenth century it was widely accepted as a commonplace. At a later time, in 1822, John Adams made this a ground for detracting from the significance of Jefferson's share in the authorship of the famous document. He was perhaps a little irritated by the laudation which Fourth of July orators were lavishing on his friend, and wished to remind his countrymen that others had had a hand in the affair. "There is not an idea in it," he wrote to Pickering, "but what had been hackneyed in Congress for two years before."¹ This is substantially true; but as a criticism, if it was intended as such, it is wholly irrelevant, since the strength of the Declaration was precisely that it said what everyone was thinking. Nothing could

¹ *Works of John Adams*, II, 512.

as to command their assent. . . . Neither aiming at originality of principles or sentiments, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind. . . . All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc.¹

Not all Americans, it is true, would have accepted the philosophy of the Declaration, just as Jefferson phrased it, without qualification, as the 'common sense of the subject'; but one may say that the premises of this philosophy, the underlying preconceptions from which it is derived, were commonly taken for granted. That there is a 'natural order' of things in the world, cleverly and expertly designed by God for the guidance of mankind; that the 'laws' of this natural order may be discovered by human reason; that these laws so discovered furnish a reliable and immutable standard for testing the ideas, the conduct, and the institutions of men — these were the accepted premises, the preconceptions, of most eighteenth century thinking, not only in America but also

¹ *Ibid.*, 407.

in England and France. They were, as Jefferson says, the 'sentiments of the day, whether expressed in conversation, in letters, printed essays, or the elementary books of public right.' Where Jefferson got his ideas is hardly so much a question as where he could have got away from them.

Since these sentiments of the day were common in France, and were most copiously, and perhaps most logically, expressed there, it has sometimes been thought that Jefferson and his American contemporaries must have borrowed their ideas from French writers, must have been 'influenced' by them, for example by Rousseau. But it does not appear that Jefferson, or any American, read many French books. So far as the 'Fathers' were, before 1776, directly influenced by particular writers, the writers were English, and notably Locke. Most Americans had absorbed Locke's works as a kind of political gospel; and the Declaration, in its form, in its phraseology, follows closely certain sentences in Locke's second treatise on government. This is interesting, but it does not tell us why Jefferson, having read Locke's treatise, was so taken with it that he read it again, and still again, so that afterwards its very phrases reappear in his own writing. Jefferson doubtless read Filmer as well as Locke; but the

America. Jefferson used the compact theory to justify revolution just as Locke did: the theory came with the revolution in both cases. Rousseau was indeed not justifying an actual revolution; but, as Chateaubriand said, the Revolution in France "was accomplished before it occurred." It was accomplished in men's minds before they made it the work of their hands; and Rousseau spoke for all those who were 'intending their minds' away from an actual, irrational, and oppressive political order which rested in theory upon the divine right of kings and priests to rule — and misrule. In all three countries this common influence — the widespread desire to limit the power of kings and priests — was one source of those underlying presuppositions which determined the character of political speculation in the eighteenth century; a strong antipathy to kings and priests predisposed Jefferson and Rousseau, as it predisposed Locke, to 'intend their minds' towards some new sanction for political authority.

The idea that secular political authority rested upon compact was not new — far from it; and it had often enough been used to limit the authority of princes. It could scarcely have been otherwise indeed in that feudal age in which the mutual obligations of vassal and

as "an inclination in man to the good, according to the *rational* nature which is proper to him; as, for example, man has a natural inclination to know the truth about God, and to live in society." Natural law was accordingly that part of law discoverable by right reason, and as such occupied a strictly subordinate place in the mediaeval hierarchy of laws. According to Aquinas, the highest of all laws, comprehending all others, was the Eternal Law, which was nothing less than the full mind of God. Something, but not all, of the mind of God could be known to man: part of it had been revealed in the Bible or might be communicated through the Church (Positive Divine Law); and part of it could be discovered by human reason (Natural Law); lowest of all in the hierarchy came Human Law, or the positive laws of particular states.¹ Thus Natural Law obviously took precedence over Human Law, but must always be subordinate to that part of the Eternal Law which God had revealed in the Bible or through the Church. Natural Law was in fact not the law of nature, but a natural method of learning about the law of God. Above all, what could be learned by this method was strictly limited: Natural Law was that part of the mind of God which man could discover by using his

¹ Quoted in Richie, *Natural Rights*, 39.

reason, but God had provided beforehand, through the Bible and the Church, a sure means of letting man know when his reason was not right reason but unreason.

The concept of Nature which held the field in the eighteenth century seems at first sight very different from this; but the difference is after all mainly on the surface. The eighteenth century did not abandon the old effort to share in the mind of God; it only went about it with greater confidence, and had at last the presumption to think that the infinite mind of God and the finite mind of man were one and the same thing. This complacent view of the matter came about partly through the Protestant Reformation, which did much to diminish the authority of the Church as the official interpreter of God's will; but it came about still more through the progress of scientific investigation which had been creating, since the time of Copernicus, a strong presumption that the mind of God could be made out with greater precision by studying the mechanism of his created universe than by meditating on the words of his inspired prophets. Some of the 'laws' of this curious mechanism had already been formulated by Kepler and Galileo. Well, what if all the 'laws' of God's universe could be discovered by the human reason? In that case

of Eden every one is the executor of that natural law of reason which God has written in the hearts of men: if a Cain appears now and then, any one may take his life.

Now it may be, let us suppose so at all events, that a good many Cains will appear, so that all the Abels, the great majority who still live by reason, are in danger of their lives, and are at great inconvenience to defend them. And suppose further that all these rational and conscientious Abels, being a great majority, come together saying: Why should we all be forever going up and down to watch where many Cains come to strike? Go to, let us appoint a few to watch for all. The question is, how might these many Abels be supposed to proceed in this business? Would they not say: These few, whom we appoint to watch for us, that we may be safe in our lives, our health, our liberty and our possessions, are to make what rules are necessary for that purpose, but for that purpose only; and we agree in return to abide by those rules, so long as the few whom we appoint to make the rules do effectively, by means of these rules, make us safe in our lives, our liberties, and our possessions. Such is the modified version of the original compact which Locke finds in the state of nature.

his history of Peru." These are in a state of nature "in reference to one another: for truth and keeping of faith belongs to men as men, and not to members of society." Men as *men* (that is to say man in the abstract, Montaigne's 'man in general') are in the state of nature. Locke's state of nature is not the actual pre-social state of history, but the logical non-social state, which he constructs imaginatively, as a premise from which to deduce the rational limits of governmental authority. In the actual pre-social state of history there may well have been more Cains than Abels; and no doubt governments have in fact been established by custom unconsciously and irrationally submitted to, or by force, by conquest, or by the flagrant usurpation of kings. This is admitted; but the fact of tyranny is no more a justification of tyranny in the social state, than the fact of murder is a justification of murder in the pre-social state. What Locke is seeking is not the historical origin, but the rational justification, of government.

If, therefore, any one says that men never did in fact live in a state where conduct was guided by reason, but that in fact they originally lived in a state of confusion and anarchy, in a state of war, and that "therefore God hath certainly appointed government to restrain the partiality

any one to question or control those who execute his pleasure?' This, generally speaking, was what the eighteenth century desired to know. The answer which it gave to that question seemed self-evident: Such a government is a bad government; since governments exist for men, not men for governments, all governments derive their just powers from the consent of the governed.

If the philosophy of Locke seemed to Jefferson and his compatriots just 'the common sense of the matter,' it was not because Locke's argument was so lucid and cogent that it could be neither misunderstood nor refuted. Locke's argument is not particularly cogent unless you accept his assumptions as proved, nor lucid until you restate it to suit yourself; on the contrary, it is lumbering, involved, obscured by innumerable and conflicting qualifications — a dreary devil of an argument staggering from assumption posited as premise to conclusion implicit in the assumption. It was Locke's conclusion that seemed to the colonists sheer common sense, needing no argument at all. Locke did not need to convince the colonists because they were already convinced; and they were already convinced because they had long been living under governments which did, in a rough and ready way, conform to the kind of

government for which Locke furnished a reasoned foundation. The colonists had never in fact lived under a government where 'one man . . . may do to all his subjects whatever he pleases.' They were accustomed to living under governments which proceeded, year by year, on a tacitly assumed compact between rulers and ruled, and which were in fact very largely dependent upon 'the consent of the governed.' How should the colonists not accept a philosophy, however clumsily argued, which assured them that their own governments, with which they were well content, were just the kind that God had designed men by nature to have!

The general philosophy which lifted this common sense conclusion to the level of a cosmic law, the colonists therefore accepted, during the course of the eighteenth century, without difficulty, almost unconsciously. That human conduct and institutions should conform to the will of God was an old story, scarcely to be questioned by people whose ancestors were celebrated, in so many instances, for having left Europe precisely in order to live by God's law. Living by God's law, as it turned out, was much the same as living according to "the strong bent of their spirits." The strong bent of their spirits, and therefore God's law,

natural rights upon which the Revolution was founded, being particularly vicious must be peculiarly French; from which it followed, doubtless as the night the day, that the Americans, having also embraced this philosophy, must have been corrupted by French influence. The truth is that the philosophy of Nature, in its broader aspects and in its particular applications, was thoroughly English. English literature of the seventeenth and eighteenth centuries is steeped in this philosophy. The Americans did not borrow it, they inherited it. The lineage is direct: Jefferson copied Locke and Locke quoted Hooker. In political theory and in political practice 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. In 1776 it was commonplace doctrine, everywhere to be met with, as Jefferson said, "whether expressed in conversation, in letters, printed essays, or the elementary books of public right." And in sermons also, he might have added. But it may be that Jefferson was not very familiar with sermons.

been accustomed to exercise, in respect to all internal affairs, a pretty full measure of self-government. Laws passed by the colonial legislatures were often vetoed by the governors, or disallowed by the Crown; but the British government had rarely intervened with regulations of a positive sort, and it had never, with some slight and negligible exceptions, laid a tax on the colonies by act of Parliament.

With this situation the colonies were in the main well satisfied; and when they thought of the constitutional relations by which the colonies were connected with the British empire, they thought of them as relations which permitted the colonists, and doubtless would always permit them, to regulate their own affairs in their own way: the immunities which they in fact enjoyed, they thought of as 'rights' which they ought constitutionally to possess. The truth is, however, that the colonists had not given a great deal of thought to these matters. They had thought a good deal about the respective 'rights' of their assemblies as against the 'rights' of their governors; but there had been no great occasion to ask what were the rights of the assemblies as against the rights of Parliament. The Sugar Act suddenly raised this question; and suddenly called upon to define their rights as colonies within the empire, called upon to

hasty proceeding.”¹ At an earlier date, Governor Colden of New York had been instructed to suspend the meetings of the Assembly of that province until it should have made provision, according to the terms of the Quartering Act, for the support of British troops stationed there.² These were measures of ominous import. Of what value was it to safeguard the right of being taxed exclusively in their own assemblies, if the British government could by administrative order abolish their assemblies? If the British government could abolish colonial assemblies, it could destroy every vestige of colonial self-government. Clearly, therefore, the question which was now coming to include all others was the question of preserving the legislative independence of the colonies.

To meet this emergency, a theory which denied the jurisdiction of the British government in this or that particular matter, such as the taxing power, was inadequate; what was needed was a theory which would define the respective jurisdictions of the British and colonial governments in terms of some general principle. Dickinson had said that the colonies were “as much dependent on Great Britain as one

¹ Macdonald, *op. cit.*, 147. *Massachusetts State Papers*, 134. Almon, *Prior Documents*, 220.

² Macdonald, *op. cit.*, 141. *Pickering's Statutes*, XXVII, 609.

free people could be on another.” This might seem to be as indefinite as anything could well be; but the assumption on which it rests was to be the foundation upon which the colonists built up their theory from this time on. That assumption was that the Americans were one ‘people,’ the English another, and each a ‘free’ people. No doubt an Englishman might have said that this was begging the question; the precise question at issue, he might have maintained, is whether the Americans *are* a ‘free’ people. We maintain that they are subject to the British Parliament. The Parliament has always exercised jurisdiction over them in fact; and to prove this we point you to any number of statutes duly passed and recorded and submitted to. If positive law is any test, the colonies are not a ‘free’ people, but a subject people; and any privileges which they may have are privileges granted or permitted by the British Parliament.

On this ground it was indeed difficult to meet the British contention. In order to maintain the rights of a free people, the colonists were accordingly forced to change the question; and from this time on we find them less disposed to ask, What are the rights which we possess as British subjects? and more disposed to ask, What are the rights which we possess as mem-

bers of the human race? This latter question was one which Samuel Adams had been thinking about since the year 1743 when, upon receiving the degree of Master of Arts from Harvard College, he argued the thesis, "Whether it be lawful to resist the Supreme Magistrate if the Commonwealth cannot otherwise be preserved." In the present crisis, therefore, he was able to formulate a theory (best stated in a letter to Dennys De Berdt, January 12, 1768) designed to show that the colonies were 'subordinate' but not 'subject' to the British Parliament.¹ Adams' theory of 'subordination' may be taken as the first reasoned elaboration of Dickinson's general proposition that America is "as dependent on Great Britain as one free people can be on another."

For a major premise, Samuel Adams turned as a matter of course to the current philosophy of Natural Rights, familiar doctrine to him, and often enough expounded in newspaper articles or at the Caucus Club; and in bringing it in to solve a practical issue, he doubtless felt that he was only grounding the discussion upon commonly accepted axioms of political thinking. The delimitation of colonial and parliamentary jurisdictions, Adams achieved by subordinating all legislative authority to an authority higher

¹ *Writings of Samuel Adams* (ed. 1904), I, 134.

than any positive law, an authority which no legislature could "overleap without destroying its own foundation." This higher authority was the British Constitution. The British Constitution, Adams said, "is fixed," having its foundation in "the law of God and nature." In the British empire there are many legislatures, all deriving their authority from, and finding their limitations in, the Constitution. Parliament has certainly a supreme or superintending legislative authority in the empire, as the colonial assemblies have a 'subordinate' in the sense of a local, legislative authority; but neither the Parliament nor any colonial assembly can rightly extend its jurisdiction beyond the limits fixed by the Constitution. And therefore, since the Constitution is founded "in the law of God and nature," and since it is "an essential natural right that a man shall quietly enjoy and have the sole disposal of his property," the Americans must enjoy this right equally with Englishmen, and Parliament must be bound to respect this right in the colonies as well as in England; from which it followed that the consent of the colonies must be sought exclusively in their own assemblies, it being manifestly impossible for that consent to be "constitutionally had in Parliament."

Obviously, according to this reasoning, the

authority of the British Parliament over the colonies would ultimately always have to stop where the "essential natural rights" of the colonies began. Adams had found at least one of these rights — the right which every man had of "quietly enjoying and having the sole disposal of his property." But perhaps there were other essential natural rights. What were they? Was there any sure way of finding out? Above all, in case there should be, as might well happen, between Britons and Americans any serious difference of opinion on this point, which opinion should prevail? Admitting that the British Parliament had a supreme or supervising jurisdiction in the empire, it might well be argued that in case of conflict the 'supreme' rather than the 'subordinate' jurisdiction should decide. Some authority would have to determine, in concrete cases, what were and what were not essential natural rights. If this authority were the British Parliament, the essential natural rights were likely to be few indeed; while if the colonial assemblies were to have this authority, the list of essential natural rights was likely in the end to be a long one.

Few men could go more directly to the heart of a question, once he gave his mind to it, than that shrewd old friend of the Human Race, Dr. Benjamin Franklin. Since 1764 he had

not what the Boston people mean by the "subordination" they acknowledge in their Assembly to Parliament, while they deny its power to make laws for them, nor what bounds the Farmer sets to the power he acknowledges in parliament to "regulate the trade of the colonies," it being difficult to draw lines between duties for regulation and those for revenue; and, if the Parliament is to be the judge, it seems to me that establishing such a principle of distinction will amount to little. The more I have thought and read on the subject, the more I find myself confirmed in opinion, that no middle ground can be well maintained, I mean not clearly with intelligible arguments. Something might be made of either of the extremes: that Parliament has a power to make *all laws* for us, or that it has a power to make *no laws* for us; and I think the arguments for the latter more numerous and weighty, than those for the former. Supposing that doctrine established, the colonies would then be so many separate states, only subject to the same king, as England and Scotland were before the union.¹

Here at last was a clear-cut alternative — that Parliament had a power of making all laws

¹ *Writings of Benjamin Franklin* (Smyth ed.), V, 115.

for the colonies, or else that it had a power of making no laws for them. Which should it be? If it must be one or the other, the arguments for the latter contention would naturally seem to the colonists to be more numerous and weighty than for the former. From this time on Franklin at least assumed that the empire was composed of separate states all subject to the king, but each possessed of its own legislature outside the jurisdiction of the British Parliament. By 1770, Franklin felt that this was a position which should be taken for granted, and no longer argued.

That the colonies originally were constituted distinct States, and intended to be continued such, is clear to me from a thorough consideration of their original Charters, and the whole conduct of the Crown and nation towards them until the Restoration. Since that period, the Parliament here has usurped an authority of making laws for them, which before it had not. We have for some time submitted to that usurpation, partly through ignorance and inattention, and partly from our weakness and inability to contend: I hope, when our rights are better understood here [in Great Britain] we shall, by prudent and proper conduct, be able to obtain from the equity of

this nation a restoration of them. And in the meantime, I could wish, that such expressions as the supreme authority of Parliament: the subordinancy of our Assemblies to the Parliament, and the like . . . were no more seen in our publick pieces. They are too strong for compliment, and tend to confirm a claim of subjects in one part of the king's dominions to be sovereigns over their fellow subjects in another part of his dominions, when in truth they have no such right, and their claim is founded only in usurpation, the several states having equal rights and liberties, and being only connected, as England and Scotland were before the union, by having one common sovereign, the King.¹

Franklin's conclusion was better adapted to the purposes of controversy than the methods by which he reached it. His pragmatic mind, instinctively avoiding speculative theory, sought in historical precedent the proof of colonial rights: the Parliamentary legislation for the colonies since 1660 might be regarded as 'usurpation,' because the 'original charters, and the whole conduct of the Crown and nation' demonstrated that the colonies were in origin intended to be independent of Parliamentary

¹ *Ibid.*, 260.

medium between acknowledging and denying that power in all cases.

Wilson's conclusion is thus the same as Franklin's — that Parliament has no legislative jurisdiction over the colonies; but his argument in support of that conclusion has a wider sweep, the jurisdiction of Parliament being made to depend not merely upon what is "consistent with law," but equally, and indeed fundamentally, upon what is consistent with "the principles of liberty, and with the happiness of the colonies." Those who maintain that the Parliament has power to bind the colonies in all cases, says Wilson, are likely to rest their contention upon the statement of Blackstone, "That there is and must be in every state a supreme, irresistible, absolute, uncontrolled authority, in which the *jus summi imperii*, or the rights of sovereignty, reside"; and they argue, with Blackstone, that in the British Constitution this supreme authority is vested in the king, lords, and commons. This principle, particularly since it was affirmed by Blackstone, no lawyer (and Wilson was a lawyer) could deny. Wilson does not deny it; but he maintains that the importance of the principle "is derived from its tendency to promote the ultimate end of all government"; and accordingly, "if the appli-

cation of it would, in any instance, destroy, instead of promoting, that end, it ought, in that instance, to be rejected; for to admit it, would be to sacrifice the end to the means, which are valuable only so far as they advance it."

Thus expeditiously does Wilson shift the issue from the positive conception of British sovereignty to the "ultimate end of all government." What then is the ultimate end of all government?

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

This reminds us of the Declaration of Independence, and sounds as if Wilson were making a summary of Locke. No doubt he was; but it is significant that he keeps as close to his positive law moorings as possible. It is evidently Wilson's aim, or at least it is the effect of his work, so inextricably to unite the positive law applicable to British subjects with the natural

the British Constitution, and the decisions of British courts with one voice proclaimed the colonies outside the jurisdiction of Parliament; from which it followed that the colonies must be subject only to the jurisdiction of their own legislatures. If it should be objected that this was to renounce "all dependence on Great Britain," his reply was no, the colonies are dependent on Great Britain in the sense that they owe "obedience and loyalty . . . to the kings of Great Britain." The connection between the inhabitants of Great Britain and those of America is the connection of fellow subjects:

They are under allegiance to the same prince; and this union of allegiance naturally produces a union of hearts. It is also productive of a union of measures through the whole British dominions. To the king is intrusted the direction and management of the great machine of government. . . . He makes war: he concludes peace: he forms alliances: he regulates domestic trade by his prerogative, and directs foreign commerce by his treaties with those nations, with whom it is carried on. He names the officers of government; so that he can check every jarring movement in the administration. He has a negative on the different legislatures throughout his

was a novel one. In 1774 it was familiar doctrine to all men; and the most radical were quite ready to take their stand upon it at that time. Before departing for the Virginia Convention Jefferson prepared, as he says, "what I thought might be given, as instruction, to the Delegates who should be appointed to attend the general congress." This paper, afterwards printed as *A Summary View of the Rights of British America*,¹ does not formulate or argue the theory that the colonies are bound to Great Britain only through the king; it takes it for granted; the theory is implicit in the statement, as it is in the Declaration of Independence. Jefferson would address the remonstrance to the king, who should be "reminded"

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

¹ *Writings of Thomas Jefferson* (Ford ed.), I, 421 ff.

That the inhabitants of the English colonies in North America, by the immutable laws of nature, the principles of the English Constitution, and the several charters or compacts, have the following RIGHTS:

Every reader could take his choice, according to disposition laying most stress on the natural law, or on the principles of the British Constitution as he understood those principles, or else on the colonial charters, documents which he might indeed prefer to call *compacts*. Having laid this broad foundation for the rights of the colonies, the Declaration goes on to declare what these rights specifically are.

That they are entitled to life, liberty and property; and they have never ceded to any foreign power whatever [to France, for example. To the British Parliament? Well, you may include it among foreign powers if you like.] a right to dispose of either without their consent.

That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects, within the realm, of England.

That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise of all such of them, as their local and other circumstances enable them to exercise and enjoy.

That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British Parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed:

Thus far resolution number four; very carefully stated, with all possible qualification; probably satisfactory as it stands to Mr. Dickinson and many men; but not satisfactory to Mr. Adams and many others, who do not wish to admit the legislative authority of the British Parliament in all cases of *external* polity, or to give to it an unlimited power of

Both the objects and the methods of the first Congress were those also of the second Congress until the year 1776. In the spring and summer of 1775, even after the Battle of Lexington had precipitated a state of war, the belief still persisted that Great Britain would in the end back down if the colonies only remained united and made it clear that even now they desired reconciliation and not independence. It was still necessary therefore to satisfy the timid as well as the aggressive. The timid wished to rely primarily upon petition and remonstrance and the non-intercourse measures. One day Mr. Dickinson, following John Adams out of the Congress hall, said to him in great heat: "What is the reason, Mr. Adams, that you New England men oppose our measures of reconciliation? There now is Sullivan, in a long harangue, following you in a determined opposition to our petition to the king. Look ye! If you don't concur with us in our pacific system, I and a number of us will break off from you in New England, and we will carry on the opposition by ourselves in our own way." Mr. Adams was at that moment "in a very happy temper," which was not always the case, and so, he says, he was able to reply very coolly. "Mr. Dickinson, there are many things which I can very cheerfully sacrifice to harmony, and even to unanim-

relinquished with regret, was that traditional but now vanishing conception of themselves as a people sharing the rich inheritance of English history and freely contributing to its enlargement and perpetuation. To surrender this conception was to renounce the prepossessions that had given consistence to all their thought, to suppress the emotions that had sustained and fortified their lives.

Not desire, but practical difficulties, forced them to adopt separation from Great Britain as the object of their efforts. In the winter of 1776 the trend of opinion was towards independence as the only alternative to submission. The first Congress had adopted the non-intercourse measure in order to force Great Britain to make concessions; the second Congress had taken up arms in order to force Great Britain to make concessions. If Great Britain made concessions speedily, all would be well; but if she insisted on making war the colonies would have to abandon either the war measure or the non-intercourse measure. As Mr. Zubly kept repeating in Congress, the colonies must speedily obtain one of two things — “A reconciliation with Great Britain or the means of carrying on the war.”¹ They could not carry on war with one hand, while destroying the trade and pros-

¹ *Works of John Adams*, II, 469.

citizens, with the allurements¹ of forfeiture & confiscation of our property:

he has waged cruel war against human nature itself, violating it's most sacred rights² of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. this piratical warfare, the opprobrium of *infidel* powers, is the warfare of the *Christian* king of Great Britain. [determined to keep open a market where MEN should be bought & sold,] he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this determining to keep open a market where MEN should be bought & sold: execrable commerce [^]³: and that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which *he* has deprived them, by murdering the people upon whom *he* also obtruded them: thus paying off former crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the *lives* of another.

¹ Adams' copy reads "allurement."

² Adams' copy reads "right."

³ Adams' copy reads "an execrable."

deaf to the voice of justice & of consanguinity, & when occasions have been given them, by the regular course of their laws, of removing from their councils the disturbers of our harmony, they have by their free election re-established them in power. at this very time too they are permitting their chief magistrate to send over not only soldiers of our common blood, but Scotch & foreign mercenaries to invade & ^{* destroy us} ~~deluge us in blood.~~ these facts have given the last stab to agonizing affection, and manly spirit bids us to renounce forever these unfeeling brethren. we must endeavor to forget our former love for them, and to hold them as we hold the rest of mankind, enemies in war, in peace friends. we might have been a free & a great people together; but a communication of grandeur & of freedom it seems is below their dignity. be it so, since they will have it: the road to ~~glory~~ ^{& to glory} & happiness ^{apart from them} is open to us too; we will climb it [^] ~~in a separately state,~~¹

* Dr. Franklin

¹ The Rough Draft reads,

~~must~~ tread apart from them

"we will climb it [^] ~~in a separately state."~~

The text as adopted by Congress reads "we will climb it apart from them." The copy in the "Notes" is the only one which gives the reading "we will tread it apart from them." If the change from "climb" to "tread" was made before the Committee of Five submitted its

~~councils the disturbers of our harmony, they have by their free election re-established them in power. at this very time too, they are permitting their chief magistrate to send over not only soldiers of our common blood, but Scotch and foreign mercenaries to invade and destroy us. these facts have given the last stab to agonizing affection; and manly spirit bids us to renounce forever these unfeeling brethren. we must ^{therefore} endeavor to forget our former love for them, and to hold them as we hold the rest of mankind, enemies in war, in peace friends. we might have been a free & a great people together; but a communication of grandeur and of freedom, it seems, is below their dignity. be it so, since they will have it, the road to happiness and to glory is open to us too; we will climb it apart from them, and acquiesce in the necessity which denounces our ^{and bold them, as we hold the rest} eternal separation ^{of mankind, enemies in war, in peace friends.} †~~

We therefore the Representatives of the United states ^{appealing to the supreme judge of the world for the rectitude of our intentions} of America in General Congress assembled, ^{colonies, solemnly} do, in the name & by authority of the good people of these ^{publish and declare, that these united colonies are and of right ought} states, ^{to be free and independent states; that they are absolved from all allegi-} reject and renounce all allegiance and subjection to the ^{ance to the British Crown, and that} kings of Great Britain, & all others who may hereafter claim by, through, or under them; we utterly dissolve

tions and engaging felicities, one misses a certain unsophisticated directness, a certain sense of impregnable solidity and massive strength, a certain effect of passion restrained and deep convictions held in reserve, which would have given to it that accent of perfect sincerity and that emotional content which belong to the grand manner.

The Declaration has not the grand manner — that passion under control which lifts prose to the level of true poetry. Yet it has, what is the next best thing, a quality which saves it from falling to the prosaic. It has elevation. I have said that Franklin had, equally with Jefferson, clarity, simplicity, precision, felicity. If Franklin had written the Declaration it would have had all of these qualities; but Franklin would have communicated to it something homely and intimate and confidential, some smell of homespun, some air of the tavern or the print shop. Franklin could not, I think, have written this sentence:

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and 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,

could be very conveniently derived from the general philosophy of the Declaration. Yet in very few of the innumerable constitutions of the nineteenth century, in few if any of the constitutions now in force, do we find the natural rights doctrine of the eighteenth century reaffirmed — not even, where we should perhaps most expect it, in the Constitution of the United States or the Constitution of the third French Republic. Modern democracy has accepted one article of the Jeffersonian philosophy — that government rests upon the consent of the governed; and this article, in the form of the right of the majority to rule, it has even erected into an article of faith. For this dogma a theoretical foundation had indeed to be found; but it is significant that the nineteenth century almost ostentatiously refrained from deriving the right of the majority from the natural rights philosophy as formulated in the Declaration of Independence and in the Declaration of the Rights of Man.

The simplest, the naïve, way to justify majority rule was of course to fall back upon force — the majority has the power, and therefore the right; we decide matters “by counting heads instead of by breaking them,” which seems to mean that it is right for the minority of heads to submit in order to avoid being broken

that Bentham's ideas were not much attended to until a generation later when everything reminiscent of Rousseau's *Social Contract* was suspect in England. After 1815, with the revival of the movement for parliamentary reform, there began to be a certain demand for a distinctively British road to democracy. What was wanted was a philosophy that would enable Englishmen to be both radical and respectable, a doctrine within the shelter of which one could advocate universal suffrage and at the same time ridicule Rousseau and renounce the "philosophy of the French school." Bentham supplied this need. Rejecting the eighteenth-century doctrine of natural rights altogether, and taking his chief ideas from Hume and Beccaria, he made utility the test of institutions. The object of society is to achieve the greatest good of all its members; do not ask what rights men have in society, but what benefits they derive from it. In the long run no man can decide for another what is good for that other. Each must decide for himself; and so, if you give each man a voice in deciding what is to be done and how, each man to count for one and none for more than one, the result will be to bring about the greatest good of all, or at least 'the greatest good of the greatest number,' which is perhaps the nearest approximation to the greatest good

Texas (1845), the phrase "All men, when they form a social compact, are equal" was changed to read "All freemen, when they form a social compact, are equal."¹ No danger in affirming that all freemen are equal, and have certain inalienable rights — particularly the right of property.²

The persistence of the political philosophy of the Declaration in the state constitutions must be mainly attributed to the conventional acceptance of a great tradition; particularly so during the thirty years prior to the Civil War, when political leaders, north and south, were ridiculing as fallacies, as glittering generalities, the very principles which were being proclaimed afresh in nearly every constitution of the time. During these decades, the ideas of the Decla-

¹ The above paragraph is based upon an examination of state constitutions prior to 1878 as given in Poore, B. P. *The Federal and State Constitutions*, ed. 1878. Cf. for Arkansas, 103, 121, 134, 155; Alabama, 32; California, 195; Connecticut, 258; Florida, 317, 332, 347; Illinois, 446, 466, 471; Indiana, 500, 512; Iowa, 537, 552; Kansas, 580, 605, 609, 615, 630; Kentucky, 654, 666, 684; Louisiana, 755; Maine, 787; Maryland, 817, 837, 859, 888; Massachusetts, 957; Michigan, 983, 995; Minnesota, 1029; Mississippi, 1054, 1067, 1081; Missouri, 1114, 1135, 1165; Nebraska, 1203, 1214; Nevada, 1247; New Hampshire, 1280; 1294; New Jersey, 1310, 1314; North Carolina, 1409, 1419, 1436; Ohio, 1461, 1465; Oregon, 1492; Pennsylvania, 1541, 1554, 1564, 1570; Rhode Island, 1603; South Carolina, 1646; Tennessee, 1673, 1677, 1695; Texas, 1762, 1767, 1784, 1801, 1824; Vermont, 1859, 1867, 1875; Virginia, 1908, 1913, 1919, 1939, 1953; West Virginia, 1978, 1994; Wisconsin, 2028.

² "The right of property is before and higher than any constitutional sanction." Kansas (Lecompton) constitution of 1857. *Ibid.*, 605.

graph of the *Disquisition on Government*,¹ "it is indispensable to understand correctly what that constitution or law of our nature is, in which government originates; or, to express it more fully and accurately, — that law, without which government would not, and with which, it must necessarily exist." This constitution or law of our nature he states as follows: "while man is . . . so formed as to feel what affects others, as well as what affects himself, he is, at the same time, so constituted as to feel more intensely what affects himself directly, than what affects him indirectly through others." His feeling what affects others fits him to live with others, in the social state; but his feeling more intensely what affects himself results in a "tendency to a universal state of conflict, between individual and individual," which, if not restrained by some controlling power, will end "in a state of universal discord and confusion, destructive of the social state and the ends for which it is ordained. This controlling

¹ The *Disquisition on Government* was not printed until 1851, when it appeared in the first volume of the *Works of John C. Calhoun*. The same ideas, so far as the Declaration of Independence is concerned, were presented by Calhoun in his speech on the Oregon Bill in the Senate in 1848. *Works*, IV, 507-510. Even at that time these ideas were commonplace in the South. The *Disquisition* is important therefore, not from any influence it may have had in determining the character of the proslavery philosophy, but because it is the most coherent and carefully guarded formulation of that philosophy.

power . . . is government."¹ Thus society is necessary to satisfy men's needs, and government is necessary to restrain their wickedness; and both are "natural" because God has so constituted man that he cannot live without them.

As government is essential for the existence of man in society, liberty is essential for his progress and perfection.

To perfect society, it is necessary to develop the faculties, intellectual and moral, with which man is endowed. But the main spring to their development, and, through this, to progress, improvement and civilization, with all their blessings, is the desire of individuals to better their condition. For this purpose, liberty and security are indispensable. Liberty leaves each free to pursue the course he may deem best to promote his interest and happiness, as far as it may be compatible with the primary end for which government is ordained.²

How far individuals may be left thus free will obviously depend upon circumstances — upon the special circumstances external and internal, of the particular community.

¹ *Works of John C. Calhoun*, I, 1, 2, 4.

² *Ibid.*, 52.

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Notes the column about slaves of
Ascribes it, wrongly, to Jefferson's
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